IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 252

Suits No 263, 264 and 271 of 2010

Between

(1) Syed Ahmad Jamal Alsagoff (as Administrator of the Estates of Shaikah Fitom binte Ghalib bin Omar Al-Bakri, Syed Salleh bin Hashim bin Mohamed Alhabshee, Sallim Hashim Mohamed Alhabshee @ Syed Sallim bin Hashim bin Mohamed Alhabshee, Noor binti Abdulgader Harharah and S Ali bin Abdulkadir Harharah)
(2) Abdul Majid Omar Harharah (as Administrator of the Estate of Noor binti Abdulgader Harharah)
(3) Kamiliah binte Ali Harharah (as Administratrix of the Estate of S Ali bin Abdulkadir Harharah)
(4) Fatimah Mohamed Hashim Alhabshee
(5) Abdullah bin Mohd bin Abdullah Alhabshee alias Abdullah Mohammed Abdullah Al-Hebshi

… *Plaintiffs*

And

(1) Harun bin Syed Hussain Aljunied @ Harun Aljunied

(2) Syed Abdulkader bin Syed Ali @ Syed Abdul Kader Alhadad (The 1st and 2nd Defendants as Trustees of the Will of Syed Ahmad bin Abdulrahman bin Ahmat Aljunied)
(3) BMS Hotel Properties Pte Ltd
(4) Syed Salim Alhadad bin Syed Ahmad Alhadad
(5) Syed Ahmad Alhadad bin Syed Abdulkader Alhadad
(6) Syed Jafaralsadeg bin Abdulkader Alhadad
(7) Syed Ibrahim bin Abdulkader Alhadad (The 4th to 7th Defendants as the former Trustees of the Will of Syed Ahmad bin Abdulrahman bin Ahmat Aljunied)

… Defendants

GROUNDS OF DECISION

[Evidence] — [Proof of evidence] — [Standard of proof] – [Submission of no case to answer in civil matter]
[Landlord and tenant] — [Distress for rent]
[Landlord and tenant] — [Termination of leases] — [Forfeiture]
[Tort] — [Conspiracy]
[Tort] — [Misrepresentation] — [Fraud and deceit]
[Trusts] — [Trustees] — [Trustee *de son tort*]
[Trusts] — [Trustees] — [Intermeddling in trust property]

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v
Harun bin Syed Hussain Aljunied and others and other suits

[2016] SGHC 252

High Court — Suits No 263, 264 and 271 of 2010
Aedit Abdullah JC
30 June, 1–2 July, 14 December 2015; 7 January 2016

9 November 2016

Aedit Abdullah JC:

Introduction

1 In this case the Plaintiffs sought to assert their leasehold interests granted to their predecessors in title over three adjacent properties, which the Defendants purported to have terminated previously. The Plaintiffs further claimed in fraud, conspiracy, and intermeddling against the Defendants. At the trial, only one witness testified for the Plaintiffs. Some of the Defendants did not participate in the proceedings, but those who did ("the active Defendants") submitted that there was no case to answer and adduced no evidence on their part. Having considered the evidence and submissions, and bearing in mind the Defendants' election, I found that the Plaintiffs' claim asserting the

subsistence of their leasehold interests was successful, but dismissed their claims in fraud, conspiracy and intermeddling. The Plaintiffs have appealed.

Background

2 The present suit was a consolidated suit bringing together three different suits in respect of three properties: Suits No 263, 264 and 271 of 2010.

3 The three properties at the centre of the disputes were No. 18, 20 and 22 Upper Dickson Road ("No. 18", "No. 20" and "No. 22" respectively, "the properties" collectively). They were located adjacent to each other. Leasehold interests were carved out of the freehold interests of the three properties in the late 19th century. A chronology of events gives the best overview of the state of affairs between the parties:

(a) In 1877, a lease for 999 years ("the lease") was granted for the properties by one Kavena Koonjan Chitty to Moon Meyna Chitty.

(b) In 1892, one Syed Ahmad bin Abdulrahman bin Ahmat Aljunied ("Ahmad Aljunied") acquired the reversionary interest over the properties. His estate had apparently not been fully administered. The 4th to 7th Defendants asserted that they were the trustees of his estate in the mid-1990s ("the Former Trustees"). The 1st and 2nd Defendants asserted that they were the present trustees of that estate.

(c) In 1969, the leasehold interests were according to the Plaintiffs assigned as follows:

(i) No. 18: This was assigned to one Syed Mohamed bin Hashim bin Mohamad Alhabshi ("Mohamad Alhabshi").

Mohamad Alhabshi passed away in 1973. The 4th and 5th Plaintiffs claimed that they were the beneficiaries, directly and indirectly, of the estate of Mohamad Alhabshi, represented by the 1st Plaintiff as their attorney.

(ii) No. 20: This was assigned to Shaikh Ali bin Abdulgader Harharah ("Ali Harharah"). A one third-share in the leasehold interest was supposedly assigned by Ali Harharah to one Noor binti Abdulgader Harharah ("Noor Harharah"). The two passed away in the 1990s. The 1st and 2nd Plaintiffs claimed to be administrators of the estate of Noor Harharah. Grant of probate in respect of the estate of Ali Harharah was made in 2013 to the 1st and 3rd Plaintiffs.

(iii) No. 22: This was assigned to one Shaikhah Fitom binte Ghalbi bin Omar Al-Bakri ("Fitom Al-Bakri"). Fitom Al–Bakri passed away in 1973. In February 2015, the 1st plaintiff was appointed the administrator of Fitom Al-Bakri's estate.

It was noted that the purported present beneficiaries of the leasehold interests were generally abroad.

4 The Plaintiffs sought, among other things, a declaration that the lease subsisted and that the leasehold interests in the three properties have not been extinguished. The version put forward by the Defendants was that the lease was determined as the covenants in it were not observed. The Defendants alleged that the Plaintiffs (and their predecessors in title) had for years, in breach of the covenants, failed to pay the rent of one Spanish Dollar on the 1st of January of every year without demand to the lessor; not used the properties

as dwelling houses; not obtained the lessor's permission on the change of use of the properties; not obtained the lessor's consent in respect of a partial assignment of the leasehold interests of No. 20; and had not been able to account for the loss of 218 square feet of land from the properties. The Former Trustees had supposedly notified the Plaintiffs of these breaches by a letter in July 1993. The Defendants said that the Former Trustees were entitled, by reason of the Plaintiffs' breaches of the lease, to forfeit the lease, and had so became vested with both the reversionary as well as the leasehold interests in the three properties.

5 In 1994, the 4th to 7th Defendants, as the Former Trustees, purportedly conveyed both the reversionary interests and the leasehold interests in the properties to the 3rd Defendant ("the Conveyance"). This was followed by a Deed of Rectification and Confirmation dated 1 November 1994 ("the Confirmation"), between the 4th to 7th Defendants on one side, and the 3rd Defendant on the other.

