Zhang Run Zi *v* Koh Kim Seng and another
[2015] SGHC 175

Case Number	: Suit No 2 of 2013 (Registrar's Appeal No 96 of 2015)
Decision Date	: 09 July 2015
Tribunal/Court	: High Court
Coram	: George Wei JC (as he then was)
Counsel Name(s)	: Looi Wan Hui (JLim Law Corporation) for the Appellant/Plaintiff; Balasubramaniam Ernest Yogarajah (Unilegal LLC) for the Respondents/Defendants.
Parties	: Zhang Run Zi — Koh Kim Seng and another

Res judicata – Issue estoppel

Abuse of process

9 July 2015

George Wei J:

1 The judicial process provides a rule-based system for parties to vindicate their rights and seek appropriate remedies. The system is part and parcel of the rule of law. Whilst all persons with grievances should have the opportunity to have those grievances fully ventilated, the cost of litigation is undeniable. This cost is not merely financial costs for the litigants. Costs are also incurred by the State, which has to provide judicial resources for the resolution of the dispute. Whilst litigation is inevitably stressful for all parties, the financial and emotional cost of protracted litigation, especially repeated attempts to litigate the same complaint, is a matter which the law is not blind to. The doctrine of *res judicata* thus plays a crucial role in striking the balance between the competing objectives of allowing the plaintiff his or her day in court, and preventing vexatious litigation which burdens all parties involved and places a strain on judicial resources.

2 The present case is one such instance where I found that the balance lay in favour of striking out the plaintiff's claim on the grounds of *res judicata*. I now set out the grounds for my decision.

Procedural history

3 Zhang Run Zi ("the Plaintiff") commenced Suit No 2 of 2013 ("S 2/2013") to recover losses she claims to have suffered from a failed property transaction in 2007 when she was supposed to purchase 10 Hoot Kiam Road S(249395) ("the Property") from joint owners Koh Kim Seng ("Mr Koh") and Alice Swan ("the Defendants").

4 On 19 January 2015, the Defendants filed Summons No 270 of 2015 ("SUM 270/2015") to strike out the Plaintiff's entire statement of claim. In summary, the Defendants asserted that S 2/2013 is an abuse of process because the factual and legal issues raised in S 2/2013 have already been litigated on multiple occasions previously.

5 On 18 March 2015, the learned assistant registrar ("the AR") allowed SUM 270/2015 in full, and ordered that the Plaintiff pay the Defendants fixed costs assessed on an indemnity basis of $14,500 inclusive of disbursements.

6 On 1 April 2015, the Plaintiff filed Registrar's Appeal No 96 of 2015 against the AR's entire decision. I heard the parties on 27 April 2015, and dismissed the Plaintiff's appeal in full. I also ordered the Plaintiff to pay the Defendants costs on an indemnity basis for the appeal. The Plaintiff now appeals against my decision in Civil Appeal No 110 of 2015.

Factual background

7 The material events regarding the disputed property transaction took place some eight years ago in early 2007. On 3 January 2007, upon the Plaintiff's payment of the option fee ($10,200), the Defendants granted the Plaintiff an option to purchase the Property. On 24 January 2007, the Plaintiff exercised her option to purchase the Property. At that point, she had paid the Defendants $51,000 for the purchase of the Property, which was 5% of the purchase price. On 25 January 2007, the Plaintiff lodged a caveat against the Property ("the Plaintiff's First Caveat").

8 The date of legal completion as specified in the sale and purchase agreement was 21 March 2007. Some time in February 2007, the parties exchanged correspondence regarding the Defendants' alleged concealing of road lines which affected the Property. The Defendants refuted the Plaintiff's allegations. Nothing conclusive emerged from the correspondence.

9 Subsequently, for reasons which are the subject of intense factual disagreement on both sides, the Plaintiff failed to complete the purchase of the Property on 21 March 2007. On 26 March 2007, the Defendants gave the Plaintiff a 21-day notice to complete the purchase of the property. No response was received from the Plaintiff. Therefore, the Defendants retained the $51,000 paid by the Plaintiff and proceeded to look for other buyers.

10 As it turned out, the Defendants did manage to find a second buyer. On 26 April 2007, the Defendants gave the second buyer an option to purchase. Legal completion of this second sale and purchase transaction was due on 5 July 2007. However, legal completion was delayed because the Plaintiff's First Caveat was still on the register as of 5 July 2007.

11 The Defendants therefore took action to remove the Plaintiff's First Caveat. They first lodged an application with the land registry to cancel the Plaintiff's caveat. The Plaintiff objected in writing to the cancellation of her caveat. The Registrar of Titles therefore directed the Defendants to apply to court for a determination of the matter.

12 Following that direction, the Defendants commenced Originating Summons No 1639 of 2007 ("OS 1639/2007") on 6 November 2007 to lift the Plaintiff's First Caveat.

13 By an order of court dated 29 November 2007, Tay Yong Kwang J expunged the Plaintiff's First Caveat. Tay J also directed the Plaintiff to consult her solicitors regarding the Property transaction and commence any action against the Defendants within two months from 29 November 2007 (*ie*, by 29 January 2008). If no such action was commenced, it was ordered that the Defendants be at liberty to restore the remaining prayers in OS 1639/2007 (primarily, a prayer for compensation of losses arising from the delayed completion of the sale).

14 After the High Court expunged the Plaintiff's First Caveat, she immediately proceeded to lodge a second caveat against the Property on 4 December 2007 ("the Plaintiff's Second Caveat"). In response, the Defendants commenced Originating Summons No 2 of 2008 ("OS 2/2008") on 2 January 2008 to expunge the Plaintiff's Second Caveat.

