Yan Jun *v* Attorney-General
[2013] SGHC 245

Case Number : Suit No 257 of 2013 (Registrar's Appeal No 227 of 2013)

Decision Date : 14 November 2013

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Yan Jun (plaintiff/appellant in person); Khoo Boo Jin and Low Tzeh Shyian Russell (Attorney-General's Chambers) for the defendant/respondent.

Parties : Yan Jun — Attorney-General

14 November 2013

Woo Bih Li J:

Introduction

1 Yan Jun ("the Plaintiff") commenced Suit 257 of 2013 on 1 April 2013 against the Attorney-General ("the Defendant"), claiming damages for:

(a) wrongful arrest;

(b) false imprisonment;

(c) assault and battery;

(d) excessive use of force;

(e) defamation;

(f) malicious prosecution; and

(g) abuse of process.

2 He claimed damages as follows:

Claims	**Amount**	**Notes**
Loss of liberty	$ 60,000	General
	$ 30,000	Aggravated
Assault and battery	$ 15,000	General
Assault and battery (humiliation)	$100,000	General
Excessive use of force	$ 10,000	General
Defamation	$ 5,000	General

Intentional infliction of emotional distress	$100,000	General
Economic loss	$ 7,135	Non-pecuniary
Malicious prosecution, abuse of process	$900,000	Punitive (recommended)
Total	$1,227,135	
Costs	**Amount**	**Dates**
Medical treatment for thumb numbness	$ 75	25 Jul 2009
Consultation with Family service centre	$ 60	11, 27 Aug and 4 Sept 2012
Return to hometown in September 2009	$3,000	Sept 2009
Lost earnings	$4,000	Jul - Sept 2009
Total	$7,135	

3 On 2 May 2013, the Defendant filed Summons 2310 of 2013 under O 18 r 19 of the Rules of Court (Cap 322, R5, 2006 Rev Ed) to strike out the entire statement of claim or various parts of the statement of claim.

4 On 3 July 2013, an Assistant Registrar ("the AR") struck out all the Plaintiff's claims except the claim for loss of liberty arising from false imprisonment.

5 The Plaintiff filed an appeal against that decision on 16 July 2013. On 21 August 2013, I dismissed his appeal and the Plaintiff has filed an appeal to the Court of Appeal. I set out the grounds for my decision below.

The background

6 According to the Plaintiff, he was in his flat in Simei in the morning of 19 July 2009 when he quarrelled with his mother-in-law Mdm Yu Xinlan ("Mdm Yu") about whether a fallen lamp should have been placed inside the master bedroom. As there were prior instances of violence between him and Mdm Yu, he telephoned for the police. He went into the master bedroom carrying a child with him and waited for the police.

7 Before the police arrived, Mdm Yu shouted to the Plaintiff's wife Mdm Liu Tian ("Mdm Liu") that stove accessories had been removed. Mdm Liu then rushed into the master bedroom and hit him violently and repeatedly. He ran out of the master bedroom with the child and stood in the dining room while Mdm Liu remained in the master bedroom. Shortly thereafter two police officers arrived outside the flat. He pointed to the master bedroom and said in Mandarin, "she beat me". He alleged that they ignored him and instead went into the master bedroom and spoke to Mdm Liu. Thereafter the police officer and Mdm Liu came out of the master bedroom and continued talking.

8 He alleged that he heard Mdm Liu informing the police officers that he had deliberately done something because he knew that an expedited order ("EO"), which she had obtained against him, was about to expire.

9 He alleged that after their conversation stopped, he said to the more senior of the police officers that it was his turn to speak. However, that police officer told him that he was under arrest for breaking the EO. He protested that they had heard only one side of the story but he was nevertheless arrested at about 9.30am.

10 A breach of an EO is deemed to be a seizable offence under s 65(11) (read with s 65(8)) of the Women's Charter (Cap 353, 2009 Rev Ed), hence allowing a police officer to arrest any person against whom a reasonable complaint for such a breach has been made against (see also s 32(1)(*a*) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed)).

11 After the Plaintiff's arrest, the police officers escorted the Plaintiff to Changi General Hospital ("CGH") for a medical examination. The medical report on the Plaintiff showed that he had superficial nail excoriations on his face, neck and left hand. Mdm Liu also proceeded to CGH for a medical examination. The medical report on the Plaintiff's wife showed that she had superficial abrasion and tenderness on the left side of her neck.

12 After the Plaintiff's medical examination, he was escorted to Bedok Police Division for further investigation. The Plaintiff was released on bail in the morning of the following day, *ie*, 20 July 2009 at about 6.30am. About 21 hours had elapsed from the time of the Plaintiff's arrest on 19 July 2009 to the time of his release on bail on 20 July 2009, inclusive of the time spent on his medical examination at CGH.

