IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 248

Suit No 268 of 2017
(Registrar's Appeal No 176 of 2017)

Between

(1) HARUN BIN SYED HUSSAIN ALJUNIED
(2) SYED ABDULKADER BIN SYED ALI

… *Plaintiffs*

And

(1) ABDUL SAMAD BIN O K MOHAMED HANIFFA
(2) O K MOHAMED HANIFFA BIN KADER MOHIDEEN
(3) HANIFFA PTE LTD

… *Defendants*

GROUNDS OF DECISION

[Civil procedure] — [Pleadings] — [Striking out]

[Limitation of actions] — [When time begins to run]

[Equity] — [Defences] — [Laches]

[Land] — [Registration of title] — [Land Titles Act]

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v
Abdul Samad bin O K Mohamed Haniffa and others

[2017] SGHC 248

High Court — Suit No 268 of 2017 (Registrar's Appeal No 176 of 2017)
Tan Siong Thye J
22 August 2017

6 October 2017

Tan Siong Thye J:

Introduction

1 The subject matter of this appeal is the title to a property known as No 120 Dunlop Street ("the Property"). It is currently registered as an estate in fee simple under the Certificate of Title Volume 375 Folio 136. The first defendant has been the registered proprietor of the Property since 2001.[1] In Summons No 1755 of 2017 ("SUM 1755"), the defendants applied to strike out the plaintiffs' statement of claim dated 27 March 2017 (as amended on 8 June 2017) under O 18 r 19 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC").[2] The assistant registrar ("AR") granted the application and struck out the plaintiffs' claim. The plaintiffs appealed against the AR's decision.

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1 DBD, Tab 19.

2 ABD, Tab 2.

2 After hearing the parties' submissions, I dismissed the appeal. The plaintiffs have appealed against my decision. I now give my reasons.

Background

3 The parties agreed that in 1877, the Property was owned by one Kavena Koonjan Chitty ("Kavena").[3] In 1879, Kavena conveyed the Property to one Jayna Ahna Navena Shedumbrum Chitty ("Jayna").[4] Jayna conveyed the Property to one Syed Allowei bin Ally Aljunied ("Syed Allowei") in 1882, who in turn conveyed it to one Syed Ahmat bin Abdulrahman bin Ahmat Aljunied ("Syed Ahmat") in 1892.[5] Syed Ahmat passed away in 1894 and a trust was created according to his will ("the Aljunied Trust"). The trustee of the Aljunied Trust was initially one Syed Jafaralsadeg bin Abdul Kadir Alhadad ("Syed Jafar").[6] He later relinquished his office to the first plaintiff in 1998. The second plaintiff was appointed trustee in 2009. They brought this claim as trustees of the Aljunied Trust.[7]

4 In 1895, Kavena conveyed the "Estate in Fee Simple – free from encumbrances" of the Property to several trustees of the Hindoo Temple Tank Road ("the Hindoo Temple Trustees").[8] These trustees were replaced by new ones in 1975; the new trustees were granted powers to sell and convey the Property to the second defendant for $50,000 in 1977 by court order.[9] Later that

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3 PWS, para 8; DWS, para 12.

4 PWS, para 10; DWS, para 12.

5 PWS, paras 11-12.

6 ABD, Tab 7, para 1.

7 PWS, paras 15-18.

8 PWS, para 20; DWS, para 12.

year, in December 1977, the Hindoo Temple Trustees conveyed the Property to the second defendant ("the 1977 conveyance").[10] The plaintiffs alleged that the 1977 conveyance was tainted by fraud since both parties to the conveyance were advised by common solicitors, who did not perform checks into the title history of the Property. If they had, then they would have discovered Syed Ahmat's interest. Accordingly, the plaintiffs submitted that the 1977 conveyance was tainted by fraud as the parties fraudulently transferred the Property even though they knew they did not have title to it.[11] The plaintiffs also alleged that Kavena had fraudulently transferred the Property to the Hindoo Temple Trustees in 1895 as he had already conveyed the Property to Jayna in 1879.[12]