15 On 10 January 2008, Lee Seiu Kin J ordered that the Plaintiff's Second Caveat be expunged, and

that the Plaintiff be prohibited from taking any steps that may interfere with the Property, including the lodging of further caveats without the leave of court.

16 Exactly on 29 January 2008, the Plaintiff commenced Magistrates' Courts Suit No 2619 of 2008 ("MC 2619/2008") against the Defendants. She pleaded, *inter alia*, that she was not told that the Property was affected by road lines before she paid the $51,000 to the Defendants, and claimed for the return of the $51,000. The Defendants applied to strike out MC 2619/2008. They were successful before the Deputy Registrar of the then Subordinate Courts. The Plaintiff appealed against the Deputy Registrar's striking out order, but the District Judge dismissed her appeal in January 2012. The Plaintiff did not attempt to appeal the District Judge's order.

17 On 2 May 2012, pursuant to Tay J's order dated 29 November 2007, the Defendants wrote to the court requesting that the remaining prayers in OS 1639/2007 be restored for hearing. The matter went before Tay J on 20 July 2012. Tay J ordered the Plaintiff to pay the Defendants damages to be assessed, with costs on an indemnity basis.

18 However, before the assessment of damages hearing, the Plaintiff filed Summons No 72 of 2013 ("SUM 72/2013") on 5 January 2013 to set aside the orders of court dated 29 November 2007 (Tay J's order expunging the Plaintiff's First Caveat), 10 January 2008 (Lee J's order expunging the Plaintiff's Second Caveat), and 20 July 2012 (Tay J's order in OS 1639/2007 that the Plaintiff pay the Defendants damages to be assessed and costs on an indemnity basis). SUM 72/2013 went before Tay J on 7 February 2013, and Tay J dismissed the Plaintiff's summons. Tay J issued written grounds for his decision at [2013] SGHC 79.

19 The Plaintiff appealed against Tay J's decision in SUM 72/2013 in Civil Appeal No 22 of 2013, but the Court of Appeal dismissed her appeal on 23 September 2013. Thereafter, the assessment of damages hearing (AD 2/2013) was proceeded with and judgment was issued on 11 February 2015.

20 Of course, as the above events unfolded, the Plaintiff simultaneously commenced the present suit (S 2/2013) on 2 January 2013. As mentioned, I upheld the AR's decision to strike out S 2/2013 entirely on 27 April 2015. I now explain the reasons for my decision.

Issues

21 The key question before me was whether the doctrine of *res judicata* (broadly speaking) operated in the present case to justify striking out the Plaintiff's entire claim in S 2/2013. More specifically, I had to consider whether cause of action estoppel, issue estoppel, and/or "the extended doctrine of *res judicata*" applied to bar the Plaintiff's claims in S 2/2013.

22 On the question of *res judicata*, the Plaintiff submitted that while she did previously commence an action against the Defendants in relation to the Property, the two specific legal wrongs asserted in S 2/2013, namely misrepresentation and breach of contract, were never previously decided upon.

23 I therefore propose to explain the grounds of my decision in the following manner:

(a) First, I shall consider what was or was not litigated and decided in the proceedings that preceded S 2/2013.

(b) Second, I shall consider the specific contours of the doctrine of *res judicata*.

(c) Finally, I shall explain why I found that on the facts of the present case, the doctrine of

res judicata operated to bar the Plaintiff's entire claim in S 2/2013.

The history of litigation

24 The two key proceedings in which the issues raised in the current suit were arguably already litigated are MC 2619/2008 and SUM 72/2013. I therefore considered what was actually raised and decided in MC 2619/2008 and SUM 72/2013.

MC 2619/2008

25 As mentioned, in MC 2619/2008, the Plaintiff claimed for the return of the $51,000 she paid to the Defendants for the purchase of the Property. In her statement of claim for MC 2619/2008, the Plaintiff pleaded the following:

(a) Before she exercised the option, she did not know the Property was affected by two road schemes, both of which affected the open market value of the Property.

(b) The market value of the Property was half what she was paying for it and she was unable to finance the purchase of the Property as a result.

(c) She was therefore entitled to recover the $51,000 she paid to the Defendants for the purchase of the Property because of a total failure of consideration. In this respect, she also included a prayer for any other or further relief which the court deemed just.

26 It is clear that the Plaintiff's statement of claim for MC 2619/2008 was bare in that it was lacking in details. She did not specifically plead the claims of misrepresentation and/or breach of contract. That said, it appears that a detailed statement by the plaintiff on the "course of events" was tendered at the hearing. [note: 1] Whilst the document is undated and unsigned, the statement raised many points including the assertion that Mr Koh had stated there were no problems with the property, the alleged deception by Mr Koh, and the Plaintiff's alleged losses including loss of opportunity to purchase another property and the fact that she sold a property in China to raise funds.

27 Moreover, it must be noted that based on the Notes of Evidence, in the oral hearing before District Judge Leslie Chew on 19 January 2012, the Plaintiff (who appeared in person) was, in any case, given the opportunity to ventilate the facts upon which she based her claims. The Notes of Evidence reveal the following:

(a) The District Judge noted that the appeal before him was a rehearing, and therefore, gave the Plaintiff the liberty to submit whatever she liked. [note: 2] Significant latitude was given to allow her to present material not found in the pleadings or documents despite the Defendants' counsel's objection. [note: 3]

(b) The Plaintiff had raised the fact that certain important documents relating to the Property were not sent to her. [note: 4]

(c) She also raised the facts that supported her claim for misrepresentation. [note: 5]

(d) The Defendants made the point that the Plaintiff's pleadings did not disclose any cause of action, whether in misrepresentation or breach of contract. [note: 6]