6 There were various contentions made by both sides about the estates of the various deceased persons, and who was a proper trustee of those estates. These were not generally material in the present proceedings, and any challenge to the status of the Plaintiffs or their predecessors had to be by way of separate proceedings. There were also other proceedings relating to issues relevant for the present action. For instance:

(a) In 1994, the 3rd Defendant sought to obtain possession of the properties in OS No. 1234 of 1994. Then in 1995, Ali Harharah, together with some others, took out proceedings against the 3rd to 7th Defendants in OS No. 1052 of 1995 to set aside the Conveyance and

Confirmation. An order was made for possession of the properties in OS No. 1234 of 1994, and the application for OS No. 1052 of 1995 was dismissed. Subsequently, in Summons No. 4805 of 1999 and Summons No. 4961 of 1999, Kamal Harharah, a son of Ali Harharah, applied to set aside that order for possession and the order dismissing OS No. 1052 of 1995 respectively. Lai Siu Chiu J granted both applications in respect of No. 20, but ordered the *status quo* to be maintained as regards No. 18 and No. 22. This, the Plaintiffs said, was so that representatives could be appointed for the estates of Mohamed Alhabshi and Fitom Al-Bakri before the relevant orders could be made for No. 18 and No.22.

(b) In Summonses No. 2248, 2250 and 2249 of 2010, Belinda Ang J, in a judgment reported as *Syed Ahmad Jamal Alsagoff (administrator of the estate of Noor bte Abdulgader Harharah, deceased) and ors v Harun bin Syed Hussein Aljuied (alias Harun Ajunied) and others and other suits* [2011] 2 SLR(R) 661 ("the 2011 striking out decision"), determined an application for striking out which touched on the relationship between the present suit and the earlier proceedings.

(c) In Suit No. 424 of 2011, the 1st and 2nd Defendants of the present action brought a claim against the 3rd Defendant for failure to pay the full consideration for the conveyance of the reversionary interests and the leasehold interests in the three properties. I gave my decision for Suit No. 424 of 2011 concurrently with my decision for the present action.

(d) OS No. 1122 of 1992 involved an application by the 4th and 5th Defendants to have themselves appointed trustees of the trusts of the will of Ahmad Aljunied. Certain related orders were granted. This was the subject of an intervention application before me, which I dealt with separately.

7 At the close of the Plaintiffs' case, the active Defendants submitted that there was no case to answer, and so did not call any evidence. They elected to so submit knowing the consequences of their choice. As it was then, the only evidence admitted was that of the Plaintiffs' sole witness, Syed Ahmad Jamal Alsagoff ("Jamal"), who was the 1st Plaintiff in this action and managing agent of the other plaintiffs.

The Plaintiffs' Case

8 The Plaintiffs' primary contention was that the Defendants had over many years deprived them of their inheritance, *ie* the leasehold interests in the properties. The Plaintiffs asserted that they were the beneficial owners of the leasehold interests, and claimed that the Conveyance and Confirmation were executed either in fraud and/or conspiracy. It was also claimed that there was intermeddling of the estates, rendering the Defendants constructive trustees. In terms of specific remedies, the Plaintiffs sought declarations that the lease remained valid with the beneficial leasehold interests vesting in them, and the expunging of the various interests registered by the Defendants in consequence of the Conveyance being null and void.

9 The Plaintiffs said that the lease subsisted because under the terms of the lease, the remedy for non-payment of the annual rent was to levy execution on goods and chattels found on the properties to recover the rent in arrears,

and not re-entry *qua* forfeiture as claimed by the Defendants. Furthermore, there was nothing adduced in evidence as to what the outstanding rent was since this was expressed to be in Spanish Dollars in the lease, and the Spanish Dollar had ceased to be in use. There was also uncertainty as to who, if anyone, could have continued to collect the rent, as there was an extended period of time between 1958 and 1992 during which no trustee was appointed under the estate of Ahmad Aljunied.

10 The essence of the Plaintiffs' case was that the 4th to 7th Defendants schemed to dispose of the reversionary interests of the properties free of the leasehold interests on the basis that the leasehold interests had been forfeited. Various allegations were made concerning the Defendants. The 4th to 7th Defendants committed fraud when they obtained appointment as trustees of the trusts of the will of Ahmad Aljunied even though they had no basis, by concealing facts from the judge in an application under OS No. 1122 of 1992. The Defendants also insisted that they had forfeited the lease even though they knew that they had no right to do so; they alleged that the Plaintiffs had breached the terms of the lease by failing, *inter alia*, to pay the rent, and that they had in 1993 issued notices to the Plaintiffs about those breaches. They then said that they had a right to re-enter and determine the lease through forfeiture when the Plaintiffs failed to remedy the breaches, and that they had exercised that right. The Plaintiffs dispute that the Defendants had ever issued the notices (no copies of which had been produced to the court), and that they had ever re-entered the properties, which at all times were in the possession of either the Plaintiffs or the Plaintiffs' predecessors. In any event, the lease did not provide the lessor with the power of forfeiture in the circumstances set out by the Defendants, and the Defendants knew that; the 4th to 7th Defendants had, in a previous lawsuit concerning the sale of other properties belong to the

trusts of the will of Ahmad Aljunied, obtained advice from two Queen's Counsel that under the terms of the lease concerning those properties, the lessor had no right to forfeit the leasehold interests. With respect to the Conveyance, the Plaintiffs argued that the 4th to 7th Defendants had purported to convey the properties to the 3rd Defendant, despite the Plaintiffs' predecessors being in occupation and possession of the properties. Further, the 3rd to 7th Defendants knew that the Conveyance was doubtful, and that was why they had felt the need to execute the Confirmation. The purported conveyance was also short of full payment of consideration by the 3rd Defendant, and the fact that the Conveyance and Confirmation were executed nonetheless without full payment showed that it was a sham. In fact, the 3rd Defendant had entered into a secret deed of settlement with the 6th Defendant as attorney of the estate of Ahmad Aljunied.

11 The 1st and 2nd Defendants acted in fraud as well, as their position was premised on adopting the acts and deeds of the 4th to 7th Defendants, perpetuating fraud against the Plaintiffs, registering the order of dismissal in OS No. 1052 of 1995 against the properties despite the order of Lai Siu Chiu J for Summons No. 4961 of 1999 (see [6(a)] above), and requiring the tenants and occupants of the properties to pay rent to them instead of the rightful lessors, the Plaintiffs.

12 The Plaintiffs alleged that the actions of the Defendants in the Conveyance and Confirmation and the earlier proceedings as set out above was evidence of a conspiracy between the Defendants by lawful means. It was argued that since the Defendants had submitted that there was no case to answer, the Plaintiffs only had to adduce *prima facie* evidence of their case. The Plaintiff had only one witness, Jamal, who was the administrator of the

estates of Mohamad Alhabshi, one of two administrators of the estate of Noor Harharah, one of two personal representatives of the estate of Ali Harharah, the sole administrator of Fitom Al–Bakri, an attorney of the beneficiaries of these estates, and the 1st Plaintiff in the present action.

The 1st and 2nd Defendants' Case

13 The 1st and 2nd Defendants submitted that there was no case to answer as the Plaintiffs had not made out on their evidence even a *prima facie* case for their claims. A number of general points were made. The burden of proof was on the Plaintiffs and was not discharged. The evidence of the Plaintiffs was wanting. There were various omissions or failings in the evidence of Jamal, the Plaintiff's only witness. Jamal referred to various matters that were not in the pleadings. He had no personal knowledge of the facts which were germane to the case. In fact, he had no knowledge of what had transpired concerning the properties before 2004. He relied on what was reported by various persons from whom no evidence was led. While he confirmed that two lawyers were involved in the preparation and execution of the deeds for the Conveyance and Confirmation, yet they were never called to give evidence. The Plaintiffs were thus relying on inadmissible hearsay evidence. Improper attempts were also made to admit evidence; the Plaintiffs attempted to admit documents which were not included in their list of documents. No formal application for leave of court to admit new documents was made, and no affidavit was filed to explain the late filing of documents. Furthermore, there were defects in the Plaintiffs' pleadings which could not be cured by averments in the affidavits.

