IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 106

OS 391/1998

Between

Hillwood Development Pte Ltd

… *Plaintiff*

And

Mariam binte Amir
Jumaiah binte Amir

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Hillwood Development Pte Ltd v Mariam binte Amir and Another

[1999] SGHC 106

OS 391/1998
Judith Prakash J
26 April 1999

Judgment:

1. This matter came before me as an appeal from the decision of the assistant registrar to strike out the defendants' defence and counterclaim and to enter judgment for the plaintiffs. This decision was made pursuant to an application by the plaintiffs for the striking out of substantial portions of the defence and counterclaim on the basis that they were irrelevant and/or tending to prejudice or embarrass or delay the fair trial of the action or otherwise an abuse of the process of the court. The plaintiffs also contended that the counterclaim disclosed no reasonable cause of action.

2. The action was started as an originating summons but subsequently the plaintiffs were ordered to convert it into a writ action. As a consequence both parties filed their pleadings.

Statement of claim

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3. The statement of claim was filed on 4 June 1998. The facts of the plaintiffs' case as contained in the statement of claim and affidavits filed in the proceedings were that in 1969, a company called Sri Jaya (Sendirian) Berhad ('Sri Jaya') had been the owner of the land known as Lot 4906, Mukim 24, Singapore ('the land'). In that year, Sri Jaya obtained a loan from United Malayan Banking Berhad ('UMBC') to finance the construction of two apartment blocks on the land. The loan was secured by an indenture of mortgage of the land which was executed on 13 October 1969 and subsequently duly registered in the Registry of Deeds. Clause 5(q) of the indenture of mortgage provided that the statutory power of leasing conveyed Sri Jaya by the Conveyancing and Law of Property Act was not exercisable by Sri Jaya without the previous consent in writing of UMBC.

4. Sri Jaya duly constructed two units of apartment blocks ('the premises') on the land. The second block was known as Block B, Paya Lebar Close, Singapore ('Block B'). One of the apartments in that block known as Block B Unit 6 Paya Lebar Close, Singapore ('Unit 6') was subsequently occupied by one Amir Bin Mohd Noor, the father of the defendants ('Amir').

5. Sri Jaya defaulted on repayments due under the mortgage and UMBC commenced action in High Court Suit no. 5904 of 1983 against, inter alia, Sri Jaya, claiming, inter alia, for a declaration that it was entitled to sell the land and the premises. On 2 October 1991, Sri Jaya consented to judgment and an order was made that UMBC was entitled to sell the land and premises freed from any interest claimed by Sri Jaya.

6. Paragraph 6 of the statement of claim stated that Amir had occupied Unit 6 without the consent or licence of UMBC and refused to deliver up possession of Unit 6 to UMBC despite a letter of demand to this effect dated 18 May 1993.

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It should be noted that Amir had in fact died in October 1987 and letters of administration to his estate were granted to the second defendant on 20 September 1988. Subsequently, on 24 August 1994, both the defendants lodged a caveat against Unit 6.

7. On 30 September 1994, UMBC sold the land and premises (including Unit 6) to Win Supreme Investment (S) Pte Ltd ('Win Supreme'). Win Supreme subsequently carried on negotiations with the occupiers of various units of Block B with the aim of obtaining vacant possession of those units. These negotiations were not successful as regards all the occupiers. The defendants did not enter any agreement with Win Supreme. Neither did one Madam Joharah Bte Abdul Wahab ('Madam Joharah') who occupied the flat known as Block B Unit 2, Paya Lebar Close, Singapore ('Unit 2').

8. By originating summons no. 1176 of 1994, Win Supreme commenced proceedings against Madam Joharah to recover possession of Unit 2. Madam Joharah claimed an interest in Unit 2 on the basis that her father one Wahab bin Sheikh Daud ('Wahab') had entered into an agreement in Malay with the Singapore National Housing Co-operative Society Ltd ('the Society') to lease and purchase Unit 2. The Society had, some time in the early 1970s, entered into a lease agreement with Sri Jaya whereunder the Society had agreed to lease the whole of Block B for a term of 199 years from 2 January 1975 at a consideration of S$420,000 or $28,000 for each flat. Neither the lease agreement or the purchase agreement between the Society and Wahab were registered with the Registry of Deeds.