(e) After hearing the Plaintiff's and Defendants' arguments, the District Judge found that the Plaintiff could not show that she had a reasonable cause of action on the pleadings and documents. He therefore found that the Plaintiff's claim as pleaded in MC 2619/2008 was bound to fail. [note: 7]

28 It is clear that the District Judge decided that the Plaintiff's case as pleaded and revealed in the documents disclosed no reasonable cause of action. What is less clear is if the District Judge decided that the *oral arguments* made by the Plaintiff at the hearing before him on 19 January 2012, which clearly went beyond the pleadings and documents, *also* disclosed no reasonable cause of action. From the latitude the District Judge gave to the Plaintiff to present her arguments despite objections from the Defendants' counsel that the material she was submitting orally went beyond the pleadings and documents, there are strong grounds for an inference that the District Judge's decision was not made merely based on the Plaintiff's case as pleaded, but on her entire case as submitted both in writing as well as orally.

SUM 72/2013

29 The Plaintiff filed SUM 72/2013 to set aside Tay J's order expunging the Plaintiff's First Caveat, Lee J's order expunging the Plaintiff's Second Caveat, and Tay J's order dated 20 July 2012 in OS 1639/2007 that the Plaintiff pay the Defendants damages to be assessed and costs on an indemnity basis.

30 In SUM 72/2013, it is undisputed that the Plaintiff did raise the two legal claims raised in S 2/2013 (namely, misrepresentation and breach of contract) as grounds for her setting aside application. The Plaintiff concedes this. [note: 8] This is also evident from Tay J's written grounds of decision, where he noted the Plaintiff's submissions regarding the Defendants' misrepresentation and failure to send letters relating to the completion to her correct address: *Koh Kim Seng and another v Zhang Run-Zi* [2013] SGHC 79 at [21]–[32]. Tay J also noted at [33] that new evidence from one Adrian Koh, which was not presented in previous proceedings, was adduced.

31 However, having heard the Plaintiff's submissions, Tay J dismissed SUM 72/2013 and held (at [40]–[41]):

> 40 It can be seen from the narration of the background and the latest hearing before me that *the defendant was given all the legal avenues to pursue her allegations against the first plaintiff and she did so by commencing the MC Suit*. When that was struck out, she did not appeal to the High Court but let the matter rest. Even after the order of 20 July 2012 was made in respect of the remaining prayers of this originating summons, she took no steps until the plaintiffs started the process for the assessment of damages.
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> 41 There was absolutely no reason to set aside the 3 orders or any one of them. *Everything that could be canvassed before the courts was before the courts.* There was no allegation that Adrian Koh could not be located or that he was unwilling or unable to file an affidavit to support the defendant's case at the earlier stages of this case. His email (set out at [23] above) was available to the defendant since 5 December 2007. If the defendant and/or her solicitors decided not to produce the said email or to ask Adrian Koh to file an affidavit, that was a conscious decision taken and is no ground for the court to now re-open the proceedings. In any event, the fact that Adrian Koh was present during the signing of the option was acknowledged by the plaintiffs. That has been considered by the courts and has not made any difference to the outcomes.

[emphasis added]

32 It is clear that Tay J decided not to set aside any of the three orders disputed by the Plaintiff because he considered that all the matters raised in SUM 72/2013 were already canvassed before the courts previously, and were decided upon. The Plaintiff had the opportunity to pursue her claims against the Defendants, and she did so in MC 2619/2008. There was therefore no reason to set aside any of the three orders.

33 I made several observations about Tay J's decision:

(a) First, I noted that the Plaintiff's main grounds for SUM 72/2013 were that the full factual matrix was not before the court at the time the three orders were made (see [21] of Tay J's decision), and that there was a new witness, Adrian Koh, whose testimony was material and in the Plaintiff's favour. In that context, Tay J disagreed that the Magistrate's Court or the High Court did not have the full factual matrix. He also pointed out that while Adrian Koh's testimony was new, it could have been obtained earlier and his new evidence is no reason to re-open proceedings.

(b) Second, in SUM 72/2013, Tay J decided that there was no reason to set aside the orders expunging the Plaintiff's caveats and directing the Plaintiff to pay the Defendants damages for failing to remove or wrongfully lodging her caveats because the substance of the Plaintiff's allegations against the Defendants (*ie*, misrepresentation and breach of contract) were either already previously considered by the courts (and hence should not be re-litigated), or should have been raised earlier. As such, Tay J dismissed SUM 72/2013 because the matters raised by the Plaintiff therein were *res judicata*; he did not come to the decision after an evaluation of the merits of the Plaintiff's claims in SUM 72/2013.

(c) Third, I noted that the Court of Appeal affirmed Tay J's decision in Civil Appeal No 22 of 2013.

34 Having explained in some detail the legal proceedings that preceded S 2/2013, I now proceed to consider the law on *res judicata*.

The doctrine of *res judicata*

35 The doctrine of *res judicata* has often been described as an "umbrella doctrine" encompassing three conceptually distinct though interrelated principles, namely, cause of action estoppel, issue estoppel, and the "extended doctrine of *res judicata*" or defence of abuse of process: *Goh Nellie v Goh Lian Teck* [2007] 1 SLR(R) 453 ("*Goh Nellie*") at [17]–[19], *Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd and another and another appeal* [2009] 2 SLR(R) 814 ("*Wing Joo Loong*") at [165], *Manharlal Trikamdas Mody v Sumikin Bussan International (HK) Ltd* [2014] 3 SLR 1161 ("*Manharlal Trikamdas*") at [133].