14 It was noted that the Plaintiffs' attack on the Conveyance and Confirmation was made primarily to uphold the lease and their leasehold interests. The Plaintiffs' claims against the Defendants were in fraud,

conspiracy and intermeddling. Fraud required a high level of proof, which was not made out by the Plaintiffs as they failed to adduce sufficient evidence. Furthermore, while fraud was alleged in respect of the Defendants' purported "assignment" of the properties' leasehold interests, no assignment was in fact done and the Plaintiffs failed to show how there was any such assignment as part of their pleaded case. Various other allegations were made by the Plaintiffs, but they were not supported by evidence. None of the allegations they made amounted to fraud or conspiracy. The failure to have full payment for the Conveyance could not be sufficient evidence of fraud. Whatever arrangements were made between the Defendants, the Plaintiffs did not lead any evidence that those arrangements were made *mala fides*. With respect to the Plaintiffs' allegation that the Defendants had not asserted their title to the properties as two of the properties remained vacant, the 1st and 2nd Defendants submitted that this did not, in any event, support the Plaintiffs' case. There was nothing to support the Plaintiffs' claim that the Defendants did not own the leasehold interests.

15 The 1st and 2nd Defendants further argued that the conspiracy claim was also not made out. As regards conspiracy by unlawful means, there was nothing in the Plaintiffs' pleaded case that showed that the Defendants had done any criminal or illegal acts. As for conspiracy by unlawful means, the essence of a conspiracy is agreement between the alleged conspirators but there was no pleading in this case as to the existence of such an agreement. In any case, any complaints pertaining to the propriety of the Conveyance and Confirmation could not concern the 1st and 2nd Defendants, who were not trustees of the trusts of the will of Ahmad Aljunied at the material time. Nothing was also pleaded as to the predominant purpose of any agreement

between the Defendants. Any agreement that the Defendants had was intended to further their own commercial interests rather than to injure the Plaintiffs.

16 Other possible causes of action, such as unlawful interference and breach of trust, were not pleaded.

17 In addition, the 1st and 2nd Defendants submitted that in any event, the Plaintiffs' claims were time-bared. They said that under Section 9(1) of the Limitation Act (Cap 163, 1996 Rev Act), the standing of the Plaintiffs would be valid for 12 years from the date on which the right of action accrued to them. The Plaintiffs had become aware of the relevant facts by 1994 when they were parties to OS No. 1234 of 1994 and OS No. 1052 of 1995, 16 years before they commenced the present suit in 2010. There was also deemed discontinuance of Summons No. 4961 of 1999 but even if the Plaintiffs had elected to reinstate that discontinued action, the time bar would have applied nonetheless.

18 It was noted that no reply was filed by the Plaintiffs with respect to the 1st and 2nd Defendants' submissions on limitation and inadequacy of evidence tendered.

The 6th Defendant's Case

19 The 6th Defendant was in person. His position largely mirrored that of the 1st and 2nd Defendants. The 6th Defendant's main point was that the Plaintiffs' witness, Jamal, did not have personal knowledge of the various matters, and that his evidence should not thus be accepted. It was also said that there was no basis for the Plaintiffs' claims. The 6th Defendant reiterated that the lease was validly terminated.

20 The 6th Defendant was an undischarged bankrupt, but his status was not in issue in the present case.

The Other Defendants

21 The other Defendants did not participate in the proceedings.

The Decision

22 The active Defendants in these proceedings chose to submit that there was no case to answer. They were asked to confirm, and did confirm their understanding of the consequences. By submitting that there was no case to answer they had elected not to call evidence on their own behalf. The affidavits that they had filed were not therefore evidence that I could consider in reaching my decision, though I would be able to take into account whatever was elicited by them in cross-examination of the Plaintiffs' witness. Given this stand, I had to assess the Plaintiffs' claim on the basis of the evidence that was before me up to that stage of the proceedings, and consider whether that evidence was sufficient to establish their claim.

23 The basis of the Plaintiffs' claim was that the leasehold interests in the properties subsist, and that they were the beneficiaries. The Defendants argued otherwise, claiming that the lease had been terminated. The Plaintiffs needed only to plead that the lease subsisted. They did not need to plead that there were no termination of their lease. As it was the Defendants who argued that the lease had been terminated, the burden lay upon them to establish this, and thus to plead this.

24 There was no dispute between the parties that the lease was created in 1877, and was to last for 999 years unless terminated earlier. On what

evidence there was before me, I could not conclude that there was valid termination of the lease under the relevant law, *ie* the law in force at the time of the purported forfeiture of the lease in 1994. In particular, the lease did not contain an express reservation clause for forfeiture for non-payment of rent, nor was payment of rent a condition of the lease. I accepted the interpretation put forward by the Plaintiffs that the reference to re-entry in the lease was re-entry only for the purposes of distraint. That being so, the lease remained in force, and the Plaintiffs' claim should succeed to that extent.

25 However, I found that it was not proven that there was any fraud or conspiracy committed by the Defendants. There was insufficient admissible and relevant evidence of this. Any inference that I could draw from the conduct of the Defendants fell short of establishing fraud or conspiracy. The Plaintiffs also had a claim for intermeddling. It would seem that this was a claim on the basis of the Defendants acting as trustees *de son tort*. But liability as a trustee *de son tort* is premised on a person acting as if he is a trustee of a particular trust. I did not see sufficient evidence of this in the present case. The Defendants actions were to my mind premised on the view that they had in fact forfeited the lease. In so far as the Defendant's actions could be taken as interference of contractual relations, I found that it was not pleaded as such and in any event there was insufficient evidence supporting this.

26 In the circumstances therefore, the Plaintiffs only succeeded on part of their claim.

Analysis

The crystallisation of the issues

27 The Plaintiffs' case was that the lease granted in 1877 remained in force, and that the purported Conveyance was done in fraud. The Defendants had conspired to commit the fraud. There was also intermeddling or interference in the estates. The active Defendants denied these contentions, and maintained that the lease had been forfeited or terminated, and there was no fraud, conspiracy, or intermeddling. The Defendants' election to submit that there was no case to answer carried implications for the assessment of the case. The issues would thus have to be dealt with in the following sequence:

(a) The effect of the submission of no case to answer;

(b) Whether the lease continued in existence;

(c) The claim of fraud and how this should be construed under the law;

(d) The claim in conspiracy;

(e) The claim for intermeddling in the estates.

A number of miscellaneous matters would then be addressed briefly at the end.

Effect of submission of no case to answer

28 Following the evidence of the sole witness for the Plaintiffs, the active Defendants chose to submit that there was no case to answer. Upon being

asked to confirm their position, they maintained their stance and indicated that they were aware of the consequences.

29 A submission of no case to answer meant that the active Defendants chose to stand their case on the inadequacy of the Plaintiffs' evidence: the affidavits that the active Defendants had filed would not be admitted as evidence at all. Conversely however, the Plaintiffs' case rested solely on the evidence adduced. There is no rule of evidence that the evidence of a plaintiff is to be accorded full weight simply because of the defendant's election of no case to answer. What must be determined is whether there was any evidence adduced by the plaintiff that *prima facie* establishes the elements of his claim. If so, the plaintiff succeeds: *Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2006] 4 SLR(R) 745.

