IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 138

Originating Summons No 682 of 2016

In the Matter of Section 21(1) of the
Supreme Court of Judicature Act (Cap 322)

And

In the Matter of MC/MC 10608 of 2015

Between

Shi Ka Yee

… *Applicant*

And

1. Nasrat Lucas Muzayyin
2. Priscillia Goh Puay Shan

… *Respondents*

JUDGMENT

[Civil Procedure] – [Appeals] – [Leave]
[Tort] – [Assault and Battery]
[Tort] – [Nuisance] – [Neighbouring Properties]
[Tort] – [Trespass] – [Land]

Shi Ka Yee
v
Nasrat Lucas Muzayyin and another

[2016] SGHC 138

High Court — Originating Summons No 682 of 2016
Choo Han Teck J
14 July 2016

20 July 2016 Judgment reserved.

Choo Han Teck J:

1 Shi Ka Yee ("Shi") lives in a large house on 12 Astrid Hills. She has been living there since 1979. On her land is an old rain tree that has been there even longer than she. Shi says that the tree is at least 80 years old. Nasrat Lucas Muzayyin ("Nasrat") and his wife Priscillia Goh (together the "Muzayyins") live next door on 13 Astrid Hills. Some branches from Shi's rain tree overhang into the Muzayyins' land. In October 2014, the Muzayyins asked the National Parks for permission to prune those overhang branches because they feared that the branches might fall off and cause injury. The National Parks told the Muzayyins that they could if they sought Shi's permission.

2 Differing accounts of the discussions between the Muzayyins and Shi between October 2014 and February 2015 were given in evidence. But the undisputed fact was that on 17 February 2015 the Muzayyins had an arborist

trim the overhanging branches from Shi's rain tree. An enraged Shi drove to the Muzayyins' house, perhaps en route elsewhere – we do not know; the house, large as it is, is only next door. What happened thereafter was not pleasant. Shi went onto the Muzayyins' property and berated the Muzayyin family. She left when Nasrat told her to leave, but returned shortly. This time she walked up to the arborist's lorry known as a "cherry-picker" because of its tall crane on which his worker was pruning the branches of the tree. Shi removed the key from the cherry-picker, causing the engine and electrical circuit to stall. The workman was thus stranded up on the rain tree for about an hour.

3 When Shi wanted to drive off in her Porsche, Nasrat stood in front of her car to stop her from leaving because he wanted her to return the key to the arborist's truck. Shi, instead, revved the engine of her car and "edged her car towards [him]". She then drove off with the key (which had not been returned even at trial). The police and the Civil Defence Force arrived and helped the stranded worker down.

4 The Muzayyins sued Shi for the nuisance of her ever-growing rain tree, and for Shi's trespass onto their land. Nasrat also sued for assault for Shi's putting him in fear of injury. Nuisance, trespass and assault are causes of action in the law of torts. They are not complicated or difficult laws and magistrate Chiah Kok Khun ("the magistrate") found Shi liable on all the grounds. Mr Christopher De Souza, counsel for the Muzayyins asked for aggravated damages. The magistrate accepted his submission and awarded $4,300 for the nuisance caused by the overhanging branches, which, because of the incomplete pruning, dripped sap onto the Muzayyins' driveway. Shi's own arborist reported to her in January 2016 that the branches may be in

danger of falling off. The magistrate ordered $4,000 as aggravated damages for Shi's trespass on her neighbour's land. He also ordered $1,500 for Shi's assault on Nasrat.

5 Shi's solicitors instructed Mr Francis Xavier SC to apply before me for leave to appeal against the whole of the magistrate's decision. Mr Xavier argued that the court below was wrong in both fact and law. The thrust of Mr Xavier's argument was that the rain tree had a girth of more than a metre and was a tree that was protected under s 14(1) of the Parks and Trees Act (Cap 216, 2006 ed). He submitted that Shi herself cannot cut the tree and therefore cannot be blamed for refusing consent. In response, Mr De Souza referred to s 14(6) which allows a protected tree to be cut "where the condition of the tree constitutes an immediate threat to life or property". He argued that there was ample evidence from both sides that showed that the protruding branches were in danger of breaking off.