36 It is important to note that whilst cause of action estoppel and issue estoppel operate as an absolute bar to re-litigation save in special circumstances, the defence of abuse of process is not subject to the same test. In the latter, the court is asked to balance the competing claims of one party to put his case before the court, and the other not to be unjustly hounded given the history of the matter: *Goh Nellie* at [23] and *Kwa Ban Cheong v Kuah Boon Sek and others* [2003] 3 SLR(R) 644 ("*Kwa Ban Cheong*") at [24], citing *Bradford & Bingley Building Society v Seddon* [1999] 1 WLR 1482 at 1490.

37 I shall now consider the specific operation of cause of action estoppel, issue estoppel, and the doctrine of abuse of process.

Cause of action estoppel

38 In *Thoday v Thoday* [1964] P 181 at 197–198, Diplock LJ (as he then was) explained cause of action estoppel as follows:

> '[C]ause of action estoppel,' is that which prevents a party from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, i.e., judgment was given upon it, it is said to be merged in the judgment … If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per rem judicatam.

This statement of law was affirmed by the Singapore High Court in *Goh Nellie* at [17].

39 Thus, once a cause of action has been litigated and decided upon, neither party may institute fresh proceedings before another court in order to re-litigate the same cause of action: *Halsbury's Laws of Singapore, Evidence*, Vol 10 (LexisNexis, 2013 Reissue) ("*Halsbury's Singapore on Evidence*") at [120.180]. Unless fraud or collusion is alleged to set aside the earlier judgment, a cause of action estoppel operates absolutely, with no exception even for special circumstances: *Arnold v National Westminster Bank plc* [1991] 2 AC 93 ("*Arnold*") at 104, *Halsbury's Singapore on Evidence* at [120.180], K R Handley, *Spencer Bower and Handley: Res Judicata* (LexisNexis, 4th Ed, 2009) ("*Spencer Bower and Handley*") at para 7.04. Moreover, even if there are new factual or legal points which might have been but were not raised and decided in the earlier proceedings, cause of action estoppel still applies to bar a re-litigation of the cause of action in light of those new points: *Arnold* at 104. I pause here to observe that in some cases, the operation of the doctrine of *res judicata* may be excluded by statutory provisions.

40 The requirements for cause of action estoppel to operate are as follows:

(a) identity of parties;

(b) identity of causes of action;

(c) the court pronouncing the earlier judgment must have been a competent court; and

(d) the judgment must be final and conclusive on the merits.

See *Manharlal Trikamdas* at [136] and *Halsbury's Singapore on Evidence* at [120.182].

41 In deciding the present case, I had to pay especial attention to whether there was an identity of causes of action. I thus found it helpful to consider in more detail what the requirement entailed.

42 The first and most fundamental question that I had to consider was what a "cause of action" is. In *Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd and others* [1992] 2 SLR(R) 382 ("*Multi-Pak*"), the court had to decide, *inter alia*, if certain voluntarily particulars filed by the plaintiff and served on the defendant introduced a new "cause of action" under O 20 rr 5(2) and (5) of the Rules of the Supreme Court 1970 (as was then applicable). If it did, the court could only grant the plaintiff leave to amend its pleadings if the new cause of action arises "out of the same facts or

substantially the same facts" as the existing causes of action. At [28], G P Selvam JC (as he then was) noted that the meaning of the term "cause of action" could differ based on context and may "mean one thing for one purpose and something different for another." One possible meaning of "cause of action" is the facts which the plaintiff must prove in order to get a decision in his favour (*Multi-Pak* at [29]), or the factual situation, the existence of which entitles a person to obtain from the court a remedy against another person (*Letang v Cooper* [1965] 1 QB 232 at 242-243). However, Selvam JC also noted that in certain limited contexts, "cause of action" may also refer to the legal basis which entitles the plaintiff to succeed (*Multi-Pak* at [30]).

43 In this regard, I was of the view that in the context of cause of action estoppel, "cause of action" referred to the *material facts upon which the plaintiff's claims for relief were based*. In other words, if a plaintiff's right to a remedy in a particular matrix of pleaded facts has been decided upon, under cause of action estoppel, the plaintiff cannot re-litigate his right to a remedy against the same defendant on those same facts. The fact that certain legal points or arguments raised in subsequent proceedings were not raised or decided upon in the previous proceedings does not bar the operation of cause of action estoppel; there is still identity of cause of action on the basis that the material facts pleaded as the basis for a remedy are identical.

44 In coming to this view, I noted the emphasis that previous authorities on cause of action estoppel have placed on the *substance* of the subject matter of the cause of action, rather than mere differences or similarities in the *form* of the action: *Halsbury's Singapore on Evidence* at [120.182], *Spencer Bower and Handley* at 7.05. In particular, previous authorities have placed focus on the identity of the *facts pleaded*, rather than the *legal points or forms of action* raised.

45 In *Greenhalgh v Mallard* [1947] 2 All ER 225 at 257-259, the plaintiff brought a second action for conspiracy to injure by unlawful means after failing in his action for conspiracy to effect an unlawful purpose. The second claim was brought on the same set of facts as the first. In this context, the English Court of Appeal found that the second action was barred by cause of action estoppel notwithstanding the fact that the second action may have been framed differently from a *legal* point of view. Somervell LJ commented (at 257):

> … In other words, a conspiracy may give rise to a claim for damages if either the end or the means, or both, are wrongful, but, in my opinion, a plaintiff who believes he has a cause of action in conspiracy must make up his mind whether he is going to rely on one or other or both of these allegations –whether he is going to say that the purpose was unlawful, but he does not suggest that the means are unlawful, or that the means were unlawful, but he does not suggest that the purpose was unlawful; or that both are unlawful. *But if he has chosen to rely on, and put his case in, one of those ways, he cannot, in my view, thereafter bring the same transactions before the court and say that he is relying on a new cause of action.*
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> [emphasis added]

46 Similarly, in *Wright v Bennett* [1948] 1 All ER 227 at 230, a plaintiff sought to bring a second action for fraudulent conspiracy on the same set of facts after his first action for fraud had failed. The English Court of Appeal found that the second action was barred by, *inter alia*, cause of action estoppel because the plaintiff was "calling on [the] defendants in substance and in reality to meet the same old charge".

