



A summary of the Federal Court’s decision in *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)].

A decision of the Court of Appeal cannot in law effectively reverse the separate orders of the High Court made in separate but similar proceedings dealing with separate defendants where no appeals were lodged by these separate defendants before the Court of Appeal

The Respondent was one of the 50 defendants.²

Each of the 50 defendants filed a counterclaim against the Appellant.³

The Appellant obtained judgment in default against 13 defendants and the remaining 37 defendants contested the matter.⁴

BACKGROUND FACTS

The Appellant, in his capacity as the registered Public Officer of Eng Choon Association Muar (Eng Choon Huay Kuan, Muar), filed 50 suits against 50 different defendants in relation to 50 different premises.¹

In light of the similar issues of facts and law present in the 37 suits, the parties had agreed that the suit between the Appellant and the

¹ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 1

² Ibid.

³ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 3

⁴ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 6



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Respondent would form a test case (“**Test Case Agreement**”).⁵

The outcome of the case would bind the 36 other cases.⁶

Notwithstanding that, there was no application to consolidate the 37 suits and the trial of the 37 suits did not proceed as one action.⁷

Based on the Test Case Agreement between the parties, the 36 defendants other than the Respondent did not testify at the trial.⁸

On 27.3.2017, the High Court allowed the Appellant’s claim and dismissed the Respondent’s counterclaim.⁹

Accordingly, the 36 other defendants were severally liable to the Appellant.¹⁰

The High Court ordered that 37 separate judgments be filed for the 37 suits and the Appellant complied with the order.¹¹

The Respondent subsequently lodged a notice of appeal against the High Court’s decision, purportedly on his

⁵ Ibid.

⁶ Ibid.

⁷ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 7

⁸ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 8

⁹ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 9

¹⁰ Ibid.

¹¹ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraphs 9 to 10



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behalf and on behalf of the other 36 defendants.¹²

The other 36 defendants did not lodge any appeal against the High Court’s decision in the test case.¹³

COURT OF APPEAL’S DECISION

The Court of Appeal allowed the Respondent’s appeal and set aside the High Court’s decision.¹⁴

¹² *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 13

¹³ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 14

¹⁴ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 16

The Court of Appeal then ordered that its decision would bind the defendants in the 36 other suits.¹⁵

FEDERAL COURT’S DECISION

Dissatisfied with the Court of Appeal’s decision, the Appellant sought leave to appeal to the Federal Court.

The Appellant obtained leave on the following questions:¹⁶

- i. Whether a decision of the Court of Appeal can in law effectively reverse the separate orders of

¹⁵ *Ibid.*

¹⁶ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 22



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the High Court made in separate but similar proceedings dealing with separate defendants where no appeals were lodged by these separate defendants before the Court of Appeal;

- ii. Whether an allegation made in a Statement of Claim, which allegation was abandoned and no evidence led in support thereof by the Plaintiff in the course of trial, is fatal to the Plaintiff's claim, notwithstanding that the Plaintiff's claim was independently supported and

established on other pleaded grounds; and

- iii. Whether the Court of Appeal can allow an appeal against a decision of the High Court based solely on the failure of a party asserting a plea to establish that plea, when that plea was abandoned and no evidence led in support thereof in the course of trial and despite the claim of the party being independently supported and established on other pleaded grounds.



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The Federal Court answered the first question in the negative and declined to answer the second and third questions.¹⁷

The first leave question was answered in the negative, *inter alia*, because:

“Carried to its logical conclusion, the argument means that a Court of Appeal can reverse or set aside the decisions or orders of the High Court made in separate and distinct proceedings, with separate and different parties,

although no separate appeals were lodged by the other aggrieved parties against the decisions or orders which affected them.”¹⁸

On the issue of the absence of any notice of appeal from the other 36 defendants, the Federal Court was of the view that “... the mere existence of an agreement between the parties to be bound by the decision in the test case cannot in law exempt the other parties from lodging their own

¹⁷ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 1

¹⁸ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 47



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notices of appeal against the decision.”¹⁹

pronounced its decision and did not extend beyond the trial stage.²¹

Consequently, the 36 defendants’ failure to appeal against the High Court decision meant that they accepted the High Court’s decision which allowed the Appellant’s claim and dismissed their counterclaims.²⁰

The Federal Court laid down the proper procedure to be adopted in a “test case”:²²

- i. There should be an agreement by all parties for one case to be tried as the “test case” and that the decision in the test case will bind all other parties in the other related cases;

The Federal Court also remarked that the Test Case Agreement came to an end once the High Court

¹⁹ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 48

²⁰ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 57

²¹ *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraphs 53 to 54

²² *Lim Choon Seng v Lim Poh Kwee* [Federal Court Civil Appeal No. 02(F)-16-03/2019(J)], at paragraph 74

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- ii. Pronouncement of the decision should be done in the “test case”;
- iii. Formal judgments are to be drawn up for each and every case even where the court makes no such order;
- iv. Separate notices of appeal to be lodged by each and every party aggrieved by the decision in the “test case”; and
- v. If more than one appeal is lodged, the appeals to be heard together.

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