13 According to the Plaintiff, he had been to the Family Court on 6 July 2009 on the return date of the EO but Mdm Liu did not attend court that day. [note: 1] After his release on 20 July 2009, he went to the Family Court again to check whether Mdm Liu had attended court on the return date and was told that she had not. [note: 2] Subsequently, the Plaintiff consulted with a number of lawyers in or about August 2009.

14 On 5 October 2009, he received an email from Staff Sergeant Lim Shao Liang informing him that after consultation with the Attorney-General's Chambers ("AGC"), the police had decided to take no further action against him and advised him to refrain from further acts of violence against Mdm Liu.

15 The Plaintiff alleged that on 16 and 29 October 2009, he sent emails to Staff Sergeant Lim questioning the validity of the EO and asking about the outcome of police investigations. There was no reply. According to the Defendant, Staff Sergeant Lim had resigned from the Singapore Police Force ("SPF") on 13 October 2009.

16 On 1 April 2013, the Plaintiff filed Suit No 257 of 2013 ("the Suit") alleging, *inter alia*, wrongful arrest, false imprisonment, malicious prosecution, and abuse of process, on the basis that the EO obtained by his wife had already expired before his arrest. According to him, the expiry (or the revocation of the EO) was because his wife failed to attend court on the return date of the EO. However, SPF maintained that neither the Plaintiff nor Mdm Liu mentioned this fact at any time between 19 July 2009 when the Plaintiff was arrested and 20 July 2009 when he was released on bail.

17 The Plaintiff also claimed in the Suit that he was defamed by a police officer when the officer answered "breach of PPO" when the doctor examining the Plaintiff asked how the Plaintiff got injured. The Plaintiff also apparently claimed that the doctor then intentionally humiliated the Plaintiff by announcing loudly thereafter the words "small injury".

The decision below

18 As mentioned above, the AR struck out all but one of the Plaintiff's claims. The AR found that the Suit clearly included personal injury claims and the limitation period for such a Suit was three years from the date of accrual of the cause of action or three years from the earliest date when the claimant had the knowledge required for the bringing of such a claim, pursuant to s 24A of the Limitation Act (Cap 163, 1996 Rev Ed). The AR found that the Plaintiff had sufficient knowledge at the point of time when he was released from detention on 20 July 2009 to bring an action, or, at the latest, a month after his arrest when he was mulling over the incident and consulted a number of lawyers. Accordingly, the Plaintiff's Suit was time-barred. The AR decided to strike out the Suit in respect of all the claims, except for the Plaintiff's claim for loss of liberty arising from false imprisonment.

The Plaintiff's case

19 The Plaintiff represented himself. He said that his home country was China. He could speak English. Besides having consulted solicitors, he appeared to have read up on the law and came equipped with some law textbooks for the hearing of the appeal before me. Unfortunately, his statement of claim suffered from prolixity. It contained much evidence and arguments which were distracting.

20 The main issue was whether the Suit was subject to a three-year limitation period under s 24A of the Limitation Act.

21 The Plaintiff argued that a six-year time bar, instead of a three-year time bar, applied to the Suit because his claim for false imprisonment included a claim for damages in respect of personal injury. What the Plaintiff probably meant was that because his claim for personal injuries included a claim for false imprisonment, the limitation period for these causes of action is six years. He cited *Padmore v Commissioner of Police* (Unreported) 17 December 1996 for the proposition that the limitation period for actions of false imprisonment is six years. Furthermore, he argued that liability for a claim for false imprisonment was strict, and was not based on a breach of duty.

22 As for wrongful arrest, the Plaintiff acknowledged that this is the same thing as false imprisonment but he still insisted on maintaining an additional claim of wrongful arrest as he was concerned that if such a claim was struck out, he might be precluded from relying on the circumstances leading to his alleged wrongful arrest.

23 On the claim of malicious prosecution, the Plaintiff argued that an arrest constituted prosecution. Moreover, the Plaintiff argued that the police officer's refusal to listen to his account of the events at the time of arrest showed malice on the part of the officer.

24 The Plaintiff also argued that his constitutional right under Art 9(4) of the Constitution of the Republic of Singapore (1999 Rev Ed) ("the Constitution") was violated when he was not brought before a magistrate during the period he was arrested or released within a reasonable time. The Plaintiff also argued that the police officers should not have released him on police bail. Instead, they were obliged to bring him before a magistrate.

