

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 127

Originating Summons No 904 of 2021

Between

CRI

... Applicant

And

CRJ

... Respondent

GROUND OF DECISION

[Civil Procedure — Discovery of Documents]
[Civil Procedure — Interrogatories]

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**CRI
v
CRJ**

[2022] SGHC 127

General Division of the High Court — Originating Summons No 904 of 2021
Lee Seiu Kin J
19 April 2022

25 May 2022

Lee Seiu Kin J:

Introduction

1 Reality, as some say, is sometimes stranger than fiction. The facts of the present case were proof of that. The Applicant had advanced a large sum of money to the Respondent, who claimed she had given birth to twins, to cover their medical expenses, on the assumption that the children were his. Later events caused the Applicant to suspect that the twins did not really exist, or that if they did, they were not his children. If the children do indeed exist, and are indeed of his blood, then, the Applicant says, he has no cause of action. But if he had been lied to, and the twins do not exist, or are not his, then he believes he has a cause of action in either unjust enrichment or the tort of deceit. He therefore applied for pre-action discovery and interrogatories, seeking information which would enable him to decide on the viability of his claims.

Background

2 On or around 9 August 2019, the Respondent informed the Applicant that she was pregnant with fraternal twins.¹ Over the next two years, the Respondent repeatedly informed the Applicant that he was the biological father of the twins, which were born on or around 1 June 2020 at [X] Hospital.

3 While the Applicant did not admit that he was their biological father, or accept any responsibility for the twins, he paid out at least S\$314,000 to the Respondent. This sum was advanced to allow the Respondent to pay for medical expenses which included the hospital fees for delivery and post-delivery medical expenses.²

4 Up till August 2021, the Applicant continually pressed the Respondent to provide proof of the existence of the twins, and that he was their biological father.³ All that the Respondent provided were copies of the alleged birth certificates of the twins, as well as a picture of two babies, neither of which allowed the Applicant to conclusively identify them as his biological children. This was because the birth certificates showed that the twins were delivered in [Y] Hospital, instead of [X] Hospital, and the fields in which the name of the father should have been filled in had been left blank.

5 The Respondent also informed the Applicant that, as of July 2020, both twins had left for Hong Kong. From there, both twins were subsequently sent

¹ Applicant's 3rd Affidavit filed on 3rd February 2022 ("Applicant's 3rd Affidavit") at para 5.

² Applicant's Skeletal Arguments at para 5, Applicant's 3rd Affidavit at para 6.

³ Applicant's Skeletal Arguments at para 6, Applicant's 3rd Affidavit at para 8

onwards to China. The Respondent also told the Applicant that her mother had given one of the twins away.⁴

6 Sometime in October 2021, the Applicant used the public service function on the Immigration and Checkpoints Authority website to search for birth records relating to the twins. His search drew a blank – there were no records from searches of the babies’ names, the Respondent’s name, and the alleged birth period.⁵

7 Given the circumstances, the Applicant suspected that he may have been deceived by the Respondent as to the existence of the twins, or whether he is indeed their biological father. He therefore took out the present application seeking the following prayers:

(a) That the Respondent, within 14 days, file and serve on the Applicant an affidavit specifically stating:

(i) Where (*ie*, the medical facility) and when (*ie*, the date/time) the twins were born.

(ii) The identity and contact information of the medical professional(s) who assisted in the delivery of the twins.

(iii) The identity and contact information of the medical professional(s) who provided paediatric medical care for the twins from the time of birth till date.

(iv) The current geographical location of the twins.

⁴ Applicant’s Skeletal Arguments at para 9, Applicant’s 3rd Affidavit at para 9.

⁵ Applicant’s Skeletal Arguments at para 10, Applicant’s 3rd Affidavit at paras 13 – 15.

- (v) The person(s) (*ie*, their name and identification information as recorded in international accepted immigration documents) who currently have custody of the twins, as well as their residential address and contact information.
- (b) The Respondent shall file and serve on the Applicant, within 14 days from the date of the order, a List of Documents giving full discovery of the items listed in Schedule A and verify the said List by affidavit which shall specifically state:
 - (i) Whether the Respondent has, or had at any time in her possession, custody or power, any of the documents specified in Schedule A hereto.
 - (ii) If the said documents had been but are not now in her possession, custody or power, when she parted with the same and what has become of them.
 - (iii) If the said documents are not in her possession, what efforts have been made to obtain possession of the copies of the same.
- (c) Parties are to redact and/or anonymise the names, addresses, photographs and any evidence or anything contained in any court documents which is likely to lead to the identification of the twins.
- (d) This action be identified by its action number and be referred to as “AB [] v. AC []” until further order, and this action not be referred to in the Registry’s hearing lists other than by the aforesaid references.
- (e) Parties are restrained from publishing anything by any means and in any platform (including but not limited to social media platforms) that

is likely to lead to the identification of the twins (including but not limited to the identity of the Applicant and/or Respondent).

