IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 155

Originating Summons No 1446 of 2018 (Summonses Nos 2628 and 2629 of 2020)

Between

Lin Jianwei

… *Plaintiff*

And

(1) Tung Yu-Lien Margaret
(2) Raffles Town Club Pte Ltd

… *Defendants*

EX TEMPORE JUDGMENT

[Civil Procedure] — [Stay of proceedings]
[Civil Procedure] — [Originating processes]

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Lin Jianwei
v
Tung Yu-Lien Margaret and another

[2020] SGHC 155

High Court — Originating Summons No 1446 of 2018 (Summonses Nos 2628 and 2629 of 2020)
Tan Siong Thye J
23 July 2020

23 July 2020

Tan Siong Thye J (delivering the judgment of the court *ex tempore*):

Introduction

1 Originating Summons No 1446 of 2018 ("OS 1446") revolves around the issue of the validity of certain Extraordinary General Meetings ("EGMs"), board of directors' meetings, and related notices issued in relation to the second defendant. The plaintiff, Lin Jianwei, and the first defendant, Tung Yu-Lien Margaret, are the only two shareholders and directors of the second defendant, Raffles Town Club Pte Ltd. The plaintiff is also the second defendant's majority shareholder and executive chairman.[1]

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[1] Plaintiff's Written Submissions, dated 20 July 2020 ("PWS"), at para 1; Plaintiff's Bundle of Relevant Cause Papers (OS 1446) ("PBRCP(OS)"), Vol 2, Tab 69.

2 On 1 July 2020, the plaintiff filed two summonses, namely, Summons No 2628 of 2020 and Summons No 2629 of 2020 ("SUM 2628" and "SUM 2629" respectively), seeking a stay of the OS 1446 proceedings and alternatively, the conversion of OS 1446 from an originating summons action to a writ action. I now set out my decision on these summonses.

Brief facts

3 There are two sets of related proceedings that are relevant here. The first proceeding is Suit No 1048 of 2018 ("Suit 1048"), which was commenced on 19 October 2018 by the first defendant and her daughter against the plaintiff and several other parties. The first defendant's claim in Suit 1048 concerns, *inter alia*, the repayment of debts allegedly owed by the plaintiff in OS 1446 to the first defendant and her daughter. The plaintiff counterclaims in Suit 1048 for, *inter alia*, repayment of debts allegedly owed by the first defendant to the plaintiff.[2]

4 The second proceeding is the matter at hand, OS 1446. OS 1446 was commenced on 23 November 2018 by the plaintiff against the first and second defendants to validate the various EGMs for the appointment of Mr Poon Hon Thang Samuel ("Mr Poon") as a director of the second defendant. The first defendant, on the other hand, counterclaims for a declaration that several notices of EGMs, the decisions taken at the EGMs, several notices of the board of directors' meetings, and the decisions taken at the board of directors' meetings

[2] PWS, at paras 12–13; Plaintiff's Bundle of Relevant Cause Papers (Suit 1048), Vol 1, Tabs 1 and 3.

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("the impugned notices and resolutions") are invalid and of no effect.[3] One area of dispute between the parties in OS 1446 revolves around the circumstances surrounding the first defendant's declaration of an interim dividend of $11m and her withdrawal of $4m through eight cheques from the second defendant in 2016 ("the 2016 dividend and cheques").

5 On 8 August 2019, I granted the first defendant's application for the plaintiff to be cross-examined at the hearing of Summons No 3213 of 2019 in OS 1446 ("SUM 3213").[4] Although the plaintiff initially applied for leave to appeal against this decision, he later withdrew his application.[5] On 14 October 2019, the plaintiff indicated that he would not be presenting himself for cross-examination.[6] The plaintiff did not apply for the first defendant or her witnesses to be cross-examined.[7]

6 On 4 October 2019, the plaintiff was granted leave to discontinue his claim in OS 1446. Nevertheless, the first defendant's counterclaim remained.[8] This counterclaim was fixed for hearing on 23 July 2020 and 24 July 2020.

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3 PWS, at para 14; Second Defendant's Written Submissions, dated 17 July 2020 ("2DWS"), at paras 1–2.

4 PWS, at para 16; HC/ORC 5856/2019.

5 First Defendant's Written Submissions, dated 17 July 2020 ("1DWS"), at para 9; Tung Yu-Lien Margaret's 11th affidavit dated 13 July 2020 for SUM 2628 ("MT's 11th affidavit"), at para 71.