25 On the claim in defamation, the Plaintiff argued that the limitation period for defamation was six years. The Plaintiff argued that there could not be any privilege because the arrest was wrongful. In response to the Defendant's argument that the Plaintiff did not identify any other person who heard any allegedly defamatory statement, the Plaintiff argued that because the door of the room he was in was open, people may have heard the statements and recognised him.

The Defendant's case

The Defendant's case

26 The Defendant argued that if the Plaintiff's claim in false imprisonment included a claim for damages in respect of personal injury, as argued by the Plaintiff, a three-year time bar would apply to prohibit all the claims and not just the claims for personal injury. The Defendant submitted that the AR's decision to carve out the Plaintiff's claim in false imprisonment in respect of loss of liberty so as to allow this part of the Plaintiff's claim to proceed was an act of judicial mercy only and the Defendant was not appealing against this part of the AR's decision.

27 On the claim for wrongful arrest, the Defendant submitted that there was no such cause of action and the correct one was false imprisonment which had survived the striking out.

28 On the Plaintiff's claim in malicious prosecution, the Defendant argued that there was no prosecution because there was no criminal charge before a judicial officer or tribunal. There was also no malice. The Defendant argued that a proper reading of Art 9(4) of the Constitution was that if an arrested person was released within 24 hours of his arrest, there is no need to bring the arrested person before a magistrate. Since the Plaintiff was released within 21 hours, there was no requirement to bring him before a magistrate.

29 As for the allegation of abuse of process, the Defendant said this meant the judicial process and no such process was engaged.

30 As regards defamation, the Defendant relied on, *inter alia*, the defence of qualified privilege and also submitted that there was no real and substantial tort.

Issues

31 The issues to be decided were:

(a) Whether the Suit was subject to a three-year limitation period ("Issue 1").

(b) Whether there were other grounds to strike out the Plaintiff's claims ("Issue 2").

The court's reasons

Issue 1: Limitation Period

32 The starting point is s 6(1) of the Limitation Act which states that the limitation period for bringing an action founded on tort is six years from the date on which the cause of action accrued:

> **Limitation of actions of contract and tort and certain other actions**
>
> **6.**—(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:
>
> (*a*) actions founded on a contract or on tort;
>
> (*b*) actions to enforce a recognizance;
>
> (*c*) actions to enforce an award;
>
> (*d*) actions to recover any sum recoverable by virtue of any written law other than a

penalty or forfeiture or sum by way of penalty or forfeiture.

33 However, where an action is for breach of duty and where the damages claimed include damages in respect of personal injuries to the plaintiff, the limitation period for bringing such an action is three years. This is provided by ss 24A(1) and (2) of the Limitation Act:

> **Time limits for negligence, nuisance and breach of duty actions in respect of latent injuries and damage**
>
> **24A.**—(1) This section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision).
>
> (2) An action to which this section applies, where the damages claimed consist of or include damages in respect of personal injuries to the plaintiff or any other person, shall not be brought after the expiration of —
>
> (*a*) 3 years from the date on which the cause of action accrued; or
>
> (*b*) 3 years from the earliest date on which the plaintiff has the knowledge required for bringing an action for damages in respect of the relevant injury, if that period expires later than the period mentioned in paragraph (a).

34 Section 6(1) is expressly stated to be "[s]ubject to this Act". Section 24A is a provision of the Limitation Act which carves out exceptions to s 6(1). This was acknowledged by the Singapore Court of Appeal in *Lian Kok Hong v Ow Wah Foong and another* [2008] 4 SLR(R) 165 ("*Lian Kok Hong*") (at [14]). Moreover, s 24A is in Pt III of the Limitation Act and s 5 makes it clear that the time limits of Pt II of the Act (which s 6 is in) are subject to Pt III:

> **Part II to be subject to Part III**
>
> **5**. The provisions of this Part shall have effect subject to the provisions of Part III.

35 In the present case, as the Suit was an action for damages for breach of duty under s 24A(1) and included a claim for damages in respect of personal injuries, the three-year limitation period under ss 24A(1) and 24A(2) of the Limitation Act appeared to apply.

Was the Suit based on a breach of duty?