(f) Costs.⁶

8 The items sought in Schedule A (above at [7(b)]) includes:

(a) The birth certificates of the twins issued by the Registry of Births and Deaths.

(b) All certifications of the twin's citizenship.

(c) All passports of the twins (particularly the 'photo and information page' and any pages bearing the immigration stamps).

(d) Documents/receipts for any travel (of any nature) undertaken by the twins across international and/or state/province boundaries, including, but not limited to, air travel itineraries and e-tickets.

9 The sealing order sought by the Applicant (see [7(c) – (e)] above) was granted by Philip Jeyaretnam J on 10 February 2022. I heard the application for pre-action discovery and pre-action interrogatories on 19 April 2022 and granted an order in terms sought. These are my reasons.

Pre-Action Discovery and Interrogatories

10 Pre-action discovery allows a potential plaintiff, who does not have sufficient facts to commence proceedings, to determine if he has a good cause of action: *Ching Mun Fong v Standard Chartered Bank* [2012] 4 SLR 185 at [23], *Toyota Tsusho (Malaysia) Sdn Bhd v United Overseas Bank Ltd & another*

⁶ Applicant's Skeletal Arguments at para 2.

[2016] SGHC 74 at [12], *Intas Pharmaceuticals Ltd v DealStreetAsia Pte Ltd* [2017] 4 SLR 684 at [32]. The court must, in assessing whether an applicant possesses sufficient knowledge about the viability of its claim so as to plead its case, consider the intended cause of action: *Haywood Management Ltd v Eagle Aero Technology Pte Ltd* [2014] 4 SLR 478 at [45]. That said, the court will only allow pre-action discovery if it is necessary to do so: O 24 r 7 of the Rules of Court (Cap 322 R 5, 2014 Rev Ed).

11 The same principles apply to pre-action interrogatories. O 26A r 2 states that pre-action interrogatories shall only be ordered if it is necessary. As noted in *Dorsey James Michael v World Sport Group Pte Ltd* [2014] 2 SLR 208 at [47] – [50], the clearer the cause of action that a claimant can put before the court, the easier it will be to ascertain the relevance and necessity of the pre-action interrogatories to the proceedings. Other notions of proportionality, such as the availability of alternative avenues to obtain the information and the intrusiveness of those interrogatories, are also relevant considerations. If the plaintiff already has a complete cause of action against an identified party, then pre-action interrogatories would be unnecessary, and should not be ordered.

12 Here, the Applicant argued that his intended causes of action were in unjust enrichment or the tort of deceit, given his suspicion that he had been deceived by the Respondent.⁷ The application for pre-action discovery and interrogatories, the Applicant argued, was necessary to allow him to obtain information and documentation as to whether the twins existed, and whether he

⁷ Applicant's Skeletal Arguments at [11].

was the biological father. Such information would allow him to determine whether he had a viable claim in either unjust enrichment or the tort of deceit.⁸

13 Given the somewhat unique facts, it may not have been entirely clear, at a first glance, what was the relevance of the information the Applicant sought in relation to his contemplated causes of action in either unjust enrichment, or the tort of deceit. If the information which the Applicant sought had no bearing in relation to the contemplated causes of action, in that they would not enable him to assess the viability of his claims, then, bearing in mind the overriding test of necessity, the application for pre-action discovery and interrogatories should be disallowed. I turn now to examine the law on unjust enrichment and the tort of deceit to determine the relevance of the information sought.

14 Unjust enrichment is a relatively recent development in private law, having only been formally recognised in the UK decision of *Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548, and subsequently by our Court of Appeal in *Seagate Technology Pte Ltd v Goh Han Kim* [1994] 3 SLR(R) 836. As noted by Andrew Phang Boon Leong JA in *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 (“*Turf Club*”) at [181], “restitution for unjust enrichment is a distinct and new branch of the law of obligations”.

15 The elements of an unjust enrichment claim, as orthodox theory would have it, are as follows (Tang Hang Wu, *Principles of the Law of Restitution in Singapore* (Academy Publishing, 2019) citing *Info-communications Development Authority of Singapore v Singapore Telecommunications Ltd* [2002] 2 SLR(R) 136, *Singapore Swimming Club v Koh Sin Chong Freddie*

⁸ Applicant’s Skeletal Arguments at [11].

[2016] 3 SLR 845 (“*Singapore Swimming Club*”) and *Benzline Auto Pte Ltd v Supercars Lorinser Pte Ltd* [2018] 1 SLR 239): First, the defendant must be enriched. Second, this enrichment must be gained at the plaintiff’s expense: *Investment Trust Companies v Revenue and Customs Commissioners* [2018] AC 275, *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 (“*Anna Wee*”) at [115] (see also Andrew Burrows, “Narrowing the scope of unjust enrichment” (2017) *Law Quarterly Review* 537). Third, it must be unjust to allow the defendant to retain that benefit (*ie*, there must be an “unjust factors”: see *Anna Wee* at [129]). Finally, the court looks at whether there are any defences to the claim.