47 I mention only one more case to demonstrate my point. In *Republic of India v Indian Steamship Co Ltd* [1993] AC 410, the plaintiff's claim for damages arose out of a fire which broke out in its cargo hold in which the plaintiff's consignment of munitions was stored. The plaintiff's loss or damage might

have resulted from the breach of more than one term of the contract. The plaintiff had already successfully obtained judgment for £6,000 against the defendant in Cochin, but was seeking to pursue the remainder of its claim of £2.5m in the English courts. In finding that cause of action estoppel applied, the House of Lords held (at 421):

> … However, for present purposes, there is no need to distinguish between the two breaches; because the factual basis relied upon by the plaintiffs as giving rise to the two breaches is the same, and indeed was referred to compendiously by the plaintiffs in the Cochin action as "negligence." In these circumstances, I am satisfied that there is identity between the causes of action in the two sets of proceedings.

48 It did not matter that the plaintiff had highlighted different aspects of the facts pleaded to make its legal case for damages in the two proceedings. There was identity of cause of action because the factual basis relied on in the two actions was the same.

49 The above cases clearly demonstrate that the requirement of an identity of cause of action is satisfied as long as the plaintiff seeks to rely on the *same matrix of facts* which were the subject of previous proceedings. It does not matter that legally speaking, the claims are characterised differently. Parties cannot, normally, re-open proceedings over the *same set of facts*.

50 In my view, this understanding of cause of action estoppel accords with the principles and policy reasons that underlie the doctrine of *res judicata*. As noted by the Singapore Court of Appeal in *Lee Tat Development Pte Ltd v Management Corporation Strata Title Plan No 301* [2009] 1 SLR(R) 875 ("*Lee Tat (2008)*") at [71], the public interest in finality of judicial decisions, as well as the right of individuals to be protected from vexatious multiplication of suits, are the twin principles or policy imperatives that underlie the doctrine of *res judicata*. Should parties be allowed to continuously re-litigate claims against the *same defendants* on the *same sets of facts* by raising new legal bases for their entitlement to a remedy or new legal arguments, the purposes of the doctrine of *res judicata* could easily be circumvented.

51 Of course, if parties can distinguish the *facts* that their second claim is based on (for example, that the tortious action or contractual breach pleaded in the second action took place on a second occasion, even if it is of substantially the same nature), they may not be barred by cause of action estoppel because the requirement of identity of causes of action would not be met: see *Halsbury's Singapore on Evidence* at [120.182] and the example of an action based on an invalid demand under a guarantee and a second action based on a fresh demand. Where however the earlier (foreign) action was founded in delict (tort) and the second action is brought in contract, *res judicata* can still apply if the difference is one in form only. *Halsbury's Singapore on Evidence* at [120.182] rightly states that the proper determination of the cause of action inevitably requires the court to have regard to *the actual transaction in issue*.

52 The final point I make in relation to cause of action estoppel is that the court can consider all relevant material in determining the identity of cause of action, and is not restricted to the pleadings: *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No.2)* [1967] 1 AC 853 at 946, 965. As the House of Lords held in *DPP v Humphrys* [1977] 1 AC 1 at 41 (albeit in a criminal context), "[t]he court will inquire into realities, and not mere technicalities."

Issue estoppel

53 Issue estoppel precludes an issue of *fact or law* which was necessarily decided and concluded in favour of one party in earlier proceedings from being reopened or submitted again for decision in

subsequent proceedings between the same parties, even if the causes of action in question are not the same: *Halsbury's Singapore on Evidence* at [120.183]. I emphasise that the determinations which will found an issue estoppel may be of law, fact, or mixed fact and law: *Jones v Lewis* [1919] 1 KB 328 at 344–345.

54 In *Lee Tat Development Pte Ltd v MCST Plan No 301* [2005] 3 SLR(R) 157 ("*Lee Tat (2005)*"), the Singapore Court of Appeal laid down the requirements for establishing an issue estoppel:

(a) there must be a final and conclusive judgment on the merits;

(b) the judgment has to be by a court of competent jurisdiction;

(c) there must be identity between the parties to the two actions that are being compared; and

(d) there must be an identity in the subject matter (*ie*, the issues of fact or law) in the two proceedings.

This statement of law in *Lee Tat (2005)* was subsequently applied by Singapore courts in *Goh Nellie* at [26] and *Wing Joo Loong* at [165].

55 In *Goh Nellie* at [34]–[39], the High Court helpfully expounded on the meaning of *identity of subject matter* in the context of issue estoppel. First, the court held that the issues must be identical in the sense that the prior decision must traverse the same ground as the subsequent proceedings and the facts and circumstances giving rise to the earlier decision must not have changed or should be incapable of change (*Goh Nellie* at [34]). Second, the previous determination in question must have been fundamental and not merely collateral to the previous decision so that the decision could not stand without that determination (*Goh Nellie* at [35]). Third, and finally, the issue should be shown to have in fact been raised and argued. Issue estoppel does not apply where there has been no actual investigation of the point. However, where a litigant raises a point but concedes or fails to argue it, issue estoppel may arise in respect of the point conceded or not argued (*Goh Nellie* at [38]–[39]). At this juncture, I note that in *Dynasty Line Ltd (in liquidation) v Sia Sukamto and another* [2013] 4 SLR 253 at [72]–[73], the High Court held that the defendant was not estopped from arguing that there was a collateral agreement between the parties because the previous court did not decide whether there was a collateral agreement. The question of a collateral agreement was not a live issue in the previous proceedings because the claim was abandoned.

