

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 237

Suit 2151/1990, RA 65/93, RA 63/93 and RA 62/93

Between

Tan Boon Hock

... Plaintiff

And

Aero Supplies Systems
Engineering Pte Ltd
Bek Kheng Lee
Lai Weng Kong

... Defendant

GROUND OF DECISION

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**Tan Boon Hock v Aero Supplies Systems Engineering Pte Ltd
and Others**

[1993] SGHC 237

Suit 2151/1990, RA 65/93, RA 63/93 and RA 62/93
L P Thean JA
06 October 1993

1 **Judgment:**

2 Coram: L P Thean JA

3 **GROUND OF JUDGMENT**

4 The plaintiff originally brought this action only against the first defendant claiming a declaration that he was the legal and beneficial owner of 28,334 shares in the first defendant company and other reliefs. On 12 December 1992, the plaintiff with leave of the Court added the second and third defendants and amended the statement of claim. By the amended statement of claim, the plaintiff claimed

5 (i) a declaration that he was the legal and beneficial owner of 28,334 shares in the first defendant company,

6 (ii) a declaration that he was the legal and beneficial owner of 320,000 shares in Aero Supplies Pte Ltd ('Aero Supplies'),

7 (iii) a declaration that the increases in the share capital of the first defendant company from \$100,000 to \$200,000 and thereafter to \$500,000 were null and void, and

8 (iv) other consequential reliefs. After the statement of claim (as amended) had been filed and served, each of the defendants took out an application to strike out the statement of claim on the ground that it disclosed no reasonable cause of action, that it was scandalous, frivolous or vexatious, that it would prejudice, embarrass or delay a fair trial and that it was an abuse of the process of the court. All the three applications were heard together before the Assistant Registrar and were dismissed. Against his decision, an appeal was brought by each of the defendants. All the three appeals raised the same issues and were therefore heard together. At the conclusion, I allowed the appeals, set aside the order of the learned Assistant Registrar made on each application, struck out the statement of claim and dismissed the action with costs. I now give my reasons.

9 The statement of claim (as amended) is an extremely lengthy document. It described

10 (i) the formation and the shareholdings of Aero Supplies and its operations,

11 (ii) the formation and shareholdings of the first defendant company and its operations,

12 (iii) the agreement made between the plaintiff on the one hand and the second and third defendants on the other, and

13 (iv) the subsequent 'break up' of their shareholdings in the two companies. It referred to various representations said to be false and referred to the disappearance of the 28,334 shares in the first defendant company and 320,000 shares in Aero Supplies. Having read it, I found I was left with this question: what was the basis on which the plaintiff was claiming the shares and other reliefs, and on further examination thereof I could not discern precisely the cause of action the plaintiff founded his claim.

14 All the three counsel for the defendants were at one in their submissions that the statement of claim did not disclose a reasonable cause of action. I agreed with them entirely. Counsel for the plaintiff contended that the action was one based on common law fraud or deceit along the line of *Derry v Peek* (1889) 14 App Cas 337 and that the elements of this tort had been adequately pleaded. I disagreed. It was accepted that to found an action of fraud there must be present the following essential elements:

15 (i) there must be a false representation made by words or conduct;

16 (ii) the representation must be made by the maker with knowledge that it is false or at least made in the absence of any genuine belief that it is true;

17 (iii) the false representation must be made with the intention that it should be acted upon by the plaintiff;

18 (iv) the plaintiff has acted upon the false representation, and (v) the plaintiff has sustained damage by so doing.

19 In the statement of claim, not all these essentials were present. The plaintiff in paras 27 to 29 thereof referred to certain representation alleged to

have been made by the second defendant and averred in para 28 specifically that the allegation 'was untrue'. However, he did not plead (i) in what way the representation was untrue, and (ii) that the second defendant in making it knew it was untrue or made it without any genuine belief that it was true. By paras 38 and 39 of the statement of claim, the plaintiff pleaded certain representations made by the third defendant and the second defendant and that the representations were untrue; but again there was no plea (i) as to how and to what extent the representations were untrue and (ii) of the defendants' knowledge as to the truth or otherwise of these representations. Para 41 of the statement of claim also referred to certain untrue representations of the second and third defendants and once again the plaintiff did not plead the other essentials necessary to found the action of fraud. On the face of the pleadings, this action on common law fraud was clearly unsustainable against all the three defendants.

20 Counsel for the plaintiff aptly referred me to the precedents in Bullen & Leake & Jacob: Precedents of Pleadings (13th ed) at pp 429-433 and relied on these precedents to show that the essential elements of fraud had been pleaded in this case. A quick reference to these precedents would show the contrary: the statement of claim in this case fell far short of the requirements shown in the precedents. All the precedents contain necessary averments that the defendant made false representations with knowledge that they were false or without genuine belief as to the truth and with the intention that they should be acted upon by the plaintiff, and averments that the plaintiff relied on and acted upon the representations and suffered damage. They also contain averments as to how the representations were untrue. Plainly, the statement of claim here did not sufficiently set out the essential elements of fraud.

21 Counsel for the defendants also submitted that the statement of claim suffered from another defect: it contained immaterial and irrelevant allegations which tend to prejudice, embarrass and delay a fair trial. As one of the counsel submitted, what was pleaded in the statement of claim was 'a convoluted and extensive mass of allegations' and 'a mass of evidence in most unintelligible form'. This criticism made by counsel was amply justified. In my judgment, what I had before me was indeed the most prolix, rambling and ill-defined statement of claim I have come across, and I found the averments in the statement of claim both confused and confusing. It seemed to me impossible for the defendants to know what case or cases they had to meet: see *Davy Brothers v Garrett* (1878) 38 LT 77, 80-82.

22 At the conclusion of the first hearing, I enquired whether counsel for the plaintiff would like to consider making drastic and necessary re-amendments to the statement of claim. When the parties appeared before me again for my decision, no application was made to me on the matter of amendment. That being so, I gave my decision on these appeals.

L P Thean JA

Palakrishnan and Sunil Emmanuel for the plaintiff
Poonam Mirchandani for the 1st defendant
Leung Wing Wah for the 2nd defendant
Rajendram for the 3rd defendant
