IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 88

Originating Summons No 242 of 2019

Between

Werner Samuel Vuillemin

… *Applicant*

And

Oversea-Chinese Banking Corporation Limited

… *Respondent*

GROUNDS OF DECISION

[Civil Procedure] — [Striking out] — [Leave to appeal]

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v
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See Kee Oon J:

1 This was an Originating Summons ("OS") seeking leave to appeal against my decision in Registrar's Appeal 33 of 2018 ("RAS 33/2018"), in which I had affirmed the decision of the learned District Judge to strike out the applicant's claim under Order 18 r 19 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"). After hearing the parties, I dismissed the OS. I now set out my reasons for doing so.

2 As a preliminary matter, among the prayers sought in the present OS, the applicant included a prayer for extension of time to file the OS. The OS was filed on 26 February 2019. This was 11 days after the stipulated seven-day timeline from my decision in RAS 33/2018 on 8 February 2019, as set out at O 56 r 3 ROC. The applicant explained in his supporting affidavit filed on 26 February 2019 that the extension was needed since "the person to effect the

formal payment of the security deposit … only arrived back in Singapore from abroad on Monday afternoon of 18 February 2019". At the hearing, the applicant further stated that this was because this period was just after the Chinese New Year holidays.

3 The respondent rightly noted in its skeletal submissions that no security is required for the filing of the OS. The application ought therefore to have failed *in limine* as the applicant did not furnish valid reasons for why the application could not have been filed in time. However, I exercised my discretion to hear the application, giving the applicant the benefit of the doubt having regard to the fact that he was a litigant in person. I should state however that any such indulgence on account of the applicant being unrepresented should not be expected as a matter of entitlement. A similar observation was expressly made by Woo Bih Li J in *Werner Samuel Vuillemin v Overseas-Chinese Banking Corporation Limited* [2018] SGHC 92 ("the 2018 HC decision") at [36], and reiterated by the Court of Appeal in *BNP Paribas SA v Jacob Agam* [2018] SGCA(I) 7 at [103].

Background

4 I do not propose to provide a detailed account of the rather involved background facts. The facts have been set out in various judgments, including two judgments of the High Court.[1] Most recently, the facts have been summarised in the Grounds of Decision ("GD") of the District Judge in *Werner Samuel Vuillemin v Oversea-Chinese Banking Corporation Limited* [2018]

[1] *Werner Samuel Vuillemin v Oversea-Chinese Banking Corporation Limited* [2017] 3 SLR 501; *Werner Samuel Vuillemin v Overseas-Chinese Banking Corporation Limited* [2018] SGHC 92.

SGDC 309. This GD was issued by the District Judge to explain why he had affirmed the decision of the Deputy Registrar of the State Courts to strike out the action, leading to RAS 33/2018 which came before me for hearing.

5 Very briefly, the relevant background facts are as follows. The present claim arose from the applicant's dispute with the respondent over an alleged breach of contract relating to the opening and relocation of a safe deposit box ("the SDB"). He had hired the SDB in February 1999 from the respondent at its then-existing branch at the Specialists' Shopping Centre ("SSC") located on Orchard Road. In June 2007, in preparation for the relocation of the SSC branch to new premises at Orchard Point, the SDB was opened by the respondent and its contents accounted for and kept in a sealed security bag. The applicant had been notified beforehand by mail of the respondent's intended course of action but he did not respond to the notification.

6 There were disagreements between the parties from 2009 onwards over the signing of the respondent's prescribed release forms before the applicant could take delivery of his items. It was not disputed, however, that since November 2009 the respondent had proposed an alternative "open offer" for the applicant to open the security bag and account for the items within, without requiring him to waive any rights against the respondent. The applicant was not amenable to the "open offer". He further disputed the respondent's notification and attempts to contact him prior to the opening of the SDB in June 2007.

7 The applicant commenced his claim in the District Court on 7 October 2013. Nearly five years after October 2013, the applicant had not set down the matter for trial. He claimed that he was not ready for trial. In the meantime, there were various interlocutory applications and appeals that reached the High

Court, as well as failed applications on the applicant's part for leave to appeal to the Court of Appeal. The applications brought by the applicant were ancillary to the main suit and included, amongst others, applications for an Anton Piller order, a recusal order in respect of a High Court Judge and a committal order against the respondent's employee. The applicant's actions prompted the High Court to observe in the 2018 HC decision (at [90]) that these "skirmishes" were needlessly engaging time and resources and distracting from the substantive action.

8 I would further note that on 27 September 2017 and 24 October 2017, the respondent had written to inform the applicant that unless the applicant takes all steps as may be necessary to move the action towards trial, the respondent would apply for the claim to be struck out for want of prosecution. This application was eventually filed on 30 May 2018.

The striking out application

9 The respondent relied on all four limbs of O 18 r 19 ROC in the striking out application. The Deputy Registrar who heard the application ruled in favour of the respondent on 20 August 2018. This was on the basis that the claim was time-barred and was an abuse of process and frivolous. The applicant appealed against the Deputy Registrar's decision to a District Judge, who found (at [14] of the GD) that the applicant's "failure to prosecute his substantive claim and unreasonable refusal to take delivery of his items demonstrated that he was not genuinely interested in recovering his items". The District Judge further found that the applicant's conduct "clearly suggested that he was not acting bona fide" and the action was motivated by some collateral purpose which was best known only to the applicant.

