Chiam Heng Hsien and another *v* WongPartnership LLP
[2015] SGHC 233

Case Number	: Suit No 312 of 2015 (Registrar's Appeal No 194 of 2015)
Decision Date	: 08 September 2015
Tribunal/Court	: High Court
Coram	: Chua Lee Ming JC
Counsel Name(s)	: The appellants in person; Chelva Retnam Rajah, SC (instructed) and Ang Shunli Alanna Sugene Uy (WongPartnership LLP) for the respondent.
Parties	: CHIAM HENG HSIEN — MITRE HOTEL (PROPRIETORS) — WONGPARTNERSHIP LLP

Civil Procedure – Striking out

8 September 2015

Chua Lee Ming JC:

Introduction

1 This was the plaintiffs' appeal against the decision of the learned Assistant Registrar ("the AR") striking out the plaintiffs' statement of claim and dismissing the action. I dismissed the appeal with costs and the plaintiffs have appealed against my decision.

2 The defendant, WongPartnership LLP ("WP"), is a law firm which represented the plaintiffs when they were the first and second defendants in previous court proceedings in Originating Summons Nos 830 and 1918 of 2006 ("the 2006 Proceedings"). WP also represented the plaintiffs in the related Civil Appeals Nos 54, 116, 117 and 128 of 2007 (the "2007 Appeals"). Mr Andre Maniam ("Mr Maniam"), a partner in WP, was lead counsel. The 2006 Proceedings and the 2007 Appeals concerned a piece of property at 145 Killiney Road ("the Property") and the Mitre Hotel which was situated on the Property.

Background

3 The first plaintiff, Chiam Heng Hsien ("CHH"), owned a 10% share of the Property. The second plaintiff, Mitre Hotel (Proprietors) ("MHP"), was a partnership formed in the early 1950s to carry on the business of running the Mitre Hotel. CHH became the managing partner of MHP in the 1970s. For all intents and purposes, MHP owned a 10% share of the Property and the tenancy at the Property; both the 10% share and tenancy were held by the executors of the estate of Chiam Toh Say, deceased, on trust for MHP. The executors were the sixth and seventh defendants in the 2006 Proceedings. Chiam Toh Say was one of the partners of MHP and the managing partner of MHP before CHH took over the role.

4 In Originating Summons No 582 of 1996 ("OS 582/1996"), some of the other co-owners of the Property obtained an order for the Property to be sold. Bids ranging between $50m and $73.3m were received for the purchase of the Property with vacant possession. However, CHH wanted more than his share and demanded $29m (later reduced to $21m) to vacate the premises. The other co-owners were not willing to pay him this amount. A further application was then filed in OS 582/1996 to compel CHH to deliver up possession of the Property. The application was heard by Kan Ting Chiu J. It was supported by all the other co-owners, apart from CHH, but was unsuccessful for reasons that are not

relevant to this present case (see *Chiam Heng Luan and Another v Chiam Heng Hsien and Others* [1997] SGHC 238). After stating his decision, Kan J went on to make the following observation (at [10]):

> ... [CHH] is a partner of [MHP]. If the partnership agrees to give up the tenancy [CHH] would lose his right to remain on the [Property], but while the tenancy subsists, the owners cannot recover possession from him. ...

CHH took the learned judge's observation to heart. He understood that he had to protect MHP's right to occupy the Property at all costs in order to protect his own right to remain on the Property. This would give him the leverage necessary to continue to demand a larger share of the proceeds of sale of the Property than he would otherwise have been entitled to.

5 When OS 582/1996 was decided by the court, the Property was protected under the Control of Rent Act (Cap 58, 1985 Rev Ed). However, the Property ceased to be protected under that statute after it was abolished in 2001 (see Control of Rent (Abolition) Act 2001 (Act 14 of 2001)).