36 In the English Court of Appeal decision of *Letang v Cooper* [1965] 1 QB 232 ("*Letang*"), Lord Denning MR construed words, which are similar to those in s 24A(1): "Actions for … breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statute or independently of any contract or any such provision)" in the Law Reform (Limitation of Actions, etc) Act 1954 (c 36) (UK) as follows (at 241C–E) :

> … Those words seem to me to cover not only a breach of contractual duty, or a statutory duty, but also a breach of any duty under the law of tort. Our whole law of tort today proceeds on the footing that there is a duty owed by every man not to injure his neighbour in a way forbidden by law. Negligence is a breach of such a duty. So is nuisance. So is trespass to the person. So is false imprisonment, malicious prosecution or defamation of character. Professor Winfield indeed defined "tortious liability" by saying that it "arises from the breach of a duty primarily fixed by the

law: this duty is towards persons generally and its breach is redressible by an action for unliquidated damages"…

37 It should be noted that *Letang* was also approved by the House of Lords in *A v Hoare and other appeals* [2008] 2 All ER 1 at [25].

38 The Plaintiff argued that every man has a duty not to injure another but that this did not apply to public officers. He argued that if in the course of helping the police, he injured another person, there was no breach of duty. As can be seen, his arguments were contradictory. As he himself had argued, every man has a duty not to injure another. There is no reason why this should not apply to public or police officers. Whether there is a breach of the duty is a separate question.

39 Following *Letang*, I found that all the Plaintiff's pleaded causes of action arose from the conduct of the police officers or officer who owed him a duty whether statutory and/or under the law of tort.

40 The Plaintiff argued that liability for a claim in false imprisonment was strict, and was not based on a breach of duty. In my view, this is a false dichotomy. The fact that a claim is based on a breach of duty and the fact that liability for such a claim can be strict are not mutually exclusive. In other words, even if a claim in false imprisonment is based on a breach of duty, liability for such a claim can still be strict. Liability for breach of duty may be strict or fault-based. As stated in *Letang*, the expression "breach of duty" is used in a very broad sense to mean the commission of any tort because the tortfeasor is under a duty "not to injure his neighbour in a way forbidden by law". The liability for a breach of a duty to take care in the law of negligence is fault-based, but that is merely one instance of a breach of duty. On the other hand, liability for defamation is strict. Therefore, this argument did not assist the Plaintiff.

Did the Suit include damages in respect of personal injuries?

41 Under s 2(1) of the Limitation Act, "personal injuries" include "any disease and any impairment of a person's *physical or mental condition*" [emphasis added].

42 It was incorrect of the Plaintiff to argue that because he had a claim for false imprisonment, the limitation period for his claim for personal injury should be subject to the six-year limitation for false imprisonment. The correct approach is the other way around. As his claim for false imprisonment (and defamation) was part of his claim for personal injury, his entire claim was subject to the limitation under s 24A.

43 I accepted the Defendant's argument that the words "*include* damages in respect of personal injuries" in s 24A(2) of the Limitation Act mean that the three-year limitation period applies not only to a suit where all the damages claimed are in respect of personal injuries, but also to a suit where merely some of the damages claimed are in respect of personal injuries.

44 The English court reached a similar position in interpreting s 11(1) of the Limitation Act 1980 (c 58) (UK) ("UK Limitation Act 1980"), which is the English equivalent of s 24A(1). Section 11(1) of the UK Limitation Act 1980 provides:

Special time limit for actions in respect of personal injuries.

(1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute

> or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

45 In *Bennett v Greenland Houchen & Co* [1998] PNLR 458 ("*Bennett*"), the plaintiff sued his former solicitors for damages for breach of contract and negligence. The plaintiff claimed that as a result of his former solicitors' mishandling of his litigation, he suffered distress, depression and large financial losses. In order to avoid the consequences of s 11(1) of the Limitation Act 1980, the plaintiff argued that the claim for distress and depression was a peripheral matter to the main thrust of the action for economic loss and thus the judge below was correct in deciding that the action was not time-barred. The English Court of Appeal disagreed and held that since the action included a claim for damages for personal injury, *ie*, distress and depression, the entire action was time-barred as it was not brought within the three-year limitation period.

46 Accordingly, I found that the three-year limitation period provided by s 24A of the Limitation Act applied to the Suit.

47 It would be different if the Suit was claiming damages in respect of the injury which merely provided the measure of the loss which the plaintiff had suffered, in contradistinction to a claim for damages in respect of personal injury. In such a case, the damages in which the plaintiff seeks to recover would not be about damages for personal injury, and s 24A would hence not apply. This is explained by Peter Gibson LJ in *Bennett* (at 466):

> In the Ackbar case the plaintiff was not claiming that the negligence of his insurance brokers had caused him personal injury. The damages for the injury merely provided the measure of the loss which he had suffered. The distinction therefore is between whether the damages in respect of the personal injury were those caused by the negligence, nuisance or breach of duty of the defendant and whether the damages in respect of the personal injury are merely the measure of the loss. For example, if solicitors for a plaintiff handle a personal injury case negligently so that it is dismissed for want of prosecution in an action against them and their client claims damages purely for financial loss, the action is all about financial compensation for their negligence and not all about the personal injury which was the reason why the first case was commenced, though the damages in the negligence action will be measured by the damages for the personal injury suffered by the plaintiff. If on the other hand the solicitors' negligence is the cause of the personal injury, damages in respect of which he seeks to recover, the action is all about damages for personal injury.