56 In *Wing Joo Loong* at [167]–[170], the Singapore Court of Appeal affirmed these three "discrete conceptual strands" enunciated in *Goh Nellie* as being an accurate explication of the identity of the subject matter requirement.

57 As to what material can be referred to in determining the issues that were decided in the previous judgment, my discussion at [52] above on cause of action estoppel equally applies to issue estoppel. Any material that shows what issues were raised and decided may be considered by the court.

58 Finally, I note that whilst the bar created by a cause of action estoppel is absolute, this is not the case for issue estoppel: *Arnold* at 106–107, 109. In *Lee Tat (2008)* at [78], the Singapore Court of Appeal confirmed that the *Arnold* exception created by the House of Lords applied in Singapore. The *Arnold* exception creates an exception to issue estoppel where the decision relied on as the basis of issue estoppel contains a very egregious error: *Lee Tat (2008)* at [74]. However, the Court of

Appeal cautioned at [78] that "it will be rare for the *Arnold* exception to be invoked successfully as it would be difficult to establish that any judicial error by itself would qualify as 'special circumstances' which justify a departure from the doctrine of issue estoppel". On the facts of *Lee Tat (2008)*, the Court of Appeal found that there were special circumstances justifying a departure from the doctrine of issue estoppel (outlined at [80] of *Lee Tat (2008)*). The Court of Appeal emphasised that *grave injustice* was caused to the appellant because it was prevented from raising a fundamental issue concerning its rights: *Lee Tat (2008)* at [81]. The applicability of the *Arnold* exception in Singapore was also affirmed by the Court of Appeal in *Management Corporation Strata Title Plan No 301 v Lee Tat Development Pte Ltd* [2011] 1 SLR 998 ("*Lee Tat (2010)*") at [65]–[67]. However, the court was again keen to emphasise that the *Arnold* exception is only a very narrow exception (*Lee Tat (2010)* at [65]).

The defence of abuse of process

59 The defence of abuse of process operates to bar some cases from proceeding even if they clearly fall outside the traditional reach of cause of action and issue estoppels: *Goh Nellie* at [19]. It is a part of both English law (*Henderson v Henderson* (1843) 3 Hare 100 ("*Henderson v Henderson*"), *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1 ("*Johnson v Gore*")) and Singapore law (see *Ching Mun Fong (executrix of the estate of Tan Geok Tee, deceased) v Liu Cho Chit and another appeal* [2000] 1 SLR(R) 53 ("*Ching Mun Fong*"), *Goh Nellie*).

60 In *Henderson v Henderson*, the *locus classicus* on the defence of abuse of process, the court held (at 115):

> … where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, *the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case.* The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to *every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time*.
>
> [emphasis added]

61 This explication of the defence of abuse of process was affirmed by the Singapore Court of Appeal in *Ching Mun Fong* at [22]. Crucially, the defence of abuse of process allows the court to bar an action from proceeding *even if the issues raised therein were never litigated or decided on before*, but ought to have been raised in previous litigation. The basis for the defence is the public interest in protecting the court's processes from abuse and protecting defendants from oppression: *Ching Mun Fong* at [23] and *Kwa Ban Cheong* at [26].

62 While there was a suggestion in the English Court of Appeal decision of *Bradford & Bingley Society v Seddon* [1999] 4 All ER 217 that some additional element such as a collateral attack on a previous decision, dishonesty or successive actions amounting to unjust harassment, besides mere re-litigation must be proven in order to invoke the defence of abuse of process, the House of Lords in *Johnson v Gore* (at 31) subsequently took a different view:

> … I would not accept that it is necessary, before abuse may be found, to identify any additional

element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not… it is in my view preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances….

63 This broad, non-formalistic approach has been adopted by the Singapore courts. In *Kwa Ban Cheong*, the High Court helpfully explained (at [27]):

> Given the nature of the rule, it would be unwise to try and define fully the circumstances which can be regarded as an abuse of the process or to fix the categories of abuse. Each case must depend upon all the relevant circumstances. …

64 However, the High Court also cautioned that the "power is to be exercised with caution before striking out or dismissing any proceedings on the ground of abuse of process" because this is "a drastic step": *Kwa Ban Cheong* at [29].

65 Thus, when considering if a defence of abuse of process is applicable, the court must take into account all the relevant facts of the case, paying especial attention to whether "additional elements" such as a collateral attack on a previous decision, dishonesty, or successive actions amounting to unjust harassment are present. The presence of these "additional elements" may well be highly persuasive in the inquiry as to whether there is an abuse of process, but they are not absolutely necessary before a court may find such abuse. That said, it will not be often that the court finds an abuse of process in the absence of those elements. Ultimately, the court is performing a balancing exercise, weighing all the different competing interests to see where the balance of justice lies: *Goh Nellie* at [23].

Res judicata **in the present case**

66 I now explain why I struck out the Plaintiff's action in S 2/2013 on the grounds of *res judicata* as well as the defence of abuse of process. Specifically, I found that cause of action estoppel and the defence of abuse of process applied to independently justify striking out the present action entirely.

Cause of action estoppel

67 It will be recalled that four elements must be present in order for a cause of action estoppel to arise:

(a) identity of parties;

(b) identity of causes of action;

(c) the court pronouncing the earlier judgment must have been a competent court; and

(d) the judgment must be final and conclusive on the merits.