30 Thus, in the present case, the Plaintiffs had to show that their evidence, namely that of their sole witness, established the elements of the various heads of claim. A *prima facie* basis requires that the evidence, uncontradicted and unless inconsistent with itself, proves facts which are elements of particular claims. In the end, I found that the Plaintiffs only succeeded in doing so in respect of their claim on the subsistence of the lease, but failed in respect of the other allegations. For the latter what the Plaintiffs brought in as evidence did not make out the claims even on a *prima facie* level.

Continued existence of the lease

31 There has been no appeal by the Defendants on this point, which would thus be dealt with relatively briefly. I was satisfied the lease had not been validly terminated; the interests asserted by the Plaintiffs thus remained. The question of the Plaintiffs' proper succession to these interests was not in

issue before me, and would have been properly the subject of separate probate proceedings. Whatever the outcome of that may be, that was a separate matter.

32 The Plaintiffs argued that the lease subsisted. If there was any default in the payment of rent, the right given to the owner of the reversionary interests was only to re-enter and levy rent in arrears on seizure of goods found on the premises. A public sale of the premises may be had if there were insufficient goods. However, the lease could not be forfeited. The Defendants also could not rely on the orders made for OS No. 1234 of 1994 and OS No. 1052 of 1995 (see [6(a)] above) to assert that the lease had been forfeited, as those orders were wrongly obtained. Furthermore, those orders were obtained on the basis that the leasehold interests had already merged with the revisionary interests, which was the very point in issue in the present proceedings. The Defendants on the other hand argued that there had been failure to pay rent as required by the lease, that owing to that failure they as owners of the reversionary interests had the right to forfeit the lease, and that they had in 1993 issued to the Plaintiffs notices to terminate the lease.

33 The Plaintiffs' contention required examination of the original terms of the lease.

Terms of the lease

34 The relevant clause ("the Clause") reads:

> The said [MMM Chitty] doth for himself [etc] covenant promise and agree to and with the said [KK Chitty etc] that the said [MMM Chitty etc] shall and will well and truly pay or cause to be paid unto the said [KK Chitty etc] the said rent of one Spanish Dollar at the several times aforesaid, and that in case default shall be made thereon, and such rent or any part thereof shall be in arrears and unpaid for the space of Three Calendar Months next after the time hereby appointed for

> payment thereof, and where the sums ought to be paid and satisfied as aforesaid it shall and may be lawful for the said [KK Chitty etc] into and upon the said demised premises or any part thereof, to re-enter and levy such rent so in arrears and unpaid by seizure and public sale of the goods and chattels as may be found thereon and for want of sufficient goods and chattels, then by Public sale of the said demised premises, or so much thereof as may be sufficient for the payment and satisfaction of such rent so in arrears and unpaid, and will at the expiration or sooner determination of the said terms of 999 years peaceably yield up the said allotment portion or section of Land…

35 In contemporary language, the Clause stipulates:

(a) An obligation to pay rent at one Spanish Dollar;

(b) If rent is unpaid for three months after it is due, the landlord may re-renter and levy rent on the goods found on the property, or sell part of the premises;

(c) The lessee will surrender the land on the expiration of 999 years or upon any earlier determination.

36 The Plaintiffs argued that the obligation to pay rent was not a condition of the lease, but only a covenant. The Plaintiffs further contended that the provision did not operate as a forfeiture clause; it only provided for re-entry to levy distress. It was not re-entry required for forfeiture, which would have been peaceable re-entry or by way of an action for repossession. In any event, there was no re-entry on the facts. The Plaintiffs also denied that the Defendants had made formal demands for the rent. The Defendants, on their part, essentially argued that under the lease they had the right of forfeiture on non-payment of rent, and that valid notice of re-entry had been given in 1993. The lease was thus terminated, and the reversionary interest was free of the claimed leasehold interests.

37 I found that non-payment of rent did not in itself give to the landlord a right to forfeit. In so far as the Defendants purported to forfeit for non-payment of rent, such forfeiture could only be done if either the payment of rent was specified to be a condition of the lease, or the right of forfeiture on non-payment of rent was specifically expressly provided for under the terms of the lease. Neither was the case here. I agreed with the Plaintiffs that the Clause did not make payment of rent a condition of the lease. The term "condition" was not present within the Clause. There was also no separate express reservation of the right of the landlord to forfeit the lease on non-payment of rent. I accepted the Plaintiffs' argument that the Clause, as properly interpreted, provide for a right of re-entry that was specifically limited for the purpose of distraining goods to make good the arrears in rent. That limitation would not have been present under the Clause had the parties' objective intention been to have the term "re-enter" entail re-entry for the purpose of forfeiture. This very fact that the lease tied re-entry to distraining for unpaid rent also pointed against non-payment of rent as being a condition of the lease.

38 Furthermore, even if there was a right of forfeiture, formal demand would be required to forfeit the lease, unless the lease provided that this was not necessary. This was not the case here. The Land Titles Act (Cap 157, 2004 Rev Ed) does provide for re-entry without formal demand, but the lease here was not governed by the Land Titles Act. In 1993, any forfeiture would have required compliance with the law in Singapore as it stood then, namely that set out under the Landlord and Tenant Act 1730 (4 George II Chapter 28). The active Defendants claimed that they had issued formal notices to the Plaintiffs in 1993, but there was no proof of that since no copies of those were produced to the Court.

39 In the circumstances therefore, on the Plaintiffs' case, it was shown that the lease claimed by the Plaintiffs continued to subsist.

Fraud

40 I did not find at the end of the day that fraud was made out. The Plaintiffs had a heavy burden to discharge as their allegations were serious. The evidence adduced by them did not bring them over the threshold. But perhaps more importantly in the present case, the Plaintiffs did not make clear what their cause of action was: fraud is not a cause of action in itself, unless what is alleged is fraudulent misrepresentation or deceit.

41 The Plaintiffs' argument was that fraud was committed by the Defendants in respect of the Conveyance and Confirmation as:

(a) the 4th to 7th Defendants engineered their appointments as trustees of the trusts of the will of Ahmad Aljunied. They knew that their grandfather, Syed Ahmad bin Abdulkader Alhadad, was not the last surviving trustee of the trusts and that there was therefore no capacity for them to be appointed as the trustees, but deliberately chose to conceal the facts from the judge hearing OS No. 1122 of 1992;

(b) the 6th Defendant knew from 1993 that the lease was validly held by the Plaintiffs;

(c) the 4th to 7th Defendants' allegation that they had in 1993 issued to the Plaintiffs' predecessors notices of breaches of the lease and of re-entry to forfeit the lease was made as part of their strategy to forfeit the lease, but no copy of those alleged notices had ever been produced;

(d) the 4th to 7th Defendants purported to convey the properties to the 3rd Defendant even though the Plaintiffs' predecessors in title were in occupation and possession of the properties;

(e) the 3rd to 7th Defendants went ahead to execute the Conveyance even though they were in doubt as to whether they could forfeit the lease. They had obtained two Queen's Counsel opinion that they would fail in their attempt to forfeit the lease;

(f) the Defendants had never re-entered the properties for the purpose of forfeiture;

(g) the 3rd Defendant did not give full consideration for the Conveyance, contrary to what was stated in the deed for the Conveyance that full consideration had been paid. The transaction was thus a sham transaction.