5 In 1991, the second defendant brought the Property under the Land Titles Act (Cap 157, 2004 Rev Ed) ("LTA"). The Property was registered in the second defendant's name.[13] In 1994, Syed Jafar, as trustee of the Aljunied Trust, lodged a caveat with the Registrar of Titles and Deeds ("the Registrar") alleging that the second defendant's title was a "wrong lodgement".[14] The Registrar conducted investigations and replied, disagreeing with Syed Jafar.[15] After some back-and-forth, Syed Jafar ceased communications with the Registrar until 1997, when he brought up the same issue again.[16] Again, the parties stopped corresponding after some time and no resolution was reached.

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9 PWS, paras 22-23; DWS, para 6.

10 DWS, para 5.

11 ABD, Tab 4, para 31.

12 ABD, Tab 4, para 19.

13 ABD, Tab 3, para 9.

14 DBD, Tab 5.

15 DBD, Tab 7.

6 In 2000, the second defendant transferred the Property to his son, the first defendant, for a sum of $930,000 ("the 2000 conveyance"). When the transfer occurred, the Registrar sent a letter to Syed Jafar dated 25 September 2001 ("the Registrar's 2001 letter"), stating that the Registrar's caveat would be removed within 14 days if nothing was done to protect the caveated interest.[17] Syed Jafar did not reply and so the caveat was withdrawn. The transfer instrument between the second and first defendants was then registered in 2001.[18] The plaintiffs again alleged that the 2000 conveyance was tainted by fraud for the same reasons as the 1977 conveyance.[19]

7 On 27 March 2017, the plaintiffs, in their capacity as trustees of the Aljunied Trust, issued a writ of summons against the defendants, seeking a rectification of the land register in the Aljunied Trust's favour.[20] The defendants in turn filed SUM 1755 seeking to strike out the plaintiffs' claim. The AR granted the striking-out application and the plaintiffs appealed.

The AR's decision

8 The AR struck out the plaintiffs' claim. She first struck out the claim against the third defendant because it was a company that had never any interest in the Property. The plaintiffs' counsel also accepted during the hearing before the AR that the plaintiffs had no clear cause of action against the third defendant.

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16 DBD, Tab 14.

17 DBD, Tab 17.

18 DBD, Tab 19; ABD, Tab 3, para 7.

19 ABD, Tab 4, para 37.

20 DBD, Tab 20.

The AR therefore considered the action against the third defendant to be unsustainable and struck it out.[21]

9 The AR also struck out the plaintiffs' claim against the first and second defendants on three grounds.

10 First, the claim was time-barred under the Limitation Act (Cap 163, 1996 Rev Ed). The AR considered that s 29 of the Limitation Act applied. Section 29(1) provides that the limitation period for an action based on the defendant's fraud would not start to run until "the plaintiff has discovered the fraud … or could with reasonable diligence have discovered it". Nonetheless, the AR found that the plaintiffs' claim was time-barred because the plaintiffs either discovered or could have discovered the alleged fraud with reasonable diligence by 1994 at the latest.

11 This was because of the correspondence between Syed Jafar on the one hand, and the Registrar and the second defendant on the other. The correspondence showed that Syed Jafar had inquired with the Registrar about a "wrong lodgement" of a certificate of title in favour of the second defendant. The Registrar investigated and stated that the Property's title did not vest in Syed Ahmat. The lawyers of the Aljunied Trust wrote to the second defendant informing him that proceedings would be commenced "immediately" to expunge the certificate of title and to reclaim possession of the Property. Although the plaintiffs alleged that they did not know about the correspondence, the AR considered this irrelevant as the plaintiffs commenced the proceedings in their capacity as trustees. Hence, Syed Jafar's actions and knowledge were

[21] Transcript of 4 July 2017, pp 3-4.

also imputed to the plaintiffs, the present trustees and they could be taken to have discovered the relevant facts in 1994. The time limitation under ss 9–10 of the Limitation Act for actions in relation to land interests is 12 years. The plaintiffs therefore had to commence the action by 2006, but they did not. Accordingly, the claim was time-barred.[22]