Application of the three-year limitation period

48 An action which s 24A(2)(*a*) applies to shall not be brought after the expiration of three years from the date on which the cause of action accrued. A cause of action is simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person: *Letang* at 242G–243A. As outlined above at [6]–[12], the factual situation which the Plaintiff relied on to obtain a remedy from the court happened on 19 July 2009 and 20 July 2009. Therefore, under s 24A(2)(*a*), the Plaintiff's cause of action would have accrued by 20 July 2009 and the three-year limitation period would expire on 19 July 2012, subject to s 24A(2)(*b*).

49 Section 24A(2)(*b*) of the Limitation Act provides that the three-year limitation runs from the earliest date on which a plaintiff has the knowledge required for bringing an action for damages if that period expires later than that under s 24A(2)(*a*). The Plaintiff suggested in para 23 of his affidavit filed on 28 May 2013 that he only had the knowledge for bringing an action when AGC replied to him

on 5 June 2012 stating that the EO had been revoked by 19 July 2009.

50 It should be noted that ss 24A(4) to 24A(6) further elaborate on the relevant "knowledge" for the purpose of s 24A(2)(*b*):

> (4) In subsections (2) and (3), the knowledge required for bringing an action for damages in respect of the relevant injury or damage (as the case may be) means knowledge —
>
> (*a*) that the injury or damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;
>
> (*b*) of the identity of the defendant;
>
> (*c*) if it is alleged that the act or omission was that of a person other than the defendant, of the identity of that person and the additional facts supporting the bringing of an action against the defendant; and
>
> (*d*) of material facts about the injury or damage which would lead a reasonable person who had suffered such injury or damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.
>
> (5) Knowledge that any act or omission did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant for the purposes of subsections (2) and (3).
>
> (6) For the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to acquire —
>
> (*a*) from facts observable or ascertainable by him; or
>
> (*b*) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek.

51 Case law has also elaborated on what constitutes knowledge for the purpose of s 24A. For the purpose of s 24A(4)(*a*), knowledge is to be interpreted in broad terms of the facts on which a plaintiff's claim is based and of a defendant's acts or omissions and knowing that there is a real possibility that those acts or omissions have been a cause of the damage. There is no need for a plaintiff to know the details of what went wrong as long as he knows the factual essence of his complaint: *Lian Kok Hong* at [36]. For the purpose of s 24A(4)(*d*), a plaintiff is not required to know that he had a possible cause of action, and the requirement for the injury or damage to be "sufficiently serious" means that the action considered must not be frivolous or wholly without merit, taking into account the effort required in instituting a court action: *Lian Kok Hong* at [38].

52 Regarding the degree of knowledge required, reasonable belief rather than absolute knowledge is enough to start the time running: *Lian Kok Hong* at [41]:

> What then is the degree of knowledge required? In [*Haward v Fawcetts* [2006] 1 WLR 682 *("Haward")*], the House of Lords held that knowledge does not mean knowing for certain and beyond possibility of contradiction (see, for example, *Haward* at [9]). The same position has been adopted locally. It suffices to refer to only one of such cases. In [*Prosperland Pte Ltd v Civic Construction Pte Ltd* [2004] 4 SLR(R) 129], the High Court approvingly referred to *Halford v*

Brookes [1991] 1WLR 428, where Lord Donaldson of Lymington MR noted at 443 as follows:

> The word ["knowledge"] has to be construed in the context of the purpose of the section, which is to determine a period of time within which a plaintiff can be required to start any proceedings. In this context "knowledge" clearly does not mean "know for certain and beyond possibility of contradiction." It does, however, mean "know with sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking legal and other advice and collecting evidence." *Suspicion, particularly if it is vague and unsupported, will indeed not be enough, but reasonable belief will normally suffice.* [emphasis added]

Thus, reasonable belief rather than absolute knowledge is enough to start time running. This has also been accepted by the House of Lords in *Haward*. We respectfully concur with this measured approach…

53 In the present case, the Plaintiff's basis for his claim was that the EO obtained by Mdm Liu had expired before the Plaintiff's arrest due to Mdm Liu's failure to attend court on the return date of the EO. The Defendant argued that the Plaintiff had the knowledge required for bringing an action for damages by July 2009 or at the latest by 29 October 2009. The Defendant relied on the following:

(a) On 19 July 2009, the Plaintiff knew that he was arrested and detained by the police for the suspected breach of an EO obtained by his wife. [note: 3]

(b) On 19 July 2009, the Plaintiff told the SPF that he went to the Family Court on the return date (or on 6 July 2009) for the EO but Mdm Liu did not turn up in court. [note: 4]

(c) The Plaintiff would know that he suffered physical injury when he was arrested on 19 July 2009 and acute emotional distress from the date of the arrest. [note: 5]

(d) The Plaintiff claimed to have gone to the Family Court again on 20 July 2009 and was informed by the Family Court that Mdm Liu did not appear in court on the return date for the EO. [note: 6]

(e) In or about August 2009, the Plaintiff claimed to have consulted a number of lawyers. [note: 7]

(f) On 5 October 2009, the police informed the Plaintiff that no further action was going to be taken against him. [note: 8]

(g) According to the Plaintiff, the Plaintiff emailed SPF to question the validity of the EO on 16 and 29 October 2009. [note: 9]

54 I was of the view that, at the latest, the three-year limitation under s 24A(2)(*b*) would expire on 28 October 2012. Therefore, the AR was correct to strike out the various claims as the Suit was commenced only on 1 April 2013. Nevertheless, as stated above, the AR allowed the Plaintiff's claim for loss of liberty arising from false imprisonment to survive and the Defendant was not appealing against this indulgence granted to the Plaintiff.

55 My ruling on Issue 1 renders it unnecessary to deal with Issue 2. However, I will address Issue 2 for completeness.

Issue 2: Other grounds to strike out the Plaintiff's claims

56 There were other reasons to strike out the Plaintiff's claims for wrongful arrest, malicious prosecution, abuse of process and defamation.

Wrongful arrest

57 The Defendant submitted that "wrongful arrest" is not a tort or other cause of action. The Defendant relied on *State of New South Wales v Williamson* [2011] NSWCA 183 where the Court of Appeal said at [23]:

> **Cause of Action for "Unlawful Arrest"?**
>
> 23 One minor matter, not affecting questions of construction of the legislation, is that the judge, and to some extent the submissions on appeal, spoke as though unlawful arrest was itself a tort. That is not strictly correct. A lawful arrest can provide the legal justification for what would otherwise be the tort of false imprisonment. If reasonable force is used in the course of effecting a lawful arrest, that can provide a legal justification for what would otherwise be an assault or battery. However, unlawful arrest is not a tort separate to assault, battery and false imprisonment.

58 In *Zainal bin Kuning and others v Chan Sin Mian Michael and another* [1996] 2 SLR(R) 858 ("*Zainal*"), the Court of Appeal appeared to consider wrongful arrest and false imprisonment interchangeably.

59 As mentioned above at [22], the Plaintiff himself acknowledged that his claim for wrongful arrest was the same as his claim for false imprisonment. He was only concerned that if his claim for wrongful arrest was struck out, he would be precluded from relying on the circumstances leading to his alleged wrongful arrest. I was of the view that striking out that claim did not preclude him from relying on such circumstances. Indeed the Defendant conceded this and accepted that he could also use the words "wrongful arrest" to describe the circumstances but stressed that "wrongful arrest" as a separate and distinct tort from false imprisonment did not exist. I agreed.

Malicious Prosecution

60 In an action for malicious prosecution, the plaintiff must show that:

(a) he was prosecuted by the defendant, *ie*, the law was set in motion against him on a criminal charge;

(b) the prosecution was determined in his favour;

(c) the prosecution was without reasonable and probable cause; and

(d) the prosecution was malicious.

(see *Zainal* at [54]).

61 The Plaintiff argued that once he was arrested, there was prosecution. However, I was unable to agree with him as the law was not set in motion against him on a criminal charge just because of the arrest. The Plaintiff referred to *Halsbury's Laws of England* vol 68 (LexisNexis, 2008) at para 629:

> **629. What is a prosecution.** A prosecution exists where a criminal charge is made before a judicial officer or tribunal, and any person who makes or is actively instrumental in the making or prosecuting of the charge is deemed to prosecute it, and is called the prosecutor. A person who lays before a magistrate an information stating that he suspects and has good reason to suspect another, or who prefers a bill of indictment, is engaged in a prosecution; and he may be responsible for the prosecution even though the charge made before the magistrate is an oral one, and even though, after making the charge before the magistrate, or even without making one, he is bound over to prosecute and does so.