9. The originating summons against Madam Joharah was subsequently converted into an action began by writ and the action was tried in September 1996 before Chao Hick Tin J. On 6 November 1996, judgment and costs were

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given in favour of Win Supreme and a declaration made that it held Unit 2 freed from the rights and interest of Madam Joharah, the occupier. Madam Joharah's appeal to the Court of Appeal was dismissed on 8 July 1997.

10. In the meantime, the plaintiffs agreed to purchase the land and premises from Win Supreme. The same were conveyed to them by an indenture of conveyance dated 13 March 1995. The plaintiffs pleaded that in the premises they, as purchaser from Win Supreme which was the purchaser from UMBC, took the land freed of any estate, interest or right of the first and second defendants. They claimed the following main reliefs:

> (1) a declaration that they held the said land and premises known as Block 6 Unit 6 Paya Lebar Close, Singapore more particularly described as Lot 4906 (formerly known as Lots 2860 and 2990) of Mukim 24, Singapore, freed from all estate, interest and right of the first defendant and the second defendant and all persons claiming under either or the both of them;
>
> (2) the first and second defendants do remove and/or withdraw their caveat registered as CV 071315/D;
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> (3) the plaintiffs do recover possession of the apartment known as Block B, Unit 6 Paya Lebar Close, Singapore; and
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> (4) the first and second defendants do pay damages to the plaintiffs for unlawful occupation of the said apartment.

Defence and counterclaim

11. In their defence and counterclaim filed on 22 June 1998, the defendants admitted many of the facts set out in the statement of claim though they averred that they were not aware of the particulars of the claim which UMBC had against Sri Jaya or of any matter relating to UMBC entering judgment against Sri Jaya.

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12. The defendants denied that Amir had occupied Unit 6 without the consent of UMBC. They contended that UMBC was at all material times aware and/ or ought to have known of the occupation of Unit 6 by the defendants' late father and his family. Further, when Win Supreme bought the land and premises, it was aware of the occupation of the various apartment units at Block B and had agreed to pay compensation of $350,000 to the occupiers of each of the units at Block B in return for vacant possession of such units.

13. The defendants went on in para 7 to aver that the plaintiffs at the time of their purchase were aware or ought to have been aware of the offers of compensation by Win Supreme. They contended that after the outcome of Madam Joharah's case the plaintiffs had changed the nature of the offer to a without prejudice one and had changed the quantum to $100,000.

14. The defendants did not admit that the plaintiffs as purchaser from Win Supreme which was the purchaser from UMBC had taken the land freed of any estate, interest or right of the defendants. They contended that at all times UMBC, then Win Supreme, and finally the plaintiffs, were under an obligation to discharge the rights and interest of the estate of Amir in Unit 6.

15. Paragraph 12 of the defence and counterclaim set out the basis of the defendants' counterclaim. The defendants recited the following facts:

> (i) By an agreement for lease made between Sri Jaya and the Society dated 22 March 1976, the Society had leased the land from Sri Jaya. Subsequently, Amir had entered into a sale and purchase agreement dated 1 December 1974 with the Society for the lease of Unit 6 for a consideration of $28,000. A deposit of $6,000 was paid on or before the signing of the agreement and it was an express term of the agreement that upon payment of the balance sum of $22,000 by way of instalments of $4,000 per month, Amir would be the owner of Unit 6. Amir completed the instalment payments some time around 1981.

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(ii) Amir died in October 1987. Two weeks later, the second defendant and her husband asked the Society to make the first and second defendants members of the Society in order to effect the change of ownership of Unit 6 from Amir's name to the defendants' names. The Society refused and offered to buy back the unit. This offer was rejected by the second defendant.

(iii) Some time in 1989, an officer of UMBC informed the second defendant and her husband and the other tenants of Block B that they were required to pay UMBC the sum of $70,000 each and that upon each and every tenant paying the said sum, title deeds for their respective units would be given to the occupants of Block B. The defendants and the other occupants of Block B refused to make such payment.

(iv) A letter dated 5 August 1993 was written by the Society's solicitors to Amir which stated that UMBC had taken legal action to recover possession of the land; that the Society was engaged in negotiations with UMBC with regard to the recovery; and that the Society wanted to represent Amir in the negotiations and for that purpose asked him to sign an authority in its favour.