6 Between 2005 and 2006, notices to quit were served on MHP. CHH and MHP disputed the notices and contended that MHP's right to occupy the Property could not be terminated by notice. Some of the co-owners then commenced the 2006 Proceedings seeking, among others, a declaration that MHP's tenancy had been validly terminated and an order that CHH and MHP deliver up possession of the Property for it to be sold with vacant possession. Judith Prakash J held that the tenancy had been validly terminated and ordered a sale of the Property with vacant possession: *Chiam Heng Luan and others v Chiam Heng Hsien and others* [2007] 4 SLR(R) 305 ("the Judgment"), at [94]–[96]. CHH was also ordered to give vacant possession of the Property to the solicitors handling the sale (at [4]). Subsequently, the Court of Appeal dismissed the appeals by CHH and MHP in the 2007 Appeals.

The plaintiffs' claim

7 In the present action, CHH represented himself and MHP. In the statement of claim, the plaintiffs pleaded as follows:

> 1. The plaintiffs have commenced action as the plaintiffs have no reason to pay the defendant for not following the specific instructions to engage them and gave up the rights to remain on the [Property] as decided by Kan J in [OS 582/1996]. Kan J decided in [OS 582/1996] that [MHP] has the rights to remain on the property as long as it has the bought tenancy and would lose such rights without the tenancy. [Mr] Maniam agreed to give up the tenancy in his submission against my specific instructions. Mitre Hotel is not a party in [OS 582/1996].
>
> 2. The plaintiffs have suffered loss of more than $100 million from the disservices of the defendants acting against the specific instructions.
>
> …

In addition to claiming damages, the plaintiffs also sought a declaration that WP was not entitled to its costs in representing the plaintiffs in the 2006 Proceedings and the 2007 Appeals.

8 The reference to the "bought tenancy" in the statement of claim was explained in CHH's affidavit that was attached to the statement of claim. In the affidavit, CHH explained that MHP had paid around $260,000 for the tenancy when the Property had a value of $90,000 free of encumbrances.

WP's application to strike out the plaintiffs' claim

9 WP applied to strike out the plaintiffs' claim under O 18 r 19 of the Rules of Court (Cap 322, R5, 2014 Rev Ed) on the grounds that the statement of claim (i) disclosed no reasonable cause of action; (ii) was scandalous, frivolous, vexatious; and/or (iii) was otherwise an abuse of the process of the court.

10 The AR struck out the claim as she found that the statement of claim disclosed no reasonable cause of action for the following reasons:

(a) It was clear from the Judgment that WP had never given up the tenancy over the Property during the conduct of the case and in their arguments to the court. Instead, WP had resisted the termination of the tenancy.

(b) The plaintiffs' claim was a relitigation of issues that had already been adjudicated by the court. CHH had lodged a complaint with the Law Society of Singapore ("the Law Society") against the two lawyers from WP who acted for the plaintiffs in the 2006 Proceedings. The Inquiry Committee ("IC") found that the lawyers had not given up the tenancy as alleged by CHH, and dismissed the complaint. CHH's application for a formal investigation by a Disciplinary Tribunal was dismissed by the High Court. The court upheld the findings of the IC: see *Chiam Heng Hsien and another v Law Society of Singapore* [2013] SGHC 24. CHH's appeal was dismissed by the Court of Appeal.

(c) The plaintiffs' obligations to pay WP its solicitor and client costs were the subject matter of concluded taxation proceedings. In Originating Summons No 275 of 2010 ("OS 275/2010"), the High Court granted leave to WP to proceed with taxation of the unpaid portion of its bill against the plaintiffs for work done in the 2006 Proceedings and the 2007 Appeals. WP's bills were taxed and the plaintiffs' applications for review were dismissed.

11 The AR did not deal with the other grounds for the application to strike out the claim; neither did she deal with WP's submissions on limitation. Before me, WP continued to rely on these other grounds and submitted that the plaintiffs' claim should also be struck out on the ground that it was frivolous and vexatious, and/or an abuse of the process of court as the claim was unsustainable for the reasons in [10] above and for the further reason that the claim was time-barred.

12 In my view, the statement of claim should not have been struck out on the ground that it disclosed no reasonable cause of action. An application to strike out a claim on this ground is to be determined solely on the allegations pleaded in the statement of claim: *Singapore Civil Procedure 2015* vol I (G P Selvam gen ed) (Sweet & Maxwell, 2015) ("*SCP 2015*") at para 18/19/10. The reasons that the AR relied on fell outside the four corners of the statement of claim. Be that as it may, I agreed with WP that the plaintiffs' claim in this action was frivolous and vexatious, and an abuse of the process of the court, for the reasons relied on by the AR, and for the reason that the plaintiffs' claim was time-barred. I therefore dismissed the plaintiffs' appeal. I now set out the reasons for my decision.