62 However, the express words of the quotation did not support the Plaintiff's argument that once he was arrested, there was prosecution. On the contrary, the quotation suggests that there has to be a criminal charge made before a *judicial officer* or *tribunal* for a prosecution to exist. In the present case, there was no criminal charge made before a judicial officer or tribunal and the Plaintiff was also not charged.

63 The Plaintiff also referred to an older edition of *Clerk and Lindsell on Torts* (Anthony M Dugdale gen ed) (Sweet & Maxwell, 18th Ed, 2000) at para 16-08:

> **What is prosecution?** In establishing the first essential element of the tort of malicious prosecution two key issues must be addressed, what constitutes a prosecution? And who is the prosecutor? To prosecute is to set the law in motion, and the law is only set in motion by an appeal to some person clothed with judicial authority in regard to the matter in question, and to be liable for malicious prosecution a person must be actively instrumental in so setting the law in motion. …

64 Once again, the text which the Plaintiff relied on contradicted his argument that once he was arrested, there was prosecution. The text states that to prosecute is to set the law in motion, and "the law is only set in motion by an appeal to some person clothed with *judicial authority*". Therefore, there was no prosecution on the facts before me. For completeness, I should mention that there is no material change in the latest edition of *Clerk and Lindsell on Torts* (Michael A Jones gen ed) (Sweet & Maxwell, 20th Ed, 2010) ("*Clerk and Lindsell on Torts*").

65 Referring to Art 9(4) of the Constitution, the Plaintiff suggested that once he was arrested, he must be brought before a magistrate within 24 hours of his arrest, even though he had been released before the 24 hours was up. Art 9(4) states:

> Where a person is arrested and not released, he shall, without unreasonable delay, and in any case within 48 hours (excluding the time of any necessary journey), be produced before a Magistrate, in person or by way of video-conferencing link (or other similar technology) in accordance with law, and shall not be further detained in custody without the Magistrate's authority.

66 The Plaintiff did not make it clear whether the Plaintiff's claim about a breach of his constitutional right under Art 9(4) was a separate cause of action or part of his claim for malicious prosecution or abuse of process or false imprisonment. If he ought to have been brought before a magistrate within 24 hours of his arrest, even though he had been released earlier, that would be part of his claim for false imprisonment and not a separate cause of action.

67 In any event, it was clear to me that he had misread Art 9(4). That provision requires the relevant authority to produce a person who is arrested before a magistrate within 48 hours from the

time of his arrest *if he has not been released by then*. The point about requiring the authority to produce him before a magistrate is so that he shall not be further detained without the magistrate's authority. Once he has already been released before the 48 hours are up, the provision ceases to apply.

68 The Plaintiff even submitted that the police had no right to release him on bail and must bring him before the magistrate. That submission was clearly wrong for the reasons already stated above.

69 The Plaintiff suggested that he ought to have been released before he was brought to the police station. That was a different complaint and would form part of his claim for false imprisonment.

70 In the circumstances, I do not need to elaborate on the question of malice in the clam for malicious prosecution since there was no prosecution as such. However, I could not help but note that while the Plaintiff was alleging malice (and abuse of process), he himself was seeking an exorbitant sum of $900,000 as punitive damages for malicious prosecution and abuse of process.

Abuse of Process

71 The Plaintiff did not clarify which act or acts he was relying on for his claim for abuse of process. Was it the alleged breach of Art 9(4) and/or the failure to release him before he reached the police station or the arrest at his flat?

72 The concept of abuse of process is more commonly relied on as a ground for terminating proceedings that constitute an abuse. However, in specific instances, abuse of process is actionable as a tort: see *Land Securities plc and others v Fladgate Fielder (a firm)* [2010] 2 WLR 1265 ("*Land Securities*") for a comprehensive survey of the tort.

73 The Singapore Court of Appeal in *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 explained the concept of abuse of process at [130]:

> The judicial process is the curial mechanism for the resolution and disposal of civil disputes and criminal prosecutions in accordance with and subject to evidentiary and procedural rules. The use of the *judicial process* for a purpose other than that for which it is established is regarded by the court as an abuse of its process. Although the concept of "abuse of process" is not a precise one, its essence is the use of the *judicial process* for a purpose for which it is not intended or in circumstances where the extraneous purpose is the dominant purpose for its use. [emphasis added]

74 Similarly in *Land Securities*, Moore-Bick LJ explained the essential element in abuse of process at [89] in the following terms:

> In *Broxton v McClelland* [1995] EMLR 485 Simon Brown LJ identified as the essential element in abuse of process the *misuse of the court's process* to achieve something not available in the course of (or, I would say, by means of) *properly conducted proceedings*. I respectfully agree. It seems to me that whether the question is one of staying or striking out the proceedings themselves or of the existence of a cause of action, the claimant must be able to establish that the defendant's predominant purpose in bringing the *proceedings* is not to obtain the remedy that the law offers (disregarding for this purpose the use he may seek to make of that remedy once he has obtained it) but to achieve some other object that lies outside the range of remedies that the law grants. At the level of this principle I see no difficulty in assimilating the decisions on abuse of process as a tort with the decisions concerning staying or striking out the proceedings.