(v) In May and June 1995, UMBC's solicitors had written to Amir stating that he was occupying Unit 6 without the knowledge and/or approval of UMBC.

(vi) In June or July 1994, the second defendant's husband was informed by an agent of Win Supreme that the latter was purchasing the land and premises and that it was making an open offer to pay each tenant of Block B compensation in the sum of $350,000 in exchange for a transfer of such tenant's rights and interest to Win Supreme. The defendants through their then solicitors wrote to Win Supreme on 4 August rejecting the compensation amount offered by Win Supreme and putting forward two alternative counter-proposals, one of which was that the compensation amount be increased to $500,000.

(vii) There were a number of meetings where the proposal of compensation at $350,000 made by Win Supreme was discussed. Subsequently, this offer was accepted by all the occupants except those occupying Units 2, 2C, 2D, 4C and 6.

(viii) Win Supreme commenced action against Madam Joharah for recovery of Unit 2 and obtained judgment against her in November 1996. Joharah in turn obtained judgment against the Society. In the interim, the land and premises were sold to the plaintiffs. When Win Supreme's action was concluded, the plaintiffs retracted the original compensation offer and put forward a lower alternative. The occupants of Units 2C, 2D and 4C accepted the reduced amount and vacated the premises.

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16. The defendants went on to plead that by reason of the matters set out above, the plaintiffs were at all material times sufficient acquainted with the offer of compensation of $350,000 and that their purchase of the land and premises was subject to the rights and interest of Amir's estate. Further, by reason of the matters aforesaid, the plaintiffs by their conduct were precluded and estopped from evicting the defendants.

17. Paragraph 15 of the defence and counterclaim alleged that the plaintiffs had cut a number of trees, damaged bedroom windows and threatened to cut off the electricity supply to Unit 6 thereby interfering with the right to quiet and peaceful occupation of the unit. In para 16, it was pleaded that in reliance on the offer of compensation of $350,000 the first defendant and her husband had applied for and obtained loans from Keppel Bank of $242,388.83 and $232,700 thereby irrevocably altering the personal and financial commitments of the first defendant. There was no pleading of any change in the financial position of the estate or of the second defendant.

18. By way of counterclaim, the defendants asked for:

> (1) An order restraining the plaintiffs from trespassing and/or interfering with the defendants' occupation of Unit 6;
>
> (2) A declaration that 'the compensation of $350,000 or such higher sum as the court deems fit to make due and payable by the plaintiffs to the second defendant as the Administrator of the estate and effects of [Amir]';
>
> (3) The plaintiffs to pay the sum of $350,000 to the first defendant and the defendants to deliver vacant possession of Unit 6 within one month of payment.

The course of the application

19. There was no material difference between the ground on which Madam Joharah claimed that her father, Wahab, had an interest in Unit 2 and the ground

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on which the defendants here claimed that their father, Amir, had an interest in Unit 6. Both were founded on agreement for sale between the Society and the respective 'purchaser', such agreements being in the Malay language and neither being subsequently registered with the Registry of Deeds. It is therefore relevant to set out the holdings of Chao J in Originating Summons 1176 of 1994 entitled *Win Supreme Investment (S) Pte Ltd v Joharah bte Abdul Wahab*. This decision is reported at [1997] 1 SLR 679 and the headnotes recite His Honour's conclusions as follows (at p 680):