WP did not give up the tenancy in the course of the 2006 Proceedings

13 The history of the Property and the various disputes relating to it were succinctly set out in the Judgment.

14 As Prakash J noted in the Judgment (at [18]), one impediment in the way of recovering

possession of the Property in OS 582/1996 was the existence of rent control legislation. However, the situation changed after the Control of Rent Act was abolished and notices to quit were served on MHP. This led to the 2006 Proceedings, the basis of which was that MHP's tenancy had been terminated.

15 As CHH and MHP could no longer rely on protection under the Control of Rent Act, they had to assert a right to continued occupation on other grounds. The position taken by CHH and MHP in the 2006 Proceedings was neatly summarised in the Judgment (at [23]) as follows:

> ... MHP had a right to continue in occupation of the Property, notwithstanding the repeal of the Control of Rent Act … in April 2001 on the basis that there was an agreement or understanding between the co-owners and the partners for MHP to occupy the Property for its business for as long as it wished to. This took the form of a contractual or equitable licence granting MHP the right to occupy the Property for as long as it wished to. Alternatively, MHP claimed that there was equity in its favour which had to be satisfied, at the very least, by an award of compensation.

16 In the event, as stated at [6] above, Prakash J held in the 2006 Proceedings that MHP's tenancy had been validly terminated and ordered that the property be sold with vacant possession.

17 It was patently clear from the Judgment that Mr Maniam did not give up MHP's tenancy in his submissions. CCH and MHP lost possession of the Property, not because Mr Maniam gave up the tenancy, but because the learned Judge decided that:

> (a) there was no agreement (whether as a term of the tenancy or as a contractual licence) to allow MHP to occupy the Property for as long as it wanted and under all circumstances (see [71] of the Judgment);
>
> (b) the intention of the parties was that the term of the tenancy was to be for as long as the hotel business was carried on at the Property (see [68] of the Judgment). This intention was unenforceable because a valid lease for an uncertain period was void. However, as MHP had occupied the Property and paid rent, the tenancy was a periodic one and could be determined by a notice to quit by either party (see [74] of the Judgment);
>
> (c) MHP had an expectation, created or encouraged by the actions of the co-owners, to be able to occupy the Property for so long as it carried on the hotel business. However, as the operation of the hotel had ceased, the owners were no longer estopped from terminating the tenancy. MHP's equity did not have to be satisfied in any additional way as MHP had enjoyment of the Property at a low rent for over 50 years and had operated a profitable business on the Property (see [88] and [89] of the Judgment).

18 There was nothing in the Judgment that suggested that Mr Maniam had given up the tenancy or that the learned Judge came to her decision based on Mr Maniam giving up the tenancy. Indeed, the summary of the position taken by CCH and MHP (see [15] above) showed that Mr Maniam argued for a right to continued occupation notwithstanding the repeal of the Control of Rent Act. It was also clear from other paragraphs in the Judgment that Mr Maniam did not "give up the tenancy"; these paragraphs included the following:

> 45 Mr Maniam concluded that the fact showed that the co-owners granted the original partnership the right to use the Property for its business for as long as it wished to and this passed on to MHP …

…

68 … bearing in mind the various submissions made by the plaintiffs and MHP, I have come to the conclusion that … the intention of the parties was that the term of the tenancy, first to the original partnership and subsequently to MHP, was to be for so long as the hotel business was carried on at the Property. …

…

77 Mr Maniam contended that the facts of the case had also given rise to equity in favour of MHP that must be satisfied and that MHP could not be evicted ... by a three months' notice to quit. … Counsel maintained that it would be unfair and unconscionable not to recognise MHP's interest in the continued occupation of the Property beyond a mere periodic tenancy and that the co-owners of the Property were estopped from asserting otherwise by their conduct, representation and/or inaction.