6 Complaints about overhanging branches are almost as old as there are neighbours. This is not a new situation, and the common law has dealt with it sensibly by allowing the tree owner's neighbour to cut branches that protrude over his land; but he may not keep any fruit found on those branches (see *Lemmon v Webb* (1895) AC 1 and *Mills v Brooker* (1919) 1 KB 555). Section 14(1) of the Parks and Trees Act is to preserve grand old trees in a "tree conservation area" or in "any vacant land". Evidence that Shi's property is in a "tree conservation area" must be proved by evidence from the National Parks but Shi did not call the Board for such evidence. Copies of old maps and diagrams are not sufficient unless verified by an officer from the National Parks. It is also not clear whether Shi is claiming that her property is "vacant land" although she seems to have claimed that her property was unoccupied.

"Vacant land" and "not occupied" may not mean the same thing. Since the question of whether Shi's property was in a conservation area or was a vacant land was not an issue between the parties in this application and in the trial below, I will assume that this is not an issue in spite of the fact that it was not properly proved and will assume that s 14(1) applies. Mr Xavier's argument that followed was this: Since the tree was a protected tree, Shi could not cut it herself and the Muzayyins could not do so either. It must be said at once that this was not a case in which it was suggested that either party intended to have the tree cut down.

7 The only issue was whether the Muzayyins could cut the overhanging branches when Shi had refused her consent. The trial judge found as a fact that some of the overhanging branches were "a hazard that [were] likely to cause and ha[d] caused damage". Mr De Souza submitted that that being the case, s 14(6) permitted his clients to cut the protruding branches. Mr Xavier complained that the trial judge made no reference to s 14(6) and the Muzayyins cannot therefore rely on that provision. I do not think that this is a justifiable complaint. Section 14(6) provides an exception to the prohibition under s 14(1) in that if the tree or its branches poses a hazard and threatens life or property it may be cut. The judgment is not wrong just because the judge did not mention s 14(6). The crucial finding is whether the protruding branches were a hazard, and this he did find.

8 The Parks and Trees Act, like all statutes, must be interpreted sensibly. The relevant provisions are intended to prevent a protected tree on private land within 'a tree conservation area' from being cut. Cutting is defined to include 'lobbing' and that means cutting of some branches rather than the entire tree. It is common knowledge that trees need trimming, and s 14(1) cannot be

understood to make every trimming of the tree an offence. It will be remarkable to hold that s 14 will not allow careful and sensible trimming. Many might have welcomed the extended canopy of a grand and lovely tree such as the 80-year old one on 12 Astrid Hills, but the Muzayyins are entitled to have the old limbs cut if those branches protrude over their land and become a threat to their life or property.

9 In arguing that Shi was justified in entering her neighbours' land to complain about the tree cutting, Mr Xavier must not forget that the initial entry might have been reasonable, but the evidence found by the trial judge was that she left after being asked to leave, but she quickly returned and "took away the key from the cherry-picker". Her entry into the Muzayyins' property after she knew that she was not welcome constitutes a trespass. Whether her removal of the key and her vocal haranguing were sufficient to justify an award of aggravated damages is a little more difficult to justify. However, given that the amount was not large, the trial judge should be given some discretion in finding that Shi's conduct justified the aggravated damages of $4,000.

10 Mr Xavier argued that the finding of assault was wrong because Nasrat stood in front of Shi's car. We do not know whether Shi could have reversed and avoided Nasrat. That is a matter of fact; and the trial judge found as a fact that Shi revved her car and edged towards Nasrat. His conclusion that it caused Nasrat an apprehension of injury is not unreasonable.

11 Finally, this dispute should not have involved so many lawyers and so much time in court. Trees from one property may stretch over to another, just as trees from the Muzayyins' home might stretch their limbs elsewhere. Boundaries have no meaning to trees which obey only the law of nature.

Boundaries establish to owners of property rights in law, but more often than not, mutual acts of neighbourliness obviate the need for law. Neither side ought to think of this as a victory or defeat. Victories and defeats are found in the language of war. There is no one who wins when neighbours go to war. There is therefore no merit in letting this case incur any more court time when cases with greater social issues are waiting in line. I therefore refuse leave to Shi to appeal.

12 I will hear parties on the question of costs here and below on another date if they are unable to settle it themselves.

- Sgd -
Choo Han Teck
Judge

Francis Xavier SC, Jeremy Gan and Vinna Yip (Rajah & Tann Singapore LLP) (instructed counsel) and Melissa Kor (Optimus Chambers LLC) for applicant;
Christopher De Souza and Amanda Lim (Lee & Lee) for respondents.