42 The active Defendants pointed primarily to the paucity of evidence of the alleged fraud. The 1st and 2nd Defendants argued that the Plaintiffs' pleaded fraud was in the "assignment" of the properties' leasehold interests, but this was not supported by any evidence, and there was in fact no such assignment. The allegations of fraud concerning the Conveyance and Confirmation also did not relate to the 1st and 2nd Defendants, as they were not trustees of the trusts of the will of Ahmad Aljunied then. Further, the 1st and 2nd Defendants attacked the adequacy of the evidence of the Plaintiffs' sole witness, Jamal. They said that Jamal did not have any personal knowledge of the facts that were material to the allegations, and could give no explanation in support of the Plaintiffs' allegation of fraud. Jamal made some assertions, but they were not supported by evidence. What the Plaintiffs sought to rely on

in Jamal's affidavit was also not in their pleaded case. Further, the Plaintiffs failed to call the two lawyers who were involved in the preparation and execution of the deeds for the Conveyance and Confirmation, The 6th Defendant made similar points that the evidence produced by the Plaintiffs was not sufficient.

43 I accepted that the Plaintiffs' case could not succeed in fraud as this claim was not properly pleaded or argued. Fraud is essentially an allegation of dishonesty. It must generally be tied to other elements to be a complete cause of action. The most common claim invoking fraud is that for fraudulent misrepresentation, or deceit. Aside from fraudulent misrepresentation, fraud can also be element of other torts, such as fraud by an agent, as recognised in cases such as *Salford Corp v Lever* [1891] 1 QB 168, and in *Clerk and Lindsell on Torts* (Sweet & Maxwell, 21st Edition, 2014) ("*Clerk and Lindsell on Torts*") at 18-55. Allegations of fraud may additionally be made in respect of other claims such as that for fraudulent trading under s 340 of the Companies Act (Cap 50, 2006 Rev Ed), or fraudulent preference, or insurance fraud. In such contexts, fraud involves some exploitation of an act of dishonesty. None of these was applicable in the present case, and nothing was pleaded by the Plaintiffs as such.

44 What the Plaintiffs appeared to have asserted was an independent, free-standing cause of action of fraud. There is no such cause of action. In other words, committing a dishonest act, without anything more, is not a tort. Nor would it be sufficient to allege acts that may seem wrongful, without establishing the other elements of a recognised tort. The complaints made by the Plaintiffs against the Defendants (see [41] above) were essentially that the Defendants knew that what they had claimed was something they were not

entitled to. The allegation was that they were not honest or acting *bona fides.* Such lack of honesty or even dishonesty does not in itself gives rise to a cause of action. No cases were cited in support of any proposition that it does. No cases were in fact cited in submissions that would have allowed the Court to tease out the doctrinal basis of the Plaintiffs' claim.

45 The Plaintiffs had in the pleadings only referred to fraud generally. They stated at para 17 of their Statement of Claim as follows:

> The Plaintiffs plead that the Conveyance and the Confirmation were, insofar as they purported to assign the Properties' Leasehold Interest, both executed in fraud…

Then again at para 30, it was stated that:

> By the actions and conduct as set out in paragraphs 17 and 27 to 29, the Defendants have acted in fraud with the intention of depriving the Plaintiffs and/or the Estates of their rights and estate in the Properties' Leasehold Interest…

Such a general claim would not do: nothing was pleaded as to facts that would ground a recognised cause of action. Fraud *simpliciter* is not enough.

46 Furthermore, in general, the evidence of Jamal, the sole witness for the Plaintiffs, did not help them at all. He had no personal knowledge of the events germane to the present dispute before he became involved in matters concerning the properties in 2004. Even if hearsay evidence of the previous events could be admitted through Jamal, the fact that he had not directly perceived the events meant that his credibility and credit as a witness could not add to the scales in favour of the Plaintiffs. Thus little weight could ultimately be given to the Plaintiffs' various allegations of fact as to fraud.

Deceit or fraudulent misrepresentation

47 In so far as the Plaintiffs' case alleging fraud was really one for fraudulent misrepresentation, I did not find that this was established on the facts, as the elements were not established. Following the Court of Appeal's decision in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 (at [14]), that cause of action has the following elements:

(i) A representation of fact made by words or conduct;

(ii) Such representation must have been made with the knowledge that it was false, or without any genuine belief that it was true;

(iii) The representation must have been made with the intention that it should be acted upon by the plaintiff or by a class of persons which includes the plaintiff;

(iv) The plaintiff had acted upon the false representation; and

(v) The plaintiff suffered damage by acting upon the false representation.

No allegation of any representation

48 Misrepresentation must be particularised in the pleadings, identifying what was stated, how it was stated, and to whom and by whom it was made. Without these particulars, insufficient notice is given to the other party and to the Court of the nature of the claim asserted to allow either rebuttal or proper consideration.

49 In the present case, the pleadings did not allege anything in the nature of a representation by the Defendants. Nothing in the pleadings could be so construed, even on a broad reading. Further, the focus of the pleadings was on the actions of the various Defendants; nothing was expressly addressed as to any inducement or reliance by any other party let alone the Plaintiffs.

Insufficient proof of the elements of deceit or fraudulent misrepresentation

50 Even if there had been sufficient averment of fraudulent misrepresentation or deceit in the pleadings, there was insufficient evidence adduced, even to establish a *prima facie* case for the Plaintiffs. Common law requires serious allegations such as those of fraud to be established by compelling evidence, as the events alleged are deemed less likely to occur: *Yogambikai Nagarajah v Indian Overseas Bank* [1996] 2 SLR(R) 774; *Tang Yoke Kheng v Lek Benedict* [2005] 3 SLR(R) 263*;* and *Chua Kwee Chen v Koh Choon Chin* [2006] 3 SLR(R) 469 as cited by the Defendants. To prove fraud, the usual civil standard of proof of balance of probabilities applies, but the strength and cogency of the evidence that must be furnished before the Court would conclude that such serious an allegation is established on this standard is relatively higher than that in most other civil claims. By the same token, when, as in the present case, the plaintiff is only required to establish his case on a *prima facie* basis, the Court will still not lightly draw inferences on fraud without sufficient proof.

51 There was nothing in the evidence adduced by the Plaintiffs that could have given rise to or be construed as a representation by the Defendants. There was in any event no evidence of any such representation coming from the Plaintiff's sole witness. There were allegations in respect of the conduct of the Defendants, and their dealings with the tenants on the property. However all of

this conduct did not involve the making of any representation to the Plaintiffs. What the Plaintiffs pointed to, even taken at the highest, would have been false statements relating to the Conveyance and the proceedings in court (*eg* OS No. 1122 of 1992 referred to above). But even if true, and I make no findings on these allegations, the misrepresentations in any of these contexts would have been to persons other than the Plaintiffs, a point addressed below. It may be that offences or other torts may have been committed, but these would not have helped the Plaintiffs before me.

