**IN THE GENERAL DIVISION OF**
**THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2024] SGHC 321**

Suit No 947 of 2021
(Registrar's Appeals Nos 188 and 189 of 2024)

Between

Hong Kah Ing

… *Appellant*

And

1. Tee Kim Leng
2. Tee Chor Leong
3. Toh Yew Keat
4. Lee Kien Han
5.Tee Yee Koon
6. Phang Soon Mun
7. Alvin Lee Sze Chang

… *Respondents*

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# JUDGMENT

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[Civil Procedure — Pleadings — Striking out]
[Civil Procedure — Costs — Security]

# Hong Kah Ing
# v
# Tee Kim Leng and others

**[2024] SGHC 321**

General Division of the High Court — Suit No 947 of 2021 (Registrar's Appeals Nos 188 and 189 of 2024)
Choo Han Teck J
26 November 2024

13 December 2024 Judgment reserved.

**Choo Han Teck J:**

1 The appellant is the defendant, and the respondents are the plaintiffs in HC/S 947/2021 ("Suit 947"). The defendant applied for the plaintiffs' statement of claim to be struck out, and for an order that the plaintiffs provide security for costs to proceed with Suit 947. Both applications were dismissed by the assistant registrar (the "AR") at the hearing below and the defendant brought the present appeal seeking the same orders.

2 The plaintiffs pleaded in the statement of claim that the defendant was in breach of contract. The plaintiffs say that the 4th to 7th plaintiffs were at the material time partners in a Malaysian law practice, Han & Partners ("H&P"). The defendant was a majority shareholder in a Singaporean company, Far East Mining Pt Ltd ("FEM"). Sometime in October 2016, H&P, the defendant, FEM and one other individual ("Nasser") were parties to an agreement where H&P

would introduce and broker the acquisition of all the shares in one of FEM's wholly owned Indonesian subsidiaries (the "Transaction"). The Transaction was to be a reverse takeover which would result in FEM obtaining a controlling stake in Silkroad Nickel Ltd ("Silkroad Nickel"), a Singaporean company. For its role in the Transaction, the defendant, FEM and Nasser undertook to pay H&P S$15,000,000 (the "Consideration Sum"). The Consideration Sum was to be paid by the issue of new ordinary shares in Silkroad Nickel (the "Consideration Shares") to H&P and its nominees.

3 After the Transaction was completed sometime in July 2018, the defendant, Nasser and/or FEM failed to complete the transfer of the Consideration Shares to H&P, despite repeated requests and demands. H&P's partners then commenced HC/S 1210/2018 ("Suit 1210") seeking specific performance of the transfer of the Consideration Shares. The 4th plaintiff (acting on behalf of H&P) and the defendant (acting on behalf of himself, Nasser and FEM) entered into an oral settlement agreement (the "Oral Settlement Agreement") sometime in February 2019 to settle Suit 1210. The Oral Settlement Agreement provided that the defendant and FEM accepted joint liability and responsibility to repay to the 4th plaintiff (on behalf of H&P) the full Consideration Sum. This would comprise a cash settlement portion and the transfer of the balance amount of the Consideration Shares. The 4th plaintiff would nominate the 1st, 2nd and 3rd plaintiffs to be H&P's nominees and trustees under this agreement to hold the balance Consideration Shares. In consideration of the Oral Settlement Agreement, the 4th plaintiff (on behalf of H&P) agreed to discontinue the suit.

4 The plaintiffs claim that the first part of the Oral Settlement Agreement relating to the cash settlement portion was evidenced and reflected in a

document dated 26 February 2019 (the "Settlement Agreement") providing for the payment of S$1,130,000 plus legal costs to the 4th plaintiff from the defendant and FEM. The second part of the Oral Settlement Agreement relating to the transfer of the balance Consideration Shares was evidenced and reflected in another document also dated 26 February 2019 made between the 1st to 3rd plaintiffs (as nominees for the 4th plaintiff) and the defendant (the "Agreement"). Its terms provided for the repayment of the remainder of the debt by way of transfer of shares in Silkroad Nickel (the "Repayment Shares").

5 Despite various requests from the 1st to 3rd plaintiffs, the defendant had failed to transfer the Repayment Shares. According to the plaintiffs, this was a breach of the Oral Settlement Agreement and the Agreement, for which Suit 947 was commenced. By the present action, the plaintiffs seek an order for specific performance by the defendant to transfer the Repayment Shares, and alternatively, damages for breach of the Oral Settlement Agreement as evidenced and reflected by the Agreement.