10 On 8 February 2019, I heard the applicant's appeal against the District Judge's decision. I dismissed the appeal and affirmed the District Judge's decision. I accepted the respondent's argument that the action was time-barred given that the respondent's breach was alleged to have taken place in June 2007 and the action was commenced in October 2013, more than six years later. The expiry of the limitation period was in fact acknowledged by the applicant at paragraph 8 of his Statement of Claim. Unsurprisingly, this fact was also pleaded in the Defence when it was filed in 2014; it was rightly taken into account by the District Judge in upholding the decision of the Deputy Registrar. The action was in any event correctly struck out as I also agreed with the District Judge's assessment that it was frivolous, unmeritorious and an abuse of process. I shall briefly explain in the ensuing paragraphs why I took this view.

11 At the hearing before the District Judge, the applicant had further suggested that in the alternative, his cause of action might have accrued only from 2008, when he accepted the respondent's alleged repudiatory breach. Thus the applicant had proposed that his Statement of Claim could be amended accordingly, but to date no amended Statement of Claim has been filed. In coming to my decision in RAS 33/2018, I explained in my brief oral judgment that even assuming that the action was not time-barred, more than 10 years would have elapsed since 2008.

12 I had, like other judges before me, noted that the respondent had repeatedly offered over the years to return the items in the SDB to the applicant without requiring him to waive any rights. The respondent remained ready, willing and able to return the items. In fact, the respondent had sought an order for the sealed bag to be opened and collected by the applicant under O 92 r 5

ROC alongside its striking out application, although the Deputy Registrar had declined to make this order. The applicant had seen fit to reject the respondent's offers, apparently because of his indignation over the respondent's alleged earlier breach of contract. This was despite the fact that various courts have noted that the applicant had commenced the action prematurely, before collecting the contents of the SDB and ascertaining whether he had in fact suffered any loss. Woo J had observed thus in *Werner Samuel Vuillemin v Oversea-Chinese Banking Corporation Limited* [2017] 3 SLR 501 (at [36]) ("the 2017 HC decision"). The same points were made by the Deputy Registrar and by the District Judge in dealing with the striking out application. Instead of reclaiming his items, the applicant assiduously maintained that he and his property were being held "hostage" (in his words).

13 The applicant's intransigence may perhaps be understandable and even tolerable if he had seriously been intent on prosecuting a legitimate claim. This does not seem to be the case, from my perusal and understanding of the case background. It is of course true that a plaintiff is ordinarily entitled to have his day in court and to see his case proceed to trial. The applicant maintains that he should be similarly entitled; but it is heavily ironic that his unreasonable conduct betrays his true motives. On any objective view, the applicant had failed to prosecute his claim as he did not take necessary steps to move the matter towards trial, despite being given ample notice since September 2017 of the respondent's intention to apply for his claim to be struck out. He had instead chosen to drag out the proceedings by taking up numerous unmeritorious interlocutory applications and appeals which have brought his case nowhere. In the proceedings before the Deputy Registrar on 7 August 2018, he had even maintained that the *respondent* should not be allowed to move the matter to trial.

14 As early as November 2016, Woo J had observed in the 2017 HC decision (at [39]) that the applicant's "real aim" was not to recover the items as soon as possible but "to make life as difficult as possible for the [respondent]". Woo J went on to add that this is not a genuine purpose of litigation. I am in complete agreement. The applicant's continued refusal to accept the respondent's offer and his conduct of the suit thus far is evidence of his true intentions. If the applicant had any genuine interest at all in having the substantive action brought to adjudication, it was certainly not evident from his conduct and the tactics he had employed.

15 The District Judge justifiably concluded that this was a plain and obvious case for striking out. I therefore dismissed RAS 33/2018 with costs to the respondent.

My decision in the present OS

16 In the present OS, the applicant sought leave to appeal against my dismissal of RAS 33/2018. He did not specify which of the three well-established grounds for leave to appeal he intended to rely on. In this connection, the respondent had cited the leading authorities setting out these principles, namely *Lee Kuan Yew v Tang Liang Hong* [1997] 2 SLR(R) 862 and *IW v IX* [2006] 1 SLR(R) 135.

17 Presumably, having regard to his written and oral submissions, the applicant's main argument was that there was a *prima facie* error of law in my decision to dismiss RAS 33/2018. He did not canvass any submissions which suggested that there was any question of general principle to be decided for the first time, or any question of importance upon which further argument and a

decision of a higher tribunal would be to the public advantage. The respondent resisted the application on all three grounds.

18 The applicant essentially sought to repeat much of his arguments in RAS 33/2018 in contending that I had made a *prima facie* error of law in refusing to reinstate his claim and allow the matter to proceed to trial. I was not persuaded that there was any such error. In upholding the District Judge's decision, as I have explained above, I had given due consideration to the relevant legal principles which govern striking out applications. This case did not raise any question of general principle decided for the first time, or any question of importance upon which further argument and a decision of the Court of Appeal would be to the public advantage. I therefore found no merit in the application for leave to appeal against my decision.

19 I should add that at the hearing of the OS, the applicant sought to rely on a recent decision of Choo Han Teck J in *Qroi Limited v Pascoe, Ian* [2019] SGHC 36 ("*Qroi*") to support his argument that his case ought not to have been struck out and that he ought to be permitted to proceed to trial due to the "unique circumstances" of his case. The applicant produced only a copy of a newspaper clipping from the Straits Times, dated 26 February 2019, and admitted when queried that he had not read the actual grounds of decision. If he had read it, he might have realised that the decision in *Qroi* was of no assistance to him. *Qroi* did not purport to alter any established legal principles. Indeed, Choo J reiterated the accepted approach that an action should only be struck out in a plain and obvious case or if it was clearly unsustainable (at [6]).

Conclusion

20 For the reasons above, I saw no reason to grant leave to appeal. I therefore dismissed the OS with costs to the respondent fixed at $2,000 inclusive of disbursements.

See Kee Oon
Judge

Applicant in person;
Ang Leong Hao (Rajah & Tann) for the respondent.