52 Assuming that the Plaintiffs' allegations and evidence provided proof of misrepresentations by the Defendants, that alone would still not be sufficient. The Plaintiffs had to show that they were induced to do something by the fraudulent misrepresentations of the Defendants and must have suffered loss because of such reliance on the misrepresentations. It would not be enough to allege that some damage was caused to some other person, such as a judge, sub-tenants or persons referring to a land register, for example. In this case, nothing was led in evidence that there was any such reliance. Even where it could be taken that someone might have been misled, such as the Court which heard OS No. 1122 of 1992, this did not give rise to an actionable claim by the Plaintiffs against the Defendants. Without pleading or evidence on reliance, there was no causative link between any wrongful representations by the Defendants to any damage suffered by the Plaintiffs. An essential part of any claim in misrepresentation was thus missing.

53 Furthermore, there was neither allegations nor evidence that whatever conduct of the Defendants, even if they do amount to misrepresentations, were made with the intention of causing the Plaintiffs to act to their detriment, and so caused the Plaintiffs to act to their detriment. It may be that the Plaintiffs

could see that the Defendants were asserting an incompatible interest. It may also be that the Defendants were threatening to harm the Plaintiffs' interest. But none of these involve fraud or deceit as a recognised tort. While it is not necessary for there to be intention to cause harm to the Plaintiffs, what must be shown is that the Defendants must have intended the Plaintiffs to act in reliance of their misrepresentation (see [47(iii)] above). This was not made out, even on a *prima facie* basis, based on the evidence adduced.

Conspiracy

54 I found that the Plaintiffs did not have sufficient evidence to prove the claim in conspiracy either. The elements of the tort, in either form of conspiracy by lawful or unlawful means, were not established on the Plaintiffs' evidence.

55 The Plaintiffs alleged there was *prima facie* evidence of both conspiracy by lawful and lawful means. In respect of conspiracy by unlawful means, it was said that there was evidence of the 4th to 7th Defendants working in combination to get themselves appointed as trustees of the trusts of the will of Ahmad Aljunied, by concealing relevant facts from the judge in an application under OS No. 1122 of 1992 (see [10] above). The 3rd Defendant became part of the conspiracy subsequently when it offered itself as a purchaser of the properties, and finally the 1st and 2nd Defendants too when they became aware of the circumstances under which the 4th to 7th Defendants became appointed as the trustees and of the Conveyance and Confirmation but chose not to distance themselves. There was *prima facie* evidence of the intention of the Defendants to injure the Plaintiffs, as the object of the Conveyance was, according to the Plaintiffs, to transfer the leasehold interests to the 3rd Defendant. As for lawful means conspiracy, the

Plaintiffs, in a somewhat curious submission, said that this was made out as well simply because the Defendants adduced no evidence that the predominant purpose of their conduct was not to injure the Plaintiffs but to protect their own interests or further a legitimate interest, and so from this it could be demonstrated that the predominant purpose of the Defendants must be to injure the Plaintiffs. The Plaintiffs said that they suffered damage in that they were unable to deal with their leasehold interests as a result of the doing of the Defendants.

56 The Defendants argued that with respect to the claim in conspiracy by unlawful means, nothing was pleaded to aver that the acts complained of by the Plaintiffs were criminal or illegal. As for conspiracy by lawful means, the Plaintiffs had to but failed to establish any agreement between the Defendants or the predominant purpose of that agreement. In asserting its claim, the Plaintiffs referred to the Conveyance and Confirmation which were executed in 1994, but that was before the 1st and 2nd Defendants became trustees of the trusts of the will of Ahmad Aljunied; the Plaintiffs thus failed to provide that the Defendants were part of any agreement. The Plaintiffs' sole witness gave evidence that was contradictory to allegations made in his affidavit and in the Plaintiffs' pleadings. Overall, insufficient evidence was adduced to establish the elements of the claim.

57 In *Nagase Singapore Pte Ltd v Ching Kai Huat* [2008] 1 SLR(R) 80 at [23], Prakash J (as she then was) summarised the elements of both forms of conspiracy as such:

> (a) a combination of two or more persons and an agreement between and amongst them to do certain acts;

(b) if the conspiracy involves lawful acts, then the predominant purpose of the conspirators must be to cause damage or injury to the plaintiff but if the conspiracy involves unlawful means, then such predominant intention is not required;

(c) the acts must actually be performed in furtherance of the agreement; and

(d) damage must be suffered by the plaintiff.

Burden

58 As is the case for deceit, the threshold for establishing conspiracy is high: the evidence that is relied upon to establish the elements of the tort must be of a level that is convincing enough in light of the seriousness of the allegations. The more serious the allegations asserted, the more compelling the evidence must be to convince the Court that the allegations are true (whether on a balance of probabilities or *prima facie* basis).

Lawful means conspiracy on the facts

59 The basis for the tort of lawful means conspiracy has been much doubted. As has been noted on many occasions, it is odd that the mere combination or agreement between parties to do what they were otherwise legally entitled to do individually can be transformed into a tort, without the need for proof of an independently unlawful act, simply because the predominant purpose of the agreement between the conspirators is to cause damage or injury to the plaintiff. The circumstances and factors that led to its first recognition as a tort are probably different now. In any case, the tort has rarely been successfully invoked in Singapore. Nonetheless, while there may

be a lack of enthusiasm for this tort, as well as unlawful means conspiracy, its continued existence or otherwise in Singapore law will need to be determined by a higher court, as was noted by the Court of Appeal in *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [90].

60 What was not in issue in this case was that damage to the Plaintiffs may be made out, if the allegations they made against the Defendants were true. However, there was insufficient evidence of any combination or agreement between the Defendants. The Plaintiffs relied on inferences. It is true that in proving a conspiracy, there is no need to show an express agreement. Conspiracies by their nature may be secretive, and arise in the course of dealings between those involved under circumstances where there may be little direct evidence of a concrete or tangible agreement being reached by all of them at the same time. Circumstantial evidence may be all that there is. The presence of an agreement or combination may thus be derived or deduced from the actions of the various members. In *Asian Corporate Services (SEA) Pte Ltd v Eastwest Management Ltd (Singapore Branch)* [2006] 1 SLR(R) 901 ("*Asian Corporate Services*"), it was noted (at [19]) that conspiracy would have to be made out based on inferences drawn from overt acts and objective facts:

> It is not often that the victim of a conspiracy will be able to obtain direct evidence to prove the allegation. Proof of conspiracy is normally to be inferred from other objective facts. As the English Court of Appeal said in *R v Siracusa* (1990) 90 Cr App R 340 at 349:
>
> > [T]he origins of all conspiracies are concealed and it is usually quite impossible to establish when or where the initial agreement was made, or when or where other conspirators were recruited. The very existence of the agreement can only be inferred from overt acts. Participation in a conspiracy is infinitely variable …

And similarly in *EFT Holdings*, the Court of Appeal stated at [113]:

> The existence of a combination is often inferred from the circumstances and acts of the alleged conspirators (*Kuwait Oil Tanker Co SAK v Al Bader* [2000] 2 All ER (Comm) 271 ("*Kuwait Oil Tanker*") at [110]; *Asian Corporate Services (SEA) Pte Ltd v Eastwest Management Ltd (Singapore Branch)* [2006] 1 SLR(R) 901 at [19]; The *Dolphina* [2012] 1 SLR 992 ("Dolphina") at [262]–[264]).These cases were concerned with conspiracy by unlawful means, but the same approach would be taken whichever form of conspiracy is alleged.