6 2DWS, at para 62; MT's 11th affidavit, at pp 137 and 139.

7 2DWS, at para 67.

8 2DWS, at paras 3 and 5; HC/ORC 6821/2019.

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7 However, on 1 July 2020, the plaintiff applied for a stay of proceedings or an adjournment of the hearing of OS 1446 until after the determination of Suit 1048 ("the Stay Application"). Alternatively, the plaintiff sought the conversion of OS 1446 from an originating summons action to a writ action ("the Conversion Application").

8 Prior to this, on 6 June 2020, the plaintiff had applied for leave to amend his pleadings in Suit 1048 to expand on the disputed issues of fact in OS 1446, including the circumstances surrounding the 2016 dividend and cheques. The pleadings in Suit 1048 had already dealt with these disputed issues of fact in OS 1446. This application was allowed on 7 July 2020 and the plaintiff filed his amended pleadings the next day, on 8 July 2020.[9] The first and second defendants submit, *inter alia*, that the Stay Application and the Conversion Application are not *bona fide*; rather, they are attempts by the plaintiff to frustrate his cross-examination and avoid the consequences of his decision not to submit to cross-examination.[10]

My decision

The issues

9 The issues that arise for my determination are as follows:

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9 HC/SUM 2248/2020; Defence and Counterclaim of the 1st Defendant (Amendment No 2) in HC/S 1048/2018, dated 8 July 2020.

10 1DWS, at paras 16, 19, 27; 2DWS, at para 25.

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(a) Whether the proceedings in OS 1446 should be stayed in the interest of case management, or the same adjourned, pending the resolution of Suit 1048.

(b) In the alternative, whether OS 1446 should be converted from an originating summons action to a writ action.

Whether a stay should be ordered

10 The principles relating to the grant of a case management stay are well-settled. In *BNP Paribas Wealth Management v Jacob Agam and another* [2017] 3 SLR 27 ("*BNP Paribas*") at [34]–[35], the court made the following observations on the factors relevant to the exercise of its discretion whether to order a stay:

> 34 … These cases have expanded on *Chan Chin Cheung* by approving the following factors … as relevant … :
>
> (a) which proceeding was commenced first;
>
> (b) whether the termination of one proceeding is likely to have a material effect on the other;
>
> (c) the public interest;
>
> (d) the undesirability of two courts competing to see which of them determines common facts first;
>
> (e) consideration of circumstances relating to witnesses;
>
> (f) whether work done on pleadings, particulars, discovery, interrogatories and preparation might be wasted;
>
> (g) the undesirability of substantial waste of time and effort if it becomes a common practice to bring actions in two courts involving substantially the same issues;
>
> (h) how far advanced the proceedings are in each court;
>
> (i) the law should strive against permitting multiplicity of proceedings in relation to similar issues; and

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> (j) generally balancing the advantages and disadvantages to each party.
>
> 35 The above list of factors is not exhaustive. Ultimately, the grant of a limited stay of proceedings is a discretionary exercise of the court's case management powers … in exercising these powers, the court is entitled to consider *all the circumstances of the case. The underlying concern is the need to ensure the efficient and fair resolution of the dispute as a whole.*
>
> [emphasis added]

11 In light of the above, and having heard the parties' submissions, I am of the view that the Stay Application should be granted. The justice of the case requires that the diametrical versions of the critical events put forward by the plaintiff and the first defendant in OS 1446 go through the trial process in order to ascertain, on a balance of probabilities, the truth of the matter.

12 I shall now deal with the first and second defendants' submissions that the reasons given by the plaintiff for the Stay Application are the result of his own doing.[11] It is a fact that the plaintiff did not apply to cross-examine the first defendant and her witnesses. He also refused to present himself for cross-examination.[12] Neither did he seek specific discovery nor admit the evidence of other witnesses that would assist his case.[13] However, I disagree with the first and second defendants that the overlap in issues between OS 1446 and Suit 1048 was "engineered" by the plaintiff's belated amendments to his pleadings in Suit 1048.[14] By that time, the 2016 dividend and cheques were already in issue in Suit 1048. In fact, as the first defendant's counsel observed

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11 2DWS, at para 45.

12 1DWS, at paras 51 and 57; 2DWS, at paras 46 and 67.

