

CIVIL PROCEDURE

Pleadings – Application to amend defence – Delay without credible reasons – Whether principles in *Yamaha Motor* were sole considerations – Rules of Court 2012, order 34

Hong Leong Finance Bhd v Low Thiam Hoe and another appeal

[2016] 1 MLJ 301, Federal Court

Facts The defendant (respondent) was a borrower who signed a term loan agreement with the plaintiff (appellant). The plaintiff initiated a civil action (“the Suit”) against the defendant when he defaulted in repayment. The Suit proceeded through five pre-trial case management sessions and the defendant did not indicate on whether any amendments will be made to the pleadings. Before the hearing day, the defendant made an application (“the Application”) to amend his defence in the High Court, where he inserted two new and distinct grounds of defence but it was dismissed. Consequently, the defendant appealed to the Court of Appeal. The Court of Appeal allowed the defendant’s appeal. Aggrieved, the plaintiff appealed to the Federal Court.

Issue The main issue was whether the principles in *Yamaha Motor Co Ltd v Yamaha Malaysia Sdn Bhd & Ors*¹ (“the *Yamaha Motor* principles”) were the sole considerations in deciding a late application to amend pleadings.

Held In allowing the appeal, the Federal Court held that a reasonable explanation on the delay in filing a late application to amend pleadings must be given by the applicant. The reason given in the present case, that the new grounds were discovered during the trial preparation, was unacceptable. The court further ruled that the *Yamaha Motor* principles only applies in an application to amend pleadings at the early stage of proceedings and did not extend to a late application made on the eve of the trial. The applicable principles for a late application are (i) the applicant’s affidavit must contain cogent reasons explaining the delay; (ii) the application was not a tactical manoeuvre; (iii) full particulars of the proposed amendments must be disclosed to enable evaluation on the prospect of success by the court; and (vi) the lateness in filling the application to amend pleadings cannot be compensated by payment of cost.

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¹ [1983] 1 MLJ 213, FC. In *Yamaha Motor*, the Federal Court decided that the amendments to pleadings will be allowed if it causes no injustice to the other parties. There are three questions to be considered: (i) whether the application is *bona fide*; (ii) whether the prejudice caused to the other party can be compensated by costs; and (iii) whether the amendments would not in effect turn the suit from one character into a suit of another and inconsistent character.