68 In this case, elements (a), (c) and (d) were clearly satisfied. The parties in MC 2619/2008, SUM 72/2013, and the present S 2/2013 are identical. The judgments in MC 2619/2008 and SUM 72/2013 were clearly pronounced by a competent court and were final and conclusive on the merits. The only issue raised by the Plaintiff was that there is no identity of causes of action.

69 While the Plaintiff did not challenge the final and conclusive nature of the judgments in MC 2619/2008 and SUM 72/2013, I pause to make a few comments on this issue. Jeffrey Pinsler SC, *Principles of Civil Procedure* (Academy Publishing, 2013) at [09.013] states that the question whether a decision is final is determined by a consideration of the intention of the judge which can be gleaned from the orders made, the documents filed, notes of evidence, and arguments. Indeed, the learned author comments at [09.016] that *res judicata* can also arise in respect of a final decision on an interlocutory application. In *Possfund Custodian Trustee Ltd v Diamond* [1996] 1 WLR 1351 at 1356, the court held that *res judicata* applies even in an interlocutory application where the substantive issue between the parties was decided.

7 0 *Halsbury's Singapore on Evidence* at [120.183] emphasises that *res judicata* only operates if the previous judgment is a final judgment and not a provisional judgment, and states that a decision on a procedural issue may lack the finality to bind the court deciding substantive issues. Much must depend on what was actually decided.

71 The point that the distinction between final and interlocutory decisions is not relevant to the doctrine of finality in respect of *res judicata* was made clearly in *Goh Nellie* at [28]. Finality in this context simply means a declaration or determination of a party's liability and/or his rights and obligations, leaving nothing else to be judicially determined. This is not a case where the earlier action was decided on a procedural point such as whether the writ was properly served. The action was struck out for revealing no reasonable cause of action after full arguments on the pleadings and documents. Whilst the statement of claim in MC 2619/2008 was brief and lacked details, it will be recalled that the learned District Judge recognised that the Plaintiff was a litigant in person and that she had been given adequate time to engage counsel. The learned District Judge noted in his Notes of Evidence for the hearing before him on 19 January 2012 ("NOE") that the Plaintiff was aware of the documents and was capable of understanding the factual matrix of the case. [note: 9] The court would therefore proceed to decide the hearing on the merits. It bears repeating that the court expressly stated that the appeal was by way of a rehearing and that the Plaintiff could submit whatever she wished. It is clear that the Plaintiff indeed did traverse the grounds of her complaint including allegations of cheating, [note: 10] her claim that she signed a blank page, [note: 11] alleged replacement of documents by the Defendants, [note: 12] the problem with the land, [note: 13] and the Defendants sending documents to the wrong address. [note: 14] In any case, I repeat that the Plaintiff has only raised the issue of identity of causes of action. I therefore now proceed to consider that issue.

72 In my view, the cause of action pursued by the Plaintiff in S 2/2013 is identical to the cause of action pursued by her in MC 2619/2008. The Plaintiff pursues a remedy against the Defendants in S 2/2013 on the basis of the exact same facts she relied on in MC 2619/2008. As discussed earlier, in determining whether there is an identity of causes of action, the court may consider all relevant

material that shows what the cause of action pursued in previous proceedings was. In particular, the court will consider the *material facts* relied on, rather than the specific *legal claims or arguments* raised.

73 The fact that the Plaintiff was not told about the road reserve lines, and the fact that important documents relating to the Property and its legal completion never reached her, were all raised in her pleadings and/or oral arguments before the then Subordinate Court in MC 2619/2008. This suggests that her right to a remedy on the basis of those facts (*ie*, her cause of action in S 2/2013) was already litigated and decided in MC 2619/2008. Cause of action estoppel therefore operates to bar S 2/2013.

74 The Plaintiff claims that she never specifically pleaded misrepresentation or breach of contract in MC 2619/2008. She also argues that her full legal case for misrepresentation and breach of contract was not fully presented and argued on her behalf as she was a litigant in person. This might very well be true – as I noted previously, the pleadings filed on the Plaintiff's behalf for MC 2619/2008 were bare; the legal arguments presented in her submissions were not fully developed either. However, in my view, this is no answer to a cause of action estoppel that operates absolutely to bar S 2/2013. Cause of action estoppel is concerned with whether the *material facts* upon which a relief is claimed has been considered and adjudicated upon by a previous court. The fact that the case was not well argued in respect of the law and legal rights does not preclude cause of action estoppel from arising. Moreover, I place little weight on the fact that the Plaintiff's statement of claim for MC 2619/2008 did not contain the legal terms "misrepresentation" or "breach of contract". After all, pleadings need only contain material facts; the legal bases for a remedy may be developed later in submissions. While the facts to do with breach of contract were not clearly pleaded in MC 2619/2008, having assessed the relevant materials as a whole, in particular, the NOE before District Judge Leslie Chew, I was of the view that the judge took into account the Plaintiff's possible right to relief on the facts relating to the Defendants' failure to send her important documents *etc* in coming to his decision to nevertheless strike out the Plaintiff's claim.

75 I therefore found that allowing S 2/2013 to proceed would be to allow a re-litigation of the same cause of action litigated and decided upon in MC 2619/2008. Bearing in mind the fact that the plaintiff was a litigant in person before the learned District Judge in the appeal in MC 2619/2008, the pleadings in that suit, the documents (including the un-dated document above at [26]), the NOE, the latitude given to the Plaintiff to advance her claim, and the decision reached, I am of the view that cause of action estoppel applied. That said, even if I am wrong on cause of action estoppel, I find in any event that the defence of abuse of process applies (see below).