61 Furthermore, inferences of the existence of a combination or agreement would not be lightly drawn, and the presence of such a combination or agreement has to be established on the balance of probabilities. It is not sufficient to merely prove the presence of an agreement; there must also be evidence that the alleged conspirators had taken concerted action pursuant to that agreement: *EFT Holdings* at [113].

62 The objective evidence presented in the present case did not sufficiently establish that there was any such combination or agreement between the Defendants, even on a *prima facie* basis. All the Plaintiffs could point to were:

(a) The fact that the 4th to 7th Defendants were together in an *ex parte* application in OS No. 1122 of 1992 to have themselves appointed as trustees of the trusts of the will of Ahmad Aljunied, in which they, according to the Plaintiffs, did not give full and frank disclosure of material facts to the judge;

(b) The 3rd Defendant offered itself as a purchaser of the properties;

(c) The 1st and 2nd Defendants were aware of the questionable nature of the Conveyance and the deceit of the other Defendants.

63 Even if it may be shown that the 4th to 7th Defendants may have acted together at least in relation to their application in OS No. 1122 of 1992, the other Defendants were not so involved; the subsequent connection of the 3rd Defendant, and then the 1st and 2nd Defendants to the properties did not show that they were acting in concert with the 4th to 7th Defendants. While it is correct, as the Plaintiffs submitted, that it is not necessary for all the conspirators to come together and execute their respective roles in the scheme at the same time (see *OCM Opportunities Fund II, LP and Others v Burhan Uray (alias Wong Ming Kiong) and Others* [2004] SGHC 115), it is necessary to show that they came together to take some form of concerted action, whether lawful or otherwise, in pursuit of a common design: Gary Chan Kok Yew, *The Law of Torts in Singapore* (Academy Publishing, 2nd Edition, 2016) ("*The Law of Torts in Singapore*") at 15.054; *Clerk & Lindsell on Torts* at 24-97. There was nothing on the evidence from the Plaintiffs to show such common design threading through all the Defendants.

64 In any case, even in respect of the 4th to 7th Defendants, the fact that they were together in a summons to be appointed trustees did not by itself show that there was combination in respect of a common design that would support the Plaintiffs' claim. The common design that formed the crux of the Plaintiffs' claim must not just be the 4th to 7th Defendants' appointment as trustees, but such common design must be one that implicated all the Defendants in depriving the Plaintiffs of their rightful position as beneficial owners of the leasehold interests. The presence of such a common design was not proven on the evidence adduced by the Plaintiffs.

65 There was also insufficient evidence of a predominant purpose of the Defendants to injure the Plaintiffs. There was no direct evidence of this. The Plaintiffs had to rely on inferences from the conduct of the Defendants. But what the Plaintiffs could point to, as enumerated above, was not sufficient to establish their case even on a *prima facie* basis. What they had pointed to as the basis for an inference of that purpose were only suppositions which were entirely speculative: other possible reasons for the Defendants' alleged conduct could be reasonably postulated, including that the Defendants were acting in what they perceived to be their own best interests. If so, then it could not be said that they had a predominant purpose to injure the plaintiffs: *Crofter Hand Woven Harris Tweed Co, Ltd v Veitch* [1942] AC 435. Even on the Plaintiffs' own evidence this element of the tort was not made out.

Unlawful means conspiracy on the facts

66 For the same reasons as above, it was not established that there was any combination between the Defendants. It has been noted in various texts such as *The Law of Torts in Singapore* (at 15.062) that the same principles for establishing combination straddle both forms of conspiracy. This is sound in principle, as nothing appears to demand a different approach. Where perhaps there may be a distinction is that the carrying out of unlawful acts by various persons may more easily give rise to an inference that they may have been in together: one does not normally expect to see a group of otherwise disparate individuals committing the same act if it is unlawful unless there has been some prior agreement causing them to do so.

67 In the present case, the fact that the 4th to 7th Defendants sought to be appointed as trustees could be a sign that there was a combination among them had it been proven that the appointment was unlawful: persons not acting in

concert would generally not be embroiled in the same unlawful act. But while there may be a dispute as to whether those appointments were proper judging by the circumstances of the appointments as alleged by the Plaintiffs (see [62(a) above), that is far from showing that there was an unlawful act by way of the 4th to 7th Defendants making the application for the appointments. The inference of a combination could not be drawn from this.

68 There was no evidence of the adoption by the Plaintiffs of any unlawful means. The burden to show this lay on the Plaintiffs. Apart from the allegation with respect to the circumstances of the 4th to 7th Defendants' appointment as trustees (see above), the Plaintiffs' essential argument was that unlawful means was made out in so far as they alleged that the Defendants had wrongly claimed to have the reversionary interests in the properties free of the Plaintiffs' beneficial leasehold interests in the same. The commission of a tortious act would certainly be unlawful, but a wrong assertion of property rights is not in itself necessarily a tort: the Plaintiffs had to prove that the actions of the various Defendants involved some recognised wrong that was actionable. Thus, for instance, in *Max-Sun Trading and another v Tang Mun Kit and another* [2016] SGHC 203, the unlawful act was deceit or fraudulent misrepresentation. In the present case, in order for the Plaintiffs' claim to succeed, it was necessary that the leases were not only found to persist, but that the actions of the Defendants involved some tort such as trespass, or interference with property rights. This was not shown.

69 Aside from wrongly claiming interests in the properties, the Plaintiffs also seem to have invoked fraud as the underlying wrong committed by the Defendants. It is true that in some conspiracy cases fraud is referred to as a form of an unlawful means. There was reference to fraud in *Wu Yang*

Construction Group Pte Ltd v Zhejiang Jinyi Group Co, Ltd and others [2006] 4 SLR(R) 451 – but that appears to be a form of deceit on the facts. Another case in which fraud was referred to was *Yap Jeffery Henry v Seow Timothy and others* [2006] SGHC 6 but this case was concerned with fraud in the context of s 340 of the Companies Act. A dishonest act alone by any of the Defendants would not to my mind be sufficient; a recognised tort must have been committed.

70 In addition, intention was not made out because such intention must be intention to cause loss to the Plaintiffs by the unlawful acts: while it is not necessary that the intention to injure must be the predominant purpose, there must nonetheless be an intention to cause damage. The primary difficulty faced by the Plaintiffs here was that the actions of the Defendants were, based on what the Plaintiffs presented, plausibly not targeted at the Plaintiffs as such but was in the pursuit of their own interests. This is not to adopt the approach in *Lonrho Ltd v Shell Petroleum Co Ltd (No. 2)* [1982] AC 173 that intention to injure must be the sole objective of the tortfeasors, which has not been adopted in subsequent cases. Rather, it is a finding that in this case, the Plaintiffs had failed to prove any intention of the Defendants to injure the Plaintiffs.