6 The defendant relies on three of the grounds provided for in O 18 r 19(1) of the Rules of Court (2014 Rev Ed) ("ROC 2014") to strike out the plaintiffs' statement of claim. First the defendant says that the plaintiffs have no reasonable cause of action as the Agreement is not enforceable for a lack of consideration and there was no breach of the alleged Oral Settlement Agreement (if it existed). According to the defendant, he had performed his obligations under the Agreement and validly tendered performance because he had made several unsuccessful attempts to transfer the Repayment Shares. The defendant also says that the 4th to 7th plaintiffs should be struck out as it is clear that no Oral Settlement Agreement was ever entered into between the parties. Second, for the same reasons, the defendant says that the plaintiffs' claim should be struck

out for being frivolous or vexatious. Third, the defendant says that the plaintiffs' continued prosecution of their claim in this suit is an abuse of the court's process in light of the fact that the defendant had validly tendered performance (by his various attempts to transfer the Repayment Shares).

7 In my view, there is no basis for the plaintiffs' statement of claim to be struck out and the defendant's appeal in this regard is dismissed. The power to strike out pleadings should only be exercised in plain and obvious cases. Where an application for striking out "involves a lengthy and serious argument, the court should decline to proceed with the argument unless" there are doubts as to the soundness of the pleading and the court is satisfied that "striking out will obviate the necessity for a trial" (*Gabriel Peter & partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [18]). There is no such plain and obvious defect with the plaintiffs' statement of claim. On the contrary, it pleads the plaintiffs' case clearly and concisely — they are claiming against the defendant for breaches of an oral agreement, and a subsequent written agreement which they had entered into with the defendant in exchange for withdrawing Suit 1210 (see [2]-[5] above).

8 The same cannot be said of the submissions put forth on behalf of the defendant. In my view, they are lengthy and serious arguments and their place is at the conclusion of trial, when evidence on both sides have been adduced. Whether the Agreement is enforceable or not enforceable for lack of consideration is a finding that the court has to arrive at after the evidence has been fully explored at trial. It is not evident from the plaintiffs' statement of claim alone that there has been no consideration. Similarly, whether there has been a breach of the Oral Settlement Agreement (if it existed), and whether the defendant had validly tendered performance, are findings the court has to make

after trial. I do not express a view as to how the terms of the alleged Oral Settlement Agreement should be interpreted, save to say that the defendant's reading of the terms does not pass muster in establishing that the plaintiffs' statement of claim is defective. Likewise, the question of whether an Oral Settlement Agreement was ever entered into between parties and its impact on whether the 4th to 7th plaintiffs have a claim in the present action is one to be decided at trial.

9 As for whether the defendant should be given security for costs, it is not disputed that the plaintiffs are ordinarily resident out of jurisdiction and that the 1st to 3rd plaintiffs are the 4th plaintiff's nominees. There is thus jurisdiction to order security for costs pursuant to O 23 r 1 of the ROC 2014. I agree with the AR's decision not to order security for costs in the present case, bearing in mind that ease of enforcement is not a determinative factor in all questions arising from such applications (*Tjong Very Sumito and others v Chan Sing En and others* [2011] 4 SLR 580 at [41]-[42]). As the AR explained, although enforcement against the plaintiffs (who are based in Malaysia) will be more difficult if the defendant is successful, this is mitigated to some extent because there is reciprocal enforcement of judgments between Singapore and Malaysia (*Creative Elegance (M) Sdn Bhd v Puay Kim Seng and another* [1999] 1 SLR(R) 112 at [33]). Notwithstanding that the plaintiffs have no fixed or permanent assets in Singapore, the plaintiffs "are a law firm and there is no evidence that they are impecunious". The plaintiffs also have a claim which has a strong chance of success as they are seeking to obtain the Repayment Shares which were to be transferred long ago — and the defendant does not even deny that such shares ought to have been transferred under the Agreement, further claiming that he had made efforts to do so in the past.

10 Costs of the appeal are awarded to the plaintiffs, with the costs to be assessed if not agreed upon.

- Sgd -
Choo Han Teck
Judge of the High Court

Joel Chng Zi Zhao, Felicia Soong Wanyi, G Kiran and Joanna Qiu Ziyun (WongPartnership LLP) for the appellant;
Koong Len Sheng, Joshua Ang Zhao Neng and Rachel Chan Wai Yee (David Lim & Partners LLP) for the respondents.