> '(1) Following the mortgage of the property to UMBC, Sri Jaya had only an equity of redemption in the property, which was an equitable interest. Under the terms of the mortgage, Sri Jaya could not exercise the statutory power of leasing without the written consent of UMBC, and there was no evidence that such consent had been obtained. Thus, while the agreement for a lease could have been enforced as a contract between Sri Jaya and the Society, it could not bind UMBC as mortgagee. UMBC was entitled to obtain possession of the flat as against Sri Jaya and to exercise its power of sale as a mortgagee and such a sale would overreach the rights of Sri Jaya as the mortgagor. Upon the sale of the property by UMBC, Win Supreme acquired the property free from the rights of those who obtained their rights from Sri Jaya and subsequent to the mortgagee; *Duke v Robson* [1973] 1 All ER 481 and *Standard Chartered Bank v Paisley Park (S) Pte Ltd* [1994] 1 SLR 415 followed.
>
> …
>
> (3) The second agreement [ie that between Wahab and the Society] being in Malay and not in the form of a deed infringed s 53(1) of the Conveyancing and Law of Property Act which required a lease for period exceeding three years to be in the form of a deed and in the English language. The alleged deed was therefore void in law although it could have operated as an agreement to lease. Moreover, since the second agreement was not registered under the Registration of Deeds Act or the Land Titles Act (LTA) it was not admissible in evidence. Under s 45(1) of the LTA no instrument was effectual to pass any estate or interest in land unless registered. Here the rights of the mortgagee [UMBC] preceded that of the interest of Wahab and Madam Joharah. Madam Joharah therefore did not acquire any rights which overreached those of UMBC.
>
> (4) It was clear that the Society would not be able to effect the transfer of the 199-year lease to Madam Joharah, an

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> impossibility brought about by the act of UMBC. Although the doctrine of frustration applied to a contract for the sale of land, the present case did not fall within this doctrine. Frustration would have come into play when a supervening event beyond the control and contemplation of the parties led to a significant change in the original obligations. In this case, UMBC exercised the power of sale because of Sri Jaya's default, a clearly foreseeable event. Thus, the Society was in breach, so far as Madam Joharah was concerned, when it was unable to convey the 199-year lease.'

20. At the hearing below, it was clear that the defendants (either in their own capacity or, in the case of the second defendant as administratrix of the estate of Amir) did not have any legal interest in Unit 6. Neither did they have any equitable interest arising solely out of the sale and purchase agreement between the Society and Amir. As counsel for the plaintiffs pointed out below, the defendants' defence to the plaintiffs' claim that they were trespassers was based solely on the ground of estoppel. They were saying that because Win Supreme, the predecessors in title of the plaintiffs, had made an offer of compensation of $350,000 to the various occupants of units in Block B, the plaintiffs were estopped from evicting the defendants. The plaintiffs submitted that such an offer could not, at law, constitute an estoppel.

21. In *Principles of Singapore Land Law* Tan Sook Yee it is stated that a successful claim of proprietary estoppel involves three elements being an assurance, a reliance and a detriment. Professor Tan states between pages 396 to 398 that the assurance must be an assurance of entitlement given by the person whom it is sought to estop. Further, 'the assurance required to raise an "equity" in the party to whom it is given must confirm in the latter an expectation that he will be the recipient of some interest or entitlement in the land which he would not otherwise have'. In this case, no such assurance was given because at all times during the negotiations leading up the open offer, the intention of the plaintiffs and/or Win Supreme was clear. The payment of money

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was to recover possession and the owners did not want the occupiers to continue occupying the units. As counsel submitted, this was totally contrary to the requirement of proprietary estoppel that the owners of the land give a promise that the occupiers can stay on the land.

22. The second element of reliance was also absent in that the defendants rejected the offer. Neither the plaintiffs nor Win Supreme could have expected the defendants to incur additional financial commitments on the basis of an offer which had been rejected. It would be farcical to hold that reliance existed in this case simply because the defendants, thinking that they would be able to get greater compensation from the owners of the land in due course, undertook additional financial obligations.

23. The learned assistant registrar was persuaded by the plaintiffs' arguments that the defendants really had no reasonable ground to resist the plaintiffs' claim. This, in my view, was the correct decision. The law as established in *Joharah's* case was against the defendants and they had not adduced any additional facts which would distinguish their case from *Joharah's* case and establish an estoppel.

24. When the defendants appeared before me, the position had not changed. I was convinced that there was no basis on which they could defend or mount a counterclaim on the facts set out in their pleading. As counsel for the plaintiffs pointed out, all that had been pleaded in the material parts of the defence was that the plaintiffs were aware of the defendants' occupation of Unit 6. Nowhere had it been stated that such knowledge gave rise to any interest or equity that would disclose a defence at law. However, at the first hearing, I was reluctant to dismiss the appeal outright as counsel for the defendants informed me that he had instructions to apply to amend the defence if the court took the view that

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the pleading was deficient. I therefore adjourned the hearing of the appeal to enable the defendants to file an application to amend the defence.