71 It is apposite here to set out the following passages in *EFT Holdings*:

> 99 What is clear is that it is not sufficient for the claimant to show that it was reasonably foreseeable that the claimant would or might suffer damage as a result of the defendant's act. Lord Phillips of Worth Matravers MR who delivered the judgment on behalf of the Court of Appeal in *Hello!* emphasised that "there is an important conceptual and factual difference between a tort, like negligence or breach of duty, which requires merely that the loss or damage should be reasonably foreseeable and a tort, which requires actual knowledge (or subjective recklessness) as to the

> consequences" such as the tort of unlawful means conspiracy (*Hello!* at [160]).
>
> 100 We agree. The law has insisted on the element of "intention" for economic torts in recognition of "the need to keep liability within acceptable bounds" (*Carty* at p 302), particularly in the light of the effect that these torts have on competition and the boundaries of acceptable conduct in the marketplace (see also *The Law of Torts in Singapore* at para 15.004). The law recognises that intentionally damaging other persons, by unlawful means is not to be countenanced. In contrast, in the tort of negligence, liability is imposed for a failure to meet an objective standard of reasonable conduct, no matter the state of mind of the actor (*The Law of Torts in Australia* at p 15).
>
> 101 A claimant in an action for unlawful means conspiracy would have to show that the unlawful means and the conspiracy were targeted or directed at the claimant. It is not sufficient that harm to the claimant would be a likely, or probable or even inevitable consequence of the defendant's conduct. Injury to the claimant must have been intended as a means to an end or as an end in itself.

The Plaintiffs here fell short of the requirements set out above: any injury to them was not shown to have been intended by the Defendants as a means to an end or an end in itself.

Intermeddling / trustee **de son tort**

72 The Plaintiffs alleged that the Defendants' purported disposal of the leasehold interests by the Conveyance and Confirmation was intermeddling in the trust property of the estates claimed by the Plaintiffs. They based this on the admission by the various Defendants that the leasehold interests were acquired by the Plaintiffs' predecessors in title. Furthermore, while the 1st and 2nd Defendants initially took issue with the grant of probate awarded to the 1st Plaintiff in relation to the estate of Mohamad Alhabshi, the probate action was eventually discontinued by consent. The upshot of all of this was that the Defendants' actions amounted to intermeddling in the trust property of the

estates, rendering them trustees *de son tort,* and thus holding the trust properties as constructive trustees.

73 A key element of a claim against trustees *de son tort* is that they had acted as trustees in relation to the trust even though they were not trustees. While some of the authorities referred to such trustees as constructive trustees (as for example in *Mara v Browne* [1896] I Ch. 199), they are different from constructive trustees in other contexts: here the persons are described as constructive trustees because they have taken on the trappings and powers of an actual trustee, and have cloaked themselves as such though in reality they are not. In the words of the editors of *Lewin on Trusts* (Sweet & Maxwell, 19th Edition, 2014) at 42-101:

> The principle is that a person who assumes an office ought not to be in any better position that if he were what he pretends: he is accountable as if he had the authority which has been assumed. While it is essential, if a person is to become a trustee *de son tort*, that he consciously takes the office of trustee, it does not matter whether he knows all the trusts or the extent of his powers…

It is the conscious assumption of a position of a trustee that is the basis of liability for a trustee *de son tort*.

74 The allegation that the Defendants should be made liable for intermeddling as trustees *de son tort* was not made out. Any claim against persons who acted as trustees *de son tort* must be in respect of the conduct of those person purporting to act as trustees in relation to that specific trust. The Plaintiffs pointed to the 4th to 7th Defendants' application to be appointed trustees of the trusts of the will of Ahmad Aljunied. The orders in that application still stood; while there was a separate application, filed in 2015 by the Plaintiffs here to intervene in that matter, which I subsequently determined

after the decision in this case, I found that it was not appropriate to allow such intervention given the passage of time and the determination of the court there. In any event, the actions of the Defendants in relation to the sale of the properties was premised on their view that the leases were terminated or not in existence in favour of the Plaintiffs, and that the grants of probate in favour of the Plaintiffs were not valid. Whether or not this was correct was beside the point. Here, the Defendants were acting not as trustees of the Plaintiffs' claimed trusts under the respective estates (which the Plaintiffs said the Defendants have intermeddled with), but as trustees of some other trust or estate (*ie* the trusts of the will of Ahmad Aljunied), and this alone meant that the Plaintiffs' claim could not succeed. A trustee *de son tort* purports to act for the beneficiaries: *Nolan v Nolan* [2004] VSCA 109, and this underlines the conclusion that the Plaintiffs' claim against the 4th to 7th Defendants was not appropriate. Any assumption of the office of the trustee by the Defendants appeared to have been for other beneficiaries and not in relation to the trusts relied upon by the Plaintiffs.

75 It must be emphasised that a claim against a person *qua* trustee *de son tort* is a limited claim; if the claim is really with interference with property, that is a different cause of action.

76 While the Plaintiffs did not wholly adopt the language of a claim against a trustee *de son tort* in their statement of claim, referring only to intermeddling, there was insufficient evidence to support any broader claim of knowing assistance or knowing receipt of trust property. Nothing of that nature was put forward in the evidence at all, or raised in argument. The Plaintiffs' claim in intermeddling must thus be dismissed.

Limitation

77 The Defendants argued that the Plaintiffs' claim was time-barred. The Plaintiffs contended that this was not so for the action was commenced first in 1995, and subsequently led to the consolidated suit in 2010. Given my decisions above dismissing the Plaintiffs' claims on the merits, I did not need to determine this point, but had this been necessary, I would have accepted that given the history of these proceedings, particularly the orders made in 1995, that limitation was not triggered.

Res judicata

78 The Plaintiffs contended that the Defendants' argument on limitation (see above) was *res judicata*. The 1st and 2nd Defendants had in 2010 applied to strike out the Plaintiffs' present actions (then unconsolidated), on the basis that they were an abuse of process, but Belinda Ang J had refused to grant the application (see [6(b)] above which referred to "the 2011 striking out decision").

79 The Defendants argued that their present contention before me on limitation was not *res judicata*. The basis for their striking out application before Belinda Ang J was abuse of process on the grounds of *res judicata* and issue estoppel, stemming from their view that the matters raised by the Plaintiffs had already been decided by the orders made earlier for OS No. 1234 of 1994 and OS No. 1052 of 1995. Belinda Ang J did not find that there was an abuse of process or issue estoppel. More importantly, the issue of limitation was never raised before Belinda Ang J and so that could not now be said to be *res judicata*.

80 Given my findings and decisions above (see [77]), I did not have to decide on this point of *res judicata*.

No pleading of interference with contract or property rights

81 There may or may not have been other torts, such as interference with contract or property rights, actionable against some or all of the Defendants, but the Plaintiffs did not plead them. Their pleadings, as they stood, could not be construed or interpreted as capturing or putting forward other causes of action. My decision had to be made on the basis of the case taken to the hearing and the evidence presented.

Other proceedings

82 Judgment was entered in the other set of proceedings (Suit No 424 of 2011) brought by the 1st and 2nd Defendants in this case against the 3rd Defendant. The two sets of proceedings should have been heard together, but it would appear that owing to some oversight, they were not set down for the same trial dates. The Plaintiffs were however informed of Suit No 424 of 2011 and invited to make arguments about the effect of judgment for that matter on the present case.

Orders Made

83 Various orders were granted in relation to the leases, but I did not however make any order for damages as claimed by the Plaintiffs. In view of the outcome, I was of the view that the most appropriate order was to make no order as to costs. Time for appeal was extended while matters as to costs were addressed, which took some time because of the unavailability of one of the parties.

Aedit Abdullah
Judicial Commissioner

Tan Teng Muan and Loh Li Qin (Mallal & Namazie) for the plaintiffs;
Kirpal Singh and Osborne Oh (Kirpal & Associates) for the first and second defendants; The sixth defendant in person;
The third, fourth, fifth and seventh defendants unrepresented.