12 Second, the AR also considered the claim barred by the defence of laches. The AR considered evidence that a caveat lodged by the former trustees of the Property against the Property in 1994 had been allowed to lapse. Further, at the time of the 2000 conveyance, the Registrar's 2001 letter gave Syed Jafar notice that unless the Registrar heard from him within 14 days, the caveat lodged by the Registrar would be withdrawn, and the transfer of the Property from the second defendant to the first defendant would be registered (see [6] above). Syed Jafar failed to respond. The Registrar's caveat was hence withdrawn and the first defendant was registered as the Property's owner. The plaintiffs did not explain their inaction and only referred to an affidavit by Syed Jafar dated 29 May 2017 where he stated that he did not receive the Registrar's 2001 letter. The AR was not convinced and found that the defence of laches applied because of the immense time delay.[23]

13 Third, even if the claim was not time-barred and the defence of laches did not apply, the AR held that the plaintiffs could not go behind the land register to challenge the first defendant's registered title. Since the Property was regulated by the LTA, any challenges by the plaintiffs would need to fall within one of the limbs of s 46(2) of the LTA. The plaintiffs relied on s 46(2)(*a*), which

22 Transcript of 4 July 2017, pp 5-8.

23 Transcript of 4 July 2017, p 9.

required fraud "to which that proprietor or his agent was a party or in which he or his agent colluded". However, the AR found that nothing in the plaintiffs' evidence satisfactorily explained how the first defendant or his agent was party to or colluded in any kind of fraud. Instead, any fraudulent intention was on Kavena's part, since he was the one who transferred the Property a second time even after the first transfer to Jayna was successful. Since the plaintiffs produced no evidence to link the alleged fraud to the first defendant, s 46(2)(*a*) did not apply.[24]

14 Accordingly, the AR struck out the plaintiffs' claim.

Parties' submissions

Plaintiffs' submissions

15 The plaintiffs' overarching submissions were that there were numerous triable legal and factual issues, such that their claim should proceed to trial.

16 In relation to the Limitation Act issue, the plaintiffs relied on s 29 of the Limitation Act for the proposition that the time for fraud could only start to run when they discovered or could reasonably have discovered the fraud. The plaintiffs submitted that they only knew of the relevant facts after October 2012, when the Singapore Land Authority ("SLA") commenced an investigation regarding certain of their properties which raised the question of whether the title in the Property belonged to the Aljunied Trust.[25] The plaintiffs submitted

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24 Transcript of 4 July 2017, pp 9-10.

25 PWS, para 178.

that they *had* taken reasonable diligence but there were no special circumstances to prompt them to inquire further prior to the SLA's investigations in 2012.[26]

17 In response to the AR's reliance on the caveat lodged by Syed Jafar with the Registrar in 1994 and the related correspondence, the plaintiffs submitted that they did not know about the caveat because they did not have the relevant documents. The documents were in Syed Jafar's possession and had since been destroyed, lost, or misplaced. The plaintiffs also did not receive the Registrar's 2001 letter. Hence, they had neither the knowledge nor the opportunity to act on the caveat.[27] The plaintiffs argued that although they bore the same office of trustee as Syed Jafar, the duty to familiarise themselves with the trust property did not oblige them to inquire whether Syed Jafar received any such letter by the Registrar. The onus was on Syed Jafar as the outgoing trustee to bring the letter to the plaintiffs' attention.[28] In any event, the plaintiffs contended that the court should accept Syed Jafar's affidavit dated 29 May 2017 as "final and conclusive" at the interlocutory stage.[29] In this affidavit, Syed Jafar stated that he was "not aware of and [had] no knowledge of" the Registrar's 2001 letter. Neither was the Registrar's 2001 letter received by his company.[30] Hence, Syed Jafar had no knowledge of the alleged fraud which could be imputed to the plaintiffs as trustees.

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26 PWS, para 180.