The attempts at amendment

25. At the adjourned hearing on 30 November 1998, there was placed before me a summons in chambers which the defendants had taken out for leave to amend their defence. The parties informed me that the draft amended defence and counterclaim had been shown to the plaintiffs before the hearing and that the latter were not satisfied that the proposed amendments were adequate. Having looked through the proposed amendments, I was also of the view that they were not sufficient. Counsel for the defendants indicated that he needed more time to take instructions and consider further appropriate amendments. The hearing was adjourned again.

26. At the second adjourned hearing, the defendants tendered a further draft of the proposed amended defence. Their counsel submitted that the pleadings, with the incorporation of the proposed amendments would show a defence. The proposed amendments related to paras 3, 5 and 7 of the defence.

27. By the proposed amended para 3 of the defence, the defendants gave particulars of their assertion in that paragraph that UMBC was at all material times or ought to have known the occupation of Unit 6 by Amir and his family. The particulars briefly were that UMBC ought to have known that Sri Jaya was developing two blocks of flats for the purposes of selling/leasing the flats to individual purchasers. Secondly, UMBC knew or ought to have known of the agreement to lease the land and premises entered into between Sri Jaya and the Society in 1995 and it should also have known that upon completion of the development, the individual flats would be leased or sold to individual

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purchasers including Amir. Thirdly, UMBC failed to take steps to remove the defendants and Amir from Unit 6 until their letter of 18 May 1993 although UMBC knew that the defendants and Amir were in occupation of the unit and alleged such occupation was wrongful. By reason of UMBC's said failure, it had represented to the defendants and to Amir that they could occupy Unit 6. Alternatively, UMBC had waived its rights to remove Amir from Unit 6 and in the further alternative, UMBC had acquiesced in Amir's occupation of Unit 6. There was also a proposed para 3A which stated that the defendants and Amir in reliance of the representation of UMBC set out earlier, had expended money to renovate the unit and had paid the property tax for it.

28. Nothing contained in the proposed amended paras 3 and 3A established, in my view, any representation made by UMBC or any waiver or acquiescence on its part which could give rise to an equitable interest in Unit 6 which could be asserted by Amir. In effect, the defendants were alleging that because UMBC had known that Sri Jaya was building blocks of flats for residential occupation it had somehow given permission to UMBC to grant a long term lease of the blocks to the Society and would therefore be bound by any subsequent leasehold interest given to individuals by the Society. There was no legal basis for such an allegation. The further allegation that failing to take steps to remove Amir was a representation to him that he had the right to remain in the unit was equally baseless in law.

29. The defendants went on to plead by their proposed para 5A that Win Supreme, on purchasing the land from UMBC only acquired such right in the land as UMBC had and therefore their right and title was subject to the right of the defendants and Amir to occupy Unit 6. To me that pleading did not take the case of the defendants any further since they had not pleaded any facts which

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could have established that vis--vis UMBC, Amir had a right of occupation of the unit.

30. By the proposed para 5B, the defendants as an alternative, pleaded that Win Supreme knew or ought to have known that the unit was occupied by the defendants and had recognised the rights of the defendants to occupy the unit. The particulars of this allegation were that the second defendant's husband had been approached by a representative of Win Supreme who had made them an offer to pay them $350,000 in return for the transfer of their right, title and interest in the unit to Win Supreme. By this action (ie the offer) Win Supreme had acknowledged that the defendants and Amir had a legal and/or equitable interest in Unit 6 which entitled them to remain in occupation of it. Alternatively, Win Supreme by such action had waived their rights to remove the defendants and Amir from the unit.

31. There was no legal basis for the above pleading. An offer of compensation to a trespasser in return for vacation of the premises trespassed on cannot convert an act of trespass into a legal occupation. Neither does such an offer once made mean that the owner of the premises cannot subsequently, when the offer is refused, take action to remove the trespasser. In *Joharah's* case such a proposition was rejected. The learned judge held that Win Supreme was still able to eject Joharah despite having earlier made her an offer of compensation in return for vacant possession of the premises.