76 In this regard, I make clear that I do not find the decision in SUM 72/2013 to have been a decision on the *merits* of the cause of action raised in S 2/2013. However, Tay J's decision in SUM 72/2013 that the matters raised by the Plaintiff therein (basically, misrepresentation and breach of contract) were *res judicata*, as well as the Court of Appeal's affirmation of it, supports my view that S 2/2013 is barred by cause of action estoppel. Indeed, it arguably renders the question of whether S 2/2013 is *res judicata* a question that is itself *res judicata* as on one view, this was already decided in SUM 72/2013. Nevertheless, I do not need to come to a firm conclusion on whether that is the case given my conclusion that the judgment in MC 2619/2008 on its own justifies striking out S 2/2013 on the ground of cause of action estoppel.

Issue estoppel

77 Given my decision on cause of action estoppel, there is no need for me to consider issue estoppel. However, I make a few brief comments on issue estoppel.

78 Similarly, in the context of issue estoppel, the only question that arose was if the legal and factual issues raised in the present case were already litigated and decided by the courts in MC 2619/2008 and SUM 72/2013. In this regard, I was of the view that the brief recorded judgment given by the District Court and the lack of clarity (or detail) in the parties' submissions before the District Court made it difficult to ascertain what issues were exactly litigated and decided upon. While new issues of law may very well have been raised by the Plaintiff's present counsel in S 2/2013, I was of the view that at the very least, the factual issues raised in S 2/2013 were already traversed and decided in MC 2619/2008 (even if the Plaintiff argues this was not done satisfactorily as she was not able to argue her case fully at that juncture).

79 Nevertheless, given the lack of clarity as to the exact issues that were litigated and decided upon, I came to no firm conclusion on issue estoppel.

The defence of abuse of process

80 Even if cause of action and issue estoppel did not apply in the present case because the specific legal bases for relief raised in S 2/2013, namely misrepresentation and breach of contract, were never fully developed and legally argued, I was of the view that the defence of abuse of process nevertheless applied.

81 It is undoubtedly the case that the Plaintiff ought to have brought forward her whole case in MC 2619/2008. Any party exercising reasonable diligence would have put forward the specific legal arguments the Plaintiff seeks to make in S 2/2013. To allow S 2/2013 to proceed would be to permit the Plaintiff to re-open the same subject matter of litigation against the same defendants.

82 I acknowledge that the Plaintiff's case may not have been argued at its highest before the District Court because the Plaintiff was acting in person. It might even be the case that if the Plaintiff were properly advised and represented, the outcome might have been different (at least at the striking out stage). However, I must weigh that against the unjust vexation and harassment the Defendants have suffered because of the Plaintiff since 2008, when the latter first filed MC 2619/2008. Since then, the Defendants have had to grapple with a long series of litigation surrounding the same allegations from the Plaintiff. This has gone on for seven years now. Moreover, S 2/2013 is not just a *collateral* attack, but a *direct* attack against the decision in MC 2619/2008. The Plaintiff has sued the Defendants over the failed property transaction that took place in early 2007 once, and she seeks to do so a second time in S 2/2013 on the exact same facts that she relied on previously. In my view, she ought not be allowed to abuse the court's processes and have a second shot at a remedy after failing in MC 2619/2008. The balance of justice lay in favour of striking out the Plaintiff's claims on the ground of abuse of process.

Conclusion

83 While I came to this decision with some reluctance, I emphasise that litigants ought to bear in mind that the failure to properly and fully argue one's case in the first round of litigation cannot ordinarily be a reason to subject the other party to a second round of litigation. A litigant in person who does not opt for legal representation (or who is dissatisfied with the legal representation) should not be given special allowance to have a second bite of the cherry on this basis alone. Indeed, as discussed earlier, the doctrine of *res judicata* guards against re-litigation on the *mere* ground that the case is going to be argued "differently" from a *legal point of view* the second time round.

84 I therefore dismissed the Plaintiff's appeal entirely. And, in light of the Plaintiff's repeated vexatious litigation which has unduly and unfairly imposed on the Defendants' substantial expense and

stress, I ordered the Plaintiff to pay the Defendants the costs of the appeal on an indemnity basis, to be agreed or taxed.

[note: 1] Respondent's BOD, Tab 9; Respondent's BOD Tab 10, Noted of Evidence dated 19 Jan 2012, p19.

[note: 2] Respondent's BOD Tab 10, Noted of Evidence dated 19 Jan 2012, p 20.

[note: 3] Respondent's BOD Tab 10, Notes of Evidence dated 19 Jan 2012, p37.

[note: 4] Respondent's BOD Tab 10, Notes of Evidence dated 19 Jan 2012, p20-21, 41-42.

[note: 5] Respondent's BOD Tab 10, Notes of Evidence dated 19 Jan 2012, p34, 40.

[note: 6] Respondent's BOD Tab 10, Notes of Evidence dated 19 Jan 2012, p23-25.

[note: 7] Respondent's BOD Tab 10, Notes of Evidence dated 19 Jan 2012, p43.

[note: 8] Plaintiff's skeletal submissions for SUM 270/2015 at [30].

[note: 9] Respondent's BOD Tab 10, Notes of Evidence dated 19 Jan 2012, p18.

[note: 10] Respondent's BOD Tab 10, Notes of Evidence dated 19 Jan 2012, p37.

[note: 11] Respondent's BOD Tab 10, Notes of Evidence dated 19 Jan 2012, p36.

[note: 12] Respondent's BOD Tab 10, Notes of Evidence dated 19 Jan 2012, p38.

[note: 13] Respondent's BOD Tab 10, Notes of Evidence dated 19 Jan 2012, p40.

[note: 14] Respondent's BOD Tab 10, Notes of Evidence dated 19 Jan 2012, p42.