13 1DWS, at para 54; 2DWS, at paras 47 and 66.

14 1DWS, at paras 45 and 47; 2DWS, at para 19.

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in oral submissions before me, the 2016 dividend and cheques were an integral part of Suit 1048. The first defendant's claim in Suit 1048 for monies allegedly owed to her by the plaintiff forms the basis for her assertion that she was entitled to withdraw $4m from the second defendant via the eight cheques. Furthermore, the amount claimed by the first defendant in Suit 1048 was derived after setting off the amounts she had declared under the dividends.

13 More importantly, in determining whether it is fair and efficient to order a stay of proceedings, the court must consider *all the circumstances of the case*. This entails taking a broader view of the situation in order to evaluate the justice of the case as a whole. Taking this approach, I find that the justice of the case lies in staying the proceedings for the following reasons.

14 First, the starting point is whether there is a multiplicity of proceedings. This is the "trigger" for the court's discretion to grant a case management stay (see *BNP Paribas* ([10] *supra*) at [35]). Here, it is clear that there are overlapping issues in OS 1446 and Suit 1048. Although the first defendant asserts that OS 1446 concerns the validity of various meetings whereas Suit 1048 involves the repayment of debts,[15] the *underlying* disputed issues of fact are similar, in particular, the circumstances surrounding the 2016 dividend and cheques. While the second defendant contends that there is no risk of conflicting judgments due to *res judicata* and estoppel, the fact remains that these are issues that are common to both proceedings. The question, therefore, is which proceeding is more appropriate to determine these disputed issues of fact. As I shall elaborate below, the robustness and thoroughness of the trial

15 1DWS, at paras 35–36.

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process in the evaluation of the evidence in Suit 1048 is superior to relying solely on affidavit evidence in OS 1446.

15 Secondly, I am cognizant of the fact that the overlapping issues involve serious allegations of misconduct, fraud, dishonesty, forgery and the alleged making of a false police report by the plaintiff. If these allegations are found to be proven, there could be serious repercussions for the parties involved. Furthermore, the parties have put forward two diametrically different versions of the events. As such, it is important that these issues be properly ventilated and the parties' positions tested against the evidence. Yet, to proceed with the hearing of OS 1446 would mean that the court will have to determine these issues without the benefit of cross-examination, the litmus test of the truth, and based on the untested affidavit evidence of the first defendant and her witnesses. In my view, it is unwise and unsafe to embark on such a quick and summary process. In contrast, the parties will have access to much more evidence and will be able to cross-examine all the witnesses as of right in Suit 1048. Given that the same allegations regarding the 2016 dividend and cheques will also be dealt with extensively in Suit 1048, it is more appropriate, just and expedient for these issues to be determined there.

16 Thirdly, the grant of the Stay Application will not unduly prejudice the first and second defendants. The first defendant can still cross-examine the plaintiff in the trial of Suit 1048 and make her case there. Furthermore, I disagree with the first defendant's submissions that she will be "irreparably prejudiced by a stay as the issues in the counterclaim will remain hanging for

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years".[16] The trial of Suit 1048 is fixed for hearing on 14 January 2021, which is in a few months' time from now. Furthermore, although there will be some delay to the resolution of OS 1446 pending the determination of Suit 1048, this will have minimal practical effect given that the director, namely, Mr Poon, sought to be appointed via the EGMs and the board of directors' meetings has already tendered his resignation.[17] Furthermore, the plaintiff has withdrawn his claim in OS 1446 and there is an existing court order that the plaintiff will not reinstitute the same action in future. The first defendant's concern that the impugned notices and resolutions will be treated as valid during the period of the stay can be addressed by an order that such validity is suspended pending the determination of Suit 1048, until the counterclaim in OS 1446 is heard. In any case, it is highly undesirable for the court to determine the serious disputed issues based on insufficient and untested evidence albeit it may be due to the plaintiff's unwillingness to be cross-examined.

17 The second defendant submits that it is prejudiced if the stay is granted as it is not a party to Suit 1048. In OS 1446 the protagonists are the plaintiff and the first defendant. The second defendant is a party to OS 1446 as the case also concerns the proper function and the legal propriety of the board of directors and the EGMs. In Suit 1048 the *dramatis personae* are the plaintiff and the first defendant in OS 1446, and the second defendant is not a party to Suit 1048 as the disputes do not involve the second defendant. However, the outcome and findings in Suit 1048 will resolve the disputed issues of fact in OS 1446, in particular, the circumstances surrounding the 2016 dividend and cheques.