16 Applying this to the present facts, it was clear that the Respondent, having received some \$300,000 from the Applicant, was indeed enriched at his expense. What then was the unjust factor that could be relied on? Some examples of recognised unjust factors include:

- (a) Mistake, either of fact or of law;
- (b) Duress;
- (c) Undue influence; and
- (d) Unconscionability.

Further, as noted by Sundaresh Menon CJ in *Singapore Swimming Club* at [93], while the categories of unjust factors are not closed, courts are “generally cautious not to recognise new grounds of recovery too freely”.

17 Can a mistake as to the paternity of children, for instance, amount to a mistake of fact for the purposes of unjust enrichment? An example can be found

in the local textbook on the subject, *Principles of the Law of Restitution in Singapore* at [04.051]. There, Prof Tang cites the case of *BMM v BMN and another matter* [2017] 4 SLR 1315 (“*BMM*”) for the proposition that where there are multiple causative factors motivating the transfer of an enrichment, restitutionary recovery should not be allowed if it is shown that only one of the factors turned out to be untrue. In that case, Y married X and had twins with her in 2000. In 2001, Y added X as a joint tenant to a property which he bought before the marriage. It later transpired that Y’s marriage to X was void because X was not granted a *decree absolute* of her earlier marriage. It also turned out that the twins were not Y’s biological children. Y thus sought a declaration that the transfer of the property be set aside on the ground of mistake.

18 Foo Tuat Yien JC who heard the case observed (at [96]):

As discussed above, I have found that [Y] was unaware of the invalidity of his marriage until about 2008. However, I do not think that this mistake is material. The way the parties dealt with each other was premised less on the assumption that their marriage had been validly registered and more on the fact that, at the time, they were in a considerably close and loving relationship, which was borne out by the fact that [Y] had fought for the custody of the twins despite the fact that they were not his biological children. Had [Y] been made aware of the invalidity of his marriage at that point in time, I think that it is improbable that he would have suddenly sought to annul his marriage; on the contrary, I think it probable that he would have re-registered his marriage to establish its validity. The position *may* be different if [Y] had been made aware of *both* the invalidity of his marriage *and* the fact that the twins were not his biological children. However, as [Y] did not pursue the issue of the twins’ paternity (as noted above at [91]–[92]), I do not make any finding on this point. [emphasis in original]

19 The above passage suggests that Y must have been mistaken as to both the validity of his marriage, as well as the fact that the twins were not his biological children before the transaction could be reversed. I would, however, make no comment as to the proposition advanced by Prof Tang, save that, in

my view, *BMM* simply illustrates that a mistake of fact could also encompass a mistake as to the paternity of one's children.

20 Based on the facts before me, it was therefore clear that, without knowledge of the non-existence of the twins, or whether they are his children, the Applicant would not be able to assess the viability of his claim in unjust enrichment.

21 I turn next to examine the elements of the tort of deceit, which have been set out in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14]. First, there must be a representation of fact made by words or conduct. Second, this representation be made either with the knowledge that it is false, or that it is wilfully false, or in the absence of any genuine belief that it is true. Third, the representation must be made with the intention that it should be acted on by the plaintiff, or by a class of persons which includes the plaintiff. Finally, the plaintiff must have acted on the false statement and suffered damage as a consequence.

22 On the present facts, it was clear that the Respondent had represented, either through words or her conduct, that she was pregnant with his children. What the Applicant did not know was whether she had made this representation with the knowledge that it was false. The Applicant also did not know whether the Respondent had intended for him to act on that representation. Here, the application for pre-action discovery and interrogatories would allow the Applicant to determine the truth of the matter – did the twins exist? And if they did, was he the biological father? If, for instance, it emerged that the twins did not exist, the Applicant would be able to plead facts to establish the second element of the tort of deceit: that the Respondent had lied to him about her pregnancy.

23 In summary, while the facts of the present case appeared rather unique, a closer examination reveals that the Applicant could have a cause of action in either unjust enrichment, or the tort of deceit. What the Applicant lacked, to establish the viability of those claims, was information (if any) concerning the existence of the twins, and assuming the twins did exist, information which would establish whether they were his biological children. I was therefore satisfied that the application for pre-action discovery and interrogatories was necessary to allow the Applicant access to that information.

Conclusion

24 In the circumstances, I found it appropriate to allow the application for pre-action discovery and interrogatories. I therefore granted an order in terms of the prayers sought (see [7(a)] and [7(b)] above) with costs reserved.

Lee Seiu Kin
Judge of the High Court

Benjamin Niroshan Bala and Dhaniyah Binte Hishammudin (TSMP Law Corporation) for the applicant.
The respondent absent and unrepresented.