…

96 … It was clear that [CCH and MHP] were resisting the termination of the tenancy, but since I had found that their grounds for doing so could not be upheld, the basis on which MHP continued to occupy the Property had been removed even if, technically, it was still a tenant of CCH.

19 What then was the basis for CHH's belief that WP had "given up the tenancy"? CHH's belief appeared to have been caused by what he read in the notes of argument during closing submissions by Mr Maniam in the 2006 Proceedings. The relevant portion of the notes of argument are set out as follows (with the part relied on by CHH highlighted in bold):

Court:	In the light of the trustees having given up the lease---
Maniam:	Yes.
Court:	---should I just not make an order now for vacant possession to be given, property to be sold, and then reserve my decision on the question of compensation?
Maniam:	Your Honour, I say no for at least two reasons. I may think of a third, okay. The first reason, your Honour, is, with respect to my learned friend, Mr Singh, I think that the prayer seeking vacant possession was misplaced in the first place because the partnership is not only a tenant occupier, it's also a co-owner. Mr Singh has taken your Honour through the law relating to tenants-in-common and I agree with him that one tenant-in-common cannot ask for vacant possession from---from the others. So as---as prayed for, the prayer doesn't work.
Court:	All right, so you can't---it doesn't work---
Maniam:	Yes.
Court:	---because they---they can all stay.
Maniam:	Yes, your Honour.
Court:	But I can make an order that it all---that it be sold---

Maniam: Yes, your Honour.

Court: ---with vacant possession.

Maniam: I think the correct order would be for sale with vacant possession.

Court: Yes.

Maniam: And that each of the co-owners has to give up vacant possession.

Court: To the purchaser.

Maniam: To the purchaser. Not that one co-owner can claim vacant possession from the other.

Court: Yes.

Maniam: So I mean that's the first point. I appreciate not a big point, but I think---

Court: Yes.

Maniam: ---that properly, that's what the---the order should be. Second, your Honour---

Court: Or I could declare that the tenancy has ended anyway.

Maniam: Your Honour could.

Court: I could make that declaration and say, well, definitely by reason of this concession by Mr Moey's clients, the tenancy has come to the end, notwithstanding anything else I may find---

Maniam: Yes.

Court: ---and therefore, the property can be sold, should be sold, with vacant possession and your client must vacate the premises on the completion of the sale.

Maniam: Your Honour, I think that brings us back to where we were---

Court: And then---yes, and then---yes.

Maniam: ---last year.

Court: Yes.

Maniam: And I think the question still is whether my clients' interests are limited to monetary compensation. That's the---

Court: Yes, but your client doesn't have an interest, apart from the partnership, as tenant. He cannot have a divisible interest, his own interest.

Maniam: No, your Honour, that's not what we are claiming. We are saying that it is the partnership that has the interest in question but that---

Court: But the trustees have given up that---that interest.

Maniam: Your Honour, we say the trustees are trustees only of the tenancy.

Court: Yes, so they have given up the tenancy.

The reference to the "trustees" was a reference to the executors of the estate of Chiam Toh Say, deceased, who held the tenancy on trust for MHP. The executors were the sixth and seventh defendants in the 2006 Proceedings (see [3] above) and they were not represented by WP.

20 It was clear that in the notes of argument set out above, Prakash J was referring to the trustees having given up the tenancy. It was also clear that Mr Maniam had not given up the tenancy as alleged by the plaintiffs. CHH's interpretation of the notes of argument was just plainly wrong.

21 In my view, it was obvious that the plaintiffs' claim was unsustainable. It is trite that a claim that is obviously unsustainable is frivolous and/or vexatious (see *SCP 2015* at para 18/19/12).

The plaintiffs' claim was a relitigation of issues already dealt with by the court

Issues dealt with in OS 386/2012 (complaint to Law Society)

22 In late 2009, CHH lodged a complaint with the Law Society against Mr Maniam and his colleague, Ms Koh Swee Yen ("Ms Koh"), who assisted Mr Maniam in the 2006 Proceedings and the 2007 Appeals. The essence of the complaint was similar to the allegations in the present action, *ie*, that Mr Maniam and Ms Koh had given up the tenancy in the 2006 Proceedings and the 2007 Appeals.