[emphasis added]

75 Indeed, the focus of a claim in abuse of process should be on the improper use of the *judicial process*. The concept of abuse of process allows the courts to control their own proceedings to prevent abuse, and hence the concept should only be engaged when the judicial process has been engaged. It has not been argued that the other torts are inadequate in addressing the alleged damage suffered by the Plaintiff, and I see no reason in expanding the concept of abuse of process to cover other legal processes which are not judicial processes.

76 In the present case, the Plaintiff was not prosecuted. As the judicial process had not been engaged, there was no abuse of process.

Defamation

77 I found that the defence of qualified privilege applied even if the police officer's remark constituted defamation. The defence of qualified privilege arises where the defendant has an interest or duty, whether legal, social or moral, to communicate the information and the recipient has the corresponding interest or duty to receive the information: see Gary Chan Kok Yew & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2011) at para 13.063 and *Clerk and Lindsell on Torts* at para 22-118.

78 In the present case, the doctor asked how the Plaintiff got injured and the police officer answered, "breach of PPO". It was subsequently recorded in the doctor's medical report that the Plaintiff was "arrested for breach of PPO" as part of the patient's history. It was not clear to me whether the doctor's question was posed to the Plaintiff or the officer. Even if it was posed to the Plaintiff, I was of the view that the officer had an interest or duty to communicate the information sought by the doctor, and the doctor had a corresponding interest or duty to receive the information.

79 The Plaintiff argued that there could not be any privilege because the arrest was wrongful. I was of the view that this argument had no basis in law. The defence of qualified privilege would and did apply even if the arrest was wrongful.

80 I add that the Plaintiff did not suggest that the remark was made out of malice or spite or for any improper purpose which might deny the Defendant the defence of privilege.

81 As regards the doctor's remark about a small injury, I was of the view that, assuming that the Plaintiff had brought in the correct defendant for the doctor's remark, which was the doctor, the remark was not defamatory of the Plaintiff. It was not as though he went voluntarily to see the doctor to obtain a medical certificate and the doctor remarked about a small injury. In that scenario, it might be arguable that the doctor was implying that he was trying to obtain a medical certificate under undeserving circumstances. The Plaintiff's allegation that the doctor had intentionally humiliated him by the remark was a bare allegation. Furthermore, there was no suggestion by the Plaintiff that the remark was untrue.

82 I also accepted the Defendant's argument that in the circumstances, there was no real and substantial tort because of the extremely limited publication of the remarks by the officer and the doctor. There were three persons in the examination room. The Plaintiff, the officer and the doctor. Even if there was a nurse or two, which the Plaintiff did not assert, it would not be more than five people. While the Plaintiff said that the door of the room was open and others could have heard the remarks and also recognised him, as he had been to CGH before where his wife worked as a nurse, the fact was that he did not identify anyone else who had heard the remarks and recognised him.

83 I was of the view that the Defendant was entitled to rely on *Jameel (Yousef) v Dow Jones & Co Inc* [2005] QB 946 in which the court struck out a defamation action because of the limited publication of the material. This was followed by a District Court in *Kesavan Engineering & Construction Pte Ltd v S P Powerassets Limited* [2011] SGDC 179.

Conclusion

84 For the reasons set out earlier, I dismissed the appeal with costs fixed at $3,000 to the Defendant including disbursements.

Comment

85 There is one other comment I wish to make. The Plaintiff sought to ask counsel for the Defendant questions in the course of the hearing before me. After he posed one or two questions, I stopped him from asking any more questions. The hearing before me was not a trial. The Defendant's counsel was not a witness. Moreover, the Plaintiff's questions were not to seek to better understand the Defendant's counsel's submissions or to establish some facts which were undisputed.

[note: 1] Statement of Claim ("SOC"), para 15

[note: 2] SOC, para 18

[note: 3] SOC, paras 6 and 17

[note: 4] SOC, para 15

[note: 5] Plaintiff's affidavit filed on 28/5/2013 at para 28

[note: 6] SOC, para 18

[note: 7] SOC, para 20

[note: 8] Lee Chen Hooi's first affidavit at p 8

[note: 9] SOC, para 22