32. The defendants also proposed to add new paragraphs dealing with the position of the plaintiffs after they purchased the land and premises from Win Supreme. Quite apart from the assertion that the plaintiffs were in no better position vis--vis the defendants than Win Supreme had been, the proposed para 7B pleaded that the plaintiffs knew or ought to have known that the unit was

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lawfully occupied by the defendants and had recognised the rights of the defendants to occupy the unit. The particulars given of this assertion were, originally, as follows:

> 'a) Mohd Bin Rahmat is the occupier of another unit in the said development (Unit 6C), having purchased/leased Unit 6C under an agreement dated 1 June 1983.
>
> b) By an agreement dated 20 November 1995 entered into between Mohd Bin Rahmat and the Plaintiffs, the Plaintiffs agreed to purchase from Mohd Bin Rahmat his right title and interest in Unit 6C.
>
> c) Pursuant to clause (5) of the agreement dated 20 November 1995, on completion, Mohd Bin Rahmat is to assign to the Plaintiffs all his rights interest benefit and advantages (including all monies paid to date) in Unit 6C acquired by virtue of the agreement dated 1 June 1983 aforesaid.
>
> d) By virtue of the Plaintiffs acknowledging that Mohd Bin Rahmat has rights interest benefit and advantages to Unit 6C, the Plaintiffs have also acknowledged, represented and/or acquiesced to the other occupiers of the development that they have rights interest benefit and advantages in their respective units.'

At the hearing on 8 January 1999, the defendants proposed amending the particulars by adding a new sub-para (d) and renumbering the previous sub-para (d) as sub-para (e) so that together they read as follows:

> 'd) The Defendants by virtue of the agreement dated 1 December 1974 were in the same position vis--vis Unit 6 as Mohd Bin Rahmat was in vis--vis Unit 6C pursuant to his agreement dated 1 June 1983.
>
> e) By virtue of the Plaintiffs acknowledging that Mohd Bin Rahmat has rights interest benefit and advantages to Unit 6C, the Plaintiffs have also acknowledged, represented and/or acquiesced to the Defendants having the same rights interest benefit and advantages in their respective units.'

33. The above pleading amounted to an allegation that because the plaintiffs had entered into an agreement for sale and purchase with the occupier of Unit 6C, Mohd Bin Rahmat, they had recognised the rights of the defendants to occupy

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their flats. That allegation made no logical or legal sense. The plaintiffs' actions vis--vis a third party could not adversely affect their rights vis--vis the defendants unless further conditions were fulfilled. For one, the plaintiffs would have had to have known that their actions vis--vis Mohd Bin Rahmat amounted to an assurance vis--vis the plaintiffs and was likely to be relied on by the latter. Secondly, such reliance would have actually to have occurred. In this case there was no pleading that the plaintiffs knew the possible effect of their actions on the defendants nor was there any pleading that the defendants had relied on such actions in order to change their position to their detriment. There was also the difficulty which the defendants had that any equitable interest in the unit which could have been asserted against the plaintiffs would have been that of the estate of Amir since they were relying on the agreement dated 1 December 1974 between Amir and the Society to say that Amir's position was the same as that of Mohd Bin Rahmat under his agreement dated 1 June 1983. There was no pleading that the estate of Amir had in any way altered its position to its detriment on the basis of any representation made by the plaintiffs through their conduct in negotiating and concluding their agreement with Mohd Bin Rahmat.

34. In my judgment, the proposed amendments did not improve the defendants' case. Accordingly, I did not accede to their request to allow the amendments to be made. A natural consequence of that refusal was that the pleadings as they stood did not disclose reasonable ground of defence or counterclaim. Further, it was my opinion that to allow the defence and counterclaim to proceed would be flying in the face of the decision in *Joharah's* case and for that reason the defence and counterclaim would also be frivolous and vexatious. The estate's remedy was against the Society, not against the plaintiffs. I therefore dismissed the defendants' appeal against the learned assistant registrar's decision.

JUDITH PRAKASH

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JUDGE

Judith Prakash J

Liaw Jin Poh with Wee Hsiang Ling (William Lai & Alan Wong) for the plaintiffs
Lim Seng Siew with K Manickam (S K Kumar & Associates) for the defendants

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