23 The IC concluded that there was no merit in the complaint and recommended that the complaint be dismissed. The IC examined, among others, the Judgment and the submissions tendered by WP in the 2006 Proceedings, and concluded that Mr Maniam and Ms Koh had not given up the tenancy as alleged.

24 Dissatisfied with the decision, CHH filed Originating Summons No 386 of 2012 (OS 386/2012) and applied for an order that a formal investigation by a Disciplinary Tribunal be conducted by the Law Society, and an order that the Law Society refer the matter to the Court of Three Judges for appropriate action. Lee Seiu Kin J concluded that the IC's decision was correct and dismissed OS 386/2012. CHH's appeal to the Court of Appeal was also dismissed.

25 I agreed with WP's submissions that the present action by CHH and MHP was a collateral attack on the earlier decisions of the High Court and the Court of Appeal. The plaintiffs were effectively trying to relitigate issues which had already been determined in those earlier decisions. The present action was therefore an abuse of the process of the court (see *SCP 2015* at para 18/19/15).

Issues dealt with in OS 275/2010 (taxation proceedings)

26 In OS 275/2010, Lee J granted an order pursuant to s 120 of the Legal Profession Act (Cap 161, 2009 Rev Ed) for the unpaid portion of WP's bill of costs (for work done in the 2006 Proceedings and the 2007 Appeals) to be taxed. After the bills were taxed, the plaintiffs applied for a review. The learned judge dismissed the applications for review. The appeals to the Court of Appeal were struck out as leave to appeal had not been obtained. CHH subsequently applied for leave to appeal; Lee J dismissed the application.

27 As the plaintiffs' claim that WP had given up the tenancy was obviously unsustainable, it followed that the claim that WP was not entitled to their solicitor and client costs was also doomed to fail. I also agreed with WP that the claim that WP was not entitled to be paid its solicitor and client costs was a collateral attack on the High Court's decisions and that this was an abuse of the process of the court.

The plaintiffs' claim was time-barred

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28 The plaintiffs' claim was founded on breach of contract and/or negligence. Under s 6(1)(*a*) of the Limitation Act (Cap 163, 1996 Rev Ed), the claim was time-barred six years after the date the cause of action accrued. The plaintiffs' present action was filed on 2 April 2015.

29 WP submitted the following dates as the possible dates on which the plaintiffs' cause of action accrued:

(a) 26 April 2007 – according to the plaintiffs, WP "agreed to give up the tenancy" in oral submissions on this date;

(b) 30 April 2007 – this was the date Prakash J gave her decision in the 2006 Proceedings pursuant to which the plaintiffs lost their "rights of occupation";

(c) 21 August 2007 – this was the date of the Judgment;

(d) 1 February 2008 – this was the date on which the plaintiffs' appeal against Prakash J's decision in the 2006 Proceedings was dismissed by the Court of Appeal (*ie*, the 2007 Appeals).

Based on the dates set out above, WP submitted that the plaintiffs' claim was time-barred at the latest by 1 February 2014, which was more than a year before the present claim was filed.

30 The defendants further submitted that any reliance on s 24A(3) of the Limitation Act would not have helped the plaintiffs. Under s 24A(3), the limitation period would be:

(*a*) 6 years from the date on which the cause of action accrued; or

(*b*) 3 years from the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action, if that period expires later than the period mentioned in paragraph (*a*).

31 In his affidavit affirmed on 2 April 2015 that was attached to the statement of claim, CHH stated that documents he received in the "middle of 2009" showed that Mr Maniam had given up the "valuable tenancy" in his submission. WP submitted that on this basis, the three-year limitation period under s 24A(3)(*b*) of the Limitation Act would have expired sometime in mid-2012.

32 I agreed with WP's submission that the plaintiffs' claim was time-barred. The claim was therefore frivolous, vexatious and an abuse of the process of the court (see *SCP 2015* at para 18/19/10).

Conclusion

33 For the reasons set out above, I dismissed the plaintiffs' appeal against the AR's decision. Costs against the plaintiffs was fixed at $5,000 plus reasonable disbursements.

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