27 PWS, para 142.

28 PWS, para 144.

29 PWS, para 155.

30 ABD, Tab 7, paras 5-6.

18 The plaintiffs submitted that if they had known about the caveat, they would have applied for its extension and prevented the Property from being registered under the LTA.[31] Since a caveat is no more than a "statutory injunction to keep the property in status quo until the court has an opportunity of discovery [*sic*] what the rights of the parties are", the plaintiffs should now be given the chance to invoke the court's assistance since they were not able to do so as they were unaware of the alleged fraud.[32]

19 In relation to the issue of fraud under s 46(2)(*a*) of the LTA, the plaintiffs argued that the defendants' title was defeated by fraud because both Kavena[33] and the defendants knew that Kavena and the second defendant possessed no good title to transfer.

20 In response to the AR's finding that the defendants were not party to any fraud, the plaintiffs submitted that the defendants were wilfully blind to the fraud that permeated the conveyances. They submitted that the first defendant (the current registered proprietor) should have made further inquiries about the Hindoo Temple Trustees' previous conveyances, since the 1977 conveyance was assisted by the same solicitors on both sides. Further, the first defendant was the lessee of the neighbouring plots of land, such as 116 and 118 Dunlop Street. Thus, the first defendant knew or ought to have known that the plaintiffs were the owners of these neighbouring plots of land (pursuant to the conveyances set out at [3] above). Accordingly, the defendants ought to have known and inquired about the fact that the defendants' disputed title to the

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31 PWS, para 166.

32 PWS, paras 174-175.

33 PWS, paras 48-50.

Property did not derive from a conveyance by either the plaintiffs or the plaintiffs' predecessors. Even though the first defendant's title was not directly conveyed by the Hindoo Temple Trustees, the plaintiffs argued that the first defendant should still be taken to have knowledge of the 1977 conveyance: "since the [first defendant] is the son of the [second defendant], the [first defendant] ought to have knowledge from his father", the previous owner of the Property.[34] The plaintiffs also submitted that the first defendant was a "proxy/nominee/agent" of the second defendant since both defendants had the "common intention" to obtain the Property and the consideration paid under the 2000 conveyance was derived from a source commonly owned by both defendants. Hence both defendants were said to be party or privy to the fraud tainting the 1977 conveyance.[35]

21 The plaintiffs contended that since there was fraud, the court could rectify the land register under s 160 of the LTA[36] to reflect the plaintiffs' common law title to the Property which was separate and distinct from the title under the LTA. They submitted that this title was "an equitable one" which existed independently from any other interest, including the title under the LTA, and therefore required a disposition in writing before the Property could be transferred (s 7(2) of the Civil Law Act (Cap 43, 1999 Rev Ed)). As there was no such disposition in writing, the Property's common law title still remained with the plaintiffs.[37] Hence, rectification was still possible.

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34 PWS, paras 197-201.

35 PWS, paras 206-215.

36 PWS, paras 67-68.

37 PWS, paras 53-61.

Defendants' submissions

22 The defendants submitted that as the registered proprietor with an unqualified title to the Property, the first defendant's title to the Property is indefeasible.[38] Since the Property has been recorded in the land register since 2001, the plaintiffs could no longer rely on an unregistered interest to claim a proprietary right over the Property.[39] This is equally the case even if the registered proprietor's registration was based on a void instrument.[40]

23 The defendants accepted that s 46(2)(*a*) is one exception to indefeasibility but submitted that there was no fraud or forgery which the first defendant or his agent were party to or colluded in.[41] Even if the plaintiffs could establish that Kavena's conveyances were tainted by fraud in the sense that Kavena transferred the Property a second time knowing that he no longer had title to transfer, this would not establish any wrongdoing by the first defendant.[42] Any omission to make inquiries relating to the Hindoo Temple Trustees' transactions was mere negligence and did not amount to fraud under the LTA.[43] Having slept on their rights and allowed the first defendant to take an unqualified title to the Property, the plaintiffs could not now assert any interest.[44]

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38 DWS, para 34.