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16 1DWS, at paras 40–41.

17 PWS, at para 18; PBRCP(OS) Vol 3, Tab 75.

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Nevertheless, the second defendant will still have the opportunity to make its case, if any, in OS 1446 upon the conclusion of Suit 1048. Hence, the interests of the second defendant in OS 1446 are also not compromised.

18 For the above reasons, I find that it is both fair and efficient as regards the resolution of the dispute to stay the proceedings in OS 1446, pending the court's determination of Suit 1048. This is on the condition that the validity of the impugned notices and resolutions is suspended.

Whether OS 1446 should be converted to a writ action

19 Since the Conversion Application is an alternative application,[18] there is no need for me to grant it in light of the fact that I have allowed the Stay Application. Nevertheless, I do not think it would be appropriate to allow the Conversion Application, as it would only replicate what is already in progress in Suit 1048 and result in unnecessary duplication and further multiplicity of proceedings. Moreover, once the disputed issues of fact have been determined in Suit 1048, it will not be necessary to determine them in OS 1446.

Summary of findings

20 In summary, having considered all the circumstances, I find that it is fair and efficient to stay the proceedings of OS 1446 pending the determination of Suit 1048 notwithstanding that this application was literally made at the door step of the hearing of OS 1446. Not only are there overlapping issues in these two proceedings, such overlapping issues include egregious allegations of misconduct potentially amounting to fraud, dishonesty and/or forgery as well as

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[18] PWS, at para 6.

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the allegation that the plaintiff had made a false police report. It is more appropriate for such alleged shenanigans to be fully ventilated at the trial of Suit 1048, where more comprehensive evidence will be disclosed, thoroughly tested and the witnesses acutely cross-examined. Further, the stay will not unduly prejudice the first defendant as the plaintiff has withdrawn his claim in OS 1446 and there is an order that the plaintiff will not reinstitute the same action in future. This is the outcome that the first defendant seeks to achieve in her counterclaim in OS 1446. I further order that the validity of the impugned notices and resolutions is to be suspended during the period for which OS 1446 is stayed.

21 I do not think it is appropriate to grant the Conversion Application as it would result in a multiplicity of proceedings *vis-à-vis* Suit 1048. Further, since I have granted the Stay Application, there is no need for me to grant the Conversion Application.

Conclusion

22 Ultimately, the court's primary duty is not to tick the boxes but to ensure that it is fair and just to the plaintiff and the first and second defendants. The actions and inactions of the plaintiff may appear to be contrived to avoid being cross-examined by the first defendant's counsel. I am also cognizant of the fact that this decision may appear to put the first defendant at a tactical disadvantage as it deprives her of the benefits of the plaintiff's failure to be cross-examined and thus, his inability to rely on his affidavit in OS 1446. However, the allegations made by the plaintiff and the first defendant are extremely serious and the justice of the case warrants that the trial process is necessary to sieve out the truth of their allegations. I have mentioned at the hearing of SUM 3213,

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when I granted the first defendant's application to cross-examine the plaintiff, that it is extremely difficult for the court to discern the truth from the affidavit evidence. It is unfortunate that the plaintiff had not applied to cross-examine the first defendant in OS 1446. Therefore, Suit 1048 will be the best forum to serve the ends of justice and for the truth to be precipitated. For these reasons, I grant SUM 2628 and dismiss SUM 2629. The first defendant's counterclaim in OS 1446 is stayed pending the outcome of Suit 1048, on the condition that the validity of the impugned notices and resolutions is suspended for the duration of the stay.

23 I shall now hear parties on the issue of costs.

Tan Siong Thye
Judge

Eng Zixuan Edmund, Tham Wei Chern, Danica Gan Fang Ling and Yang Yuanhong Bernard (Fullerton Law Chambers LLC) for the plaintiff;
Davinder Singh s/o Amar Singh SC, Tan Siew Wei Cheryl, Pardeep Singh Khosa, Tan Mao Lin, Darveenia Rajula Rajah and Vanessa Poo Jill (Davinder Singh Chambers LLC) for the first defendant;
Benny Jude Philomen and Mary-Anne Shu-Hui Chua (Joseph Tan Jude Benny LLP) for the second defendant.

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