39 DWS, para 37.

40 DWS, para 51.

41 DWS, para 47.

42 DWS, para 55.

43 DWS, paras 56-59.

44 DWS, para 74.

24 In any case, the defendants also argued that the plaintiffs' action was barred by the Limitation Act and the defence of laches. In relation to the Limitation Act, the defendants said that since the plaintiffs only commenced the present proceedings on 27 March 2017, their claim fell outside the time period of 12 years for land-related claims. The defendants relied on the same correspondence in 1993-1994 as the AR relied on to show that the trustees of the Aljunied Trust had known about the second defendant's registered interest.[45] They submitted that in law, the knowledge or acts of former trustees bind subsequent trustees, *ie*, the plaintiffs, relying on the Court of Appeal decision in *Abdul Jalil bin Ahmad bin Talib and others v A Formation Construction Pte Ltd* [2007] 3 SLR(R) 592 ("*Abdul Jalil*") at [49]–[50]. Hence, the plaintiffs' actual knowledge of the correspondence was irrelevant.[46] In any event, the plaintiffs could have discovered the fact that the defendants were the registered proprietors of the Property before 2012 with reasonable diligence since it was a simple matter of conducting a search with the land registry.[47]

25 In terms of laches, the defendants relied on the Registrar's 2001 letter and said that there were "multiple opportunities" for the plaintiffs to bring an action or lodge a caveat at an earlier stage, but they failed to do so. This prejudiced the defendants' case because it deprived them of witnesses and material evidence from the conveyance in 1895, which was the plaintiffs' main claim.[48]

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45 DWS, paras 86-87.

46 DWS, paras 95-96; DBOA, Tab 4.

47 DWS, para 99.

48 DWS, paras 113-114.

26 Accordingly, the defendants submitted that the plaintiffs' claim was unsustainable and was doomed to fail.[49]

The court's decision

Issues

27 There were three issues for the court's decision, which corresponded to the three grounds for the AR's decision:

(a) whether the claim was time-barred by the Limitation Act;

(b) even if the claim was not time-barred under statute, whether the defence of laches nevertheless applied; and

(c) on the merits of the case, whether the plaintiffs could challenge the first defendant's indefeasible title under s 46(2)(*a*) of the LTA.

I shall address each issue in turn. But before I do so, I must emphasise that this is not a case where the plaintiffs must prove their case on a balance of probabilities. Since the defendants sought to strike out the plaintiffs' claim, the threshold that the plaintiffs needed to satisfy was much lower. I shall therefore briefly set out the principles which govern striking out before I turn to each of the three issues.

The legal principles applicable to striking out

28 Striking out is a draconian order that prevents the plaintiffs from even going to trial to attempt to prove their case. Hence, the limited circumstances

[49] DWS, para 120.

where a claim can be struck out are set out in O 18 r 19(1) of the ROC as follows:

> **Striking out pleadings and endorsements (O. 18, r. 19)**
>
> **19.**—(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading … on the ground that —
>
> (*a*) it discloses no reasonable cause of action or defence, as the case may be;
>
> (*b*) it is scandalous, frivolous or vexatious;
>
> (*c*) it may prejudice, embarrass or delay the fair trial of the action; or
>
> (*d*) it is otherwise an abuse of the process of the Court,
>
> …

The defendants in SUM 1755 relied on grounds (a), (b), and (d).[50]

29 A reasonable cause of action under O 18 r 19(1)(*a*) was defined by the Court of Appeal in *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 ("*Gabriel Peter*")[51] at [21] as one that has some chance of success when only the allegations in the pleading are considered. As long as the statement of claim discloses some cause of action or raises a question that is fit to be decided at trial, then the mere fact that the case is weak and unlikely to succeed is not enough grounds to strike it out.

30 In relation to whether a claim is scandalous, frivolous or vexatious, the Court of Appeal in *The "Bunga Melati 5"* [2012] 4 SLR 546[52] confirmed at [39]

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50 ABD, Tab 2, p 1.

51 ABOA, Tab G.

52 DBOA, Tab 16.

that O 18 r 19(1)(*b*) can be found in two ways. First, the claim can be struck out on this ground if it is legally unsustainable in the sense that the plaintiff would not get the relief sought even if he succeeded in proving all the facts that he alleges. Second and alternatively, the claim can also be struck out if it is factually unsustainable: where it is clear beyond question that the statement of facts is contradicted by all the documents or materials on which it is based.

31 Finally, a claim is considered as an abuse of the court's process under O 18 r 19(1)(*d*) when it makes improper use of the court's machinery. Although the categories for such conduct are not closed, one of the paradigm examples of an abuse of process is that of bringing a claim for a collateral purpose (*Gabriel Peter* at [22]).

32 With these principles in mind, I now turn to each of the three issues.

Whether the claim was time-barred by the Limitation Act

33 The plaintiffs asked the court to rectify the land register under s 160 of the LTA. To succeed in this course of action, the plaintiffs' claim must not be barred by the Limitation Act.

34 As I shall later explain, I found that there was no fraud or mistake in this case as the plaintiffs' allegations were no more than bare assertions. Hence, the applicable limitation provision is s 9(1) of the Limitation Act, which deals with actions to recover land. Section 9(1) provides as follows:

> **Limitation of actions to recover land**
>
> **9.**—(1) No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the

> right of action accrued to him, or, if it first accrued to some person through whom he claims, to that person.

35 In order to determine whether the plaintiffs' cause of action was time-barred, *ie*, whether the 12-year period had expired, I had to ascertain when the right of action started to accrue to the plaintiffs. Section 10(1) of the Limitation Act then became relevant:

> **Accrual of right of action in case of present interests in land**
>
> **10.**—(1) Where the person bringing an action to recover land or some person through whom he claims has been in possession thereof and has, whilst entitled thereto, been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.

36 Under s 9(1) read with s 10(1), time started to run on the date of the dispossession, which was when the right of action was "deemed to have accrued". This would be on 6 September 1895 when Kavena conveyed the Property to the Hindoo Temple Trustees. Kavena had already conveyed the Property to Jayna in 1879 who had in turn conveyed it to Syed Allowei in 1882 who then conveyed it to Syed Ahmat in 1892. Hence, it was Kavena's subsequent conveyance to the Hindoo Temple Trustees that would have "dispossessed" the land from its rightful owners. Accordingly, the 12-year limit would have elapsed by 1907. The claim is now more than 100 years over the limitation period.

37 However, as I noted earlier, the plaintiffs claimed that the defendants participated in or knew of certain fraudulent conveyances. Even assuming that the plaintiffs' case of fraud was made out, their action would still have been time-barred. The relevant portions of s 29 of the Limitation Act provide as follows:

> **Postponement of limitation period in case of fraud or mistake**
>
> **29.**—(1) Where, in the case of any action for which a period of limitation is prescribed by this Act —
>
> (*a*) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent;
>
> (*b*) the right of action is concealed by the fraud of any such person as aforesaid; or
>
> (*c*) the action is for relief from the consequences of a mistake,
>
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it.
>
> (2) Nothing in this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting, any property which —
>
> (*a*) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or
>
> (*b*) in the case of mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.

38 Assuming there was fraud, the time period began to run when the plaintiffs had either "discovered" the fraud or "could with reasonable diligence have discovered it". I agreed with the AR and found that the plaintiffs either knew about the fraud or should have discovered it with reasonable diligence in 1994, which means that its claim was time-barred from 2006.

39 The plaintiffs' own position, as stated in their amended statement of claim, was that Syed Jafar was the trustee of the Aljunied Trust until 1998, when

one Sharifah Fatimah Binte Abdul Kader Aljunied and the first plaintiff were appointed as trustees by a court order dated 10 February 1998.[53] While Syed Jafar was still trustee, he corresponded with the Registrar a number of times as follows:

(a) On 2 December 1993, Syed Jafar wrote to the Registrar in the capacity of the trustee of the Aljunied Trust. He said that as the "legal owners" of the Property, the Aljunied Trust was seeking rectification of the "wrong lodgement" of title.[54] The Registrar did not reply and Syed Jafar wrote a follow-up letter on 14 December 1993 requesting for an acknowledgement.[55]

(b) On 5 January 1994, the Registrar replied, stating that "[our] investigation into the title to the [Property] does not show the vesting of the title in [Syed Ahmat], deceased".[56]

(c) On 10 January 1994, Syed Jafar replied to the Registrar and "disagree[d] with [the Registrar's] findings". Syed Jafar referred to the history of the Property and a copy of his search of the Registry of Deeds which, in his view, showed that the land vested in Syed Ahmat.[57] In other words, Syed Jafar would have shown the Registrar all the evidence available to him at that point in time in a bid to convince the Registrar that the latter was wrong.

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53 DBCP, Tab 3, p 4, para 11.

54 DBD, Tab 5.

55 DBD, Tab 6.

56 DBD, Tab 7.

57 DBD, Tab 8.

(d) On 14 February 1994, the Registrar replied and maintained its position that the title to the Property did not vest in Syed Ahmat. The Registrar explained that the Registry of Deeds was obliged to register deeds presented to it as long as the deeds complied with the formal requirements. In other words, the fact that Syed Jafar's search of the Registry of Deeds disclosed deeds registering Syed Ahmat's interest against the parcel of land where the Property was situated did not mean that title in the Property had in fact vested in Syed Ahmat. The Registrar's investigations into transactions prior to Syed Ahmat's death showed that the Property did not vest in Syed Ahmat.[58]

(e) On 18 November 1994, the lawyers of the trustees of the Aljunied Trust wrote to the second defendant, who was then the registered owner of the Property, stating that "[p]roceedings will be commenced immediately to expunge the Certifecate [*sic*] of Title (Vol 375, Folio 136) from the Register and to reclaim possession of the property, by our clients".[59] However, no proceedings were commenced.

40 The above correspondence shows that Syed Jafar – on behalf of the office of the trustee of the Aljunied Trust – did know about the second defendant's registration, and sought to take action against the second defendant to "expunge" the title from the Registry.

41 But instead of taking any such legal action, Syed Jafar lodged a caveat against the Property on 13 December 1994. The Registrar duly notified the

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58 DBD, Tab 9.

59 DBD, Tab 11.

second defendant of Syed Jafar's caveat on 31 December 1994.[60] Although no action was taken, Syed Jafar confirmed to the land registry again in a letter dated 28 January 1997 that he still maintained the position that the second defendant had "no title whatsoever". Syed Jafar again reiterated that the trust would "in due course commence proceeding to reclaim possession of the property".[61] The Registrar replied on 4 February 1997 asking to be kept up to date about the status of the action.[62]

42 It appears that no action was ever commenced. Eventually, the second defendant transferred the Property to the first defendant on 3 October 2000.[63] The Registrar then followed this up with the Registrar's 2001 letter, referring to its last letter of 4 February 1997, to which there was no reply. The Registrar gave notice to Syed Jafar that unless it heard from Syed Jafar within 14 days, the Registrar's caveat would be withdrawn. The letter was copied to the first defendant.[64] When no reply was forthcoming, the Registrar withdrew the caveat on 12 October 2001.[65] The transfer to the first defendant was then registered on the same date free of encumbrances.[66]

43 I have set out this sequence of events in some detail because it shows two things. First, it shows that Syed Jafar was all along aware of the second

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60 DBD, Tab 13.

61 DBD, Tab 14.

62 DBD, Tab 15.

63 DBD, Tab 16.

64 DBD, Tab 17.

65 DBD, Tab 18.

66 DBD, Tab 19.

defendant's initial claim to the Property, and the first defendant's subsequent claim to the Property during the 2000 conveyance. Second, Syed Jafar did not object on grounds that, for instance, he had to investigate further. Rather, he already knew the grounds of his objection and was prepared to begin proceedings to vindicate Syed Ahmat's interest. But he did not. Syed Jafar sat on his hands despite his *own* assertion that he would begin proceedings. The estate could not be allowed to revive his wish to commence proceedings more than 20 years later.

44 The plaintiffs' argument against this chain of events was twofold. First, they asserted that Syed Jafar did not receive the Registrar's 2001 letter. Syed Jafar stated this in his affidavit dated 29 May 2017,[67] where he explained that the Registrar's 2001 letter was not received by his company because the company's address had changed from the address stated in the caveat he had filed. No documentary evidence was attached to Syed Jafar's affidavit to support this claim. More importantly, it was incumbent on Syed Jafar to provide an accurate address and update his address if there were changes so that he would be contactable by the Registrar. The Registrar could only proceed on the basis that the address stated on the caveat was the accurate one. Hence, I did not accept Syed Jafar's convenient explanation that he did not receive the Registrar's 2001 letter. Even if he did not have actual sight of the letter, this was due to his own fault and should not be held against the Registrar. Furthermore, Syed Jafar officially informed the second defendant and the Registrar on 18 November 1994 that he would immediately take action to expunge the second defendant from the land register but no action was taken thereafter. Syed

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67 ABD, Tab 7, paras 5-6.

Jafar should have expected a follow-up inquiry from the Registrar, as the Registrar had previously informed him to update the land registry on the outcome of the impending action due to the outstanding caveat lodged with the registry.

45 To persuade the court to accept Syed Jafar's explanation in his affidavit, the plaintiffs referred the court to *Soh Lup Chee and others v Seow Boon Cheng and another* [2002] 1 SLR(R) 604 ("*Soh Lup Chee*")[68] for the proposition that at the interlocutory stage, the court should accept a party's affidavit as final and conclusive, at least until the trial. In that case, the first defendant's counsel had argued that an affidavit verifying a list of documents for discovery should be taken as conclusive. Choo Han Teck JC (as he then was) stated at [9] that:

> … I must agree with counsel that generally, such affidavits cannot be contravened by other contentious affidavits and shall not be subject to cross-examination. The reasons for this, as Stuart-Smith LJ pointed out in *Lonrho plc v Fayed (No 3)* The Times (24 June 1993), are plain. Affidavits raised in such circumstances do not address the issues for trial and whether the deponent is truthful or not in respect of the discovery of documents he might still persuade the trial judge of the merits of his case through other evidence. … It should be noted that Mr Khoo [*ie*, the plaintiffs' counsel] had accepted from the outset that he was not seeking a cross-examination of the first defendant.

46 Choo JC said that the contents of the affidavit could generally be accepted before the trial. He did not say that this rule would apply in every case, whether the affidavit is filed for a pre-trial matter or as evidence to be tested at trial. There are differences between *Soh Lup Chee* and this case. The reason why the affidavits in *Soh Lup Chee* could be taken at its face value was because they

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[68] ABOA, Tab U.

were filed for pre-trial matters and were not subject to cross-examination. In this case, whether Syed Jafar had received the Registrar's 2001 letter goes directly to the issue of whether he had the knowledge of the Registrar's 2001 letter. This is not a pre-trial issue and instead has to do with the evidence that will subsequently be adduced at trial to prove the plaintiffs' claim. Hence, unlike the court in *Soh Lup Chee*, I could not accept this affidavit at its face value. Syed Jafar's explanation was self-serving and conveniently shifted the blame to the Registrar for his own failure to update his address in the land registry.

47 The second plank of the plaintiffs' argument was that even if Syed Jafar knew or should have known of the Registrar's 2001 letter, Syed Jafar's knowledge should not be imputed to the plaintiffs since the trustees had changed in 1998 and later in 2009. The plaintiffs cited no authority for this proposition. In contrast, the defendants relied on the case of *Abdul Jalil* (*supra* [24]) for the proposition that subsequent trustees are bound by the acts of previous trustees. In *Abdul Jalil*, the previous trustees of a trust had entered into lease agreements with the respondent. Eventually the sole trustee that remained claimed rent arrears from the respondent. The sole trustee later waived the rent, and thereafter appointed the appellants as the new trustees. When the appellants discovered the sole trustee's waiver, they commenced proceedings challenging the sole trustee's power to do so. One of the issues facing the Court of Appeal was whether the appellants were estopped from claiming the rent due to the sole trustee's waiver. The appellants argued that they could not be bound by a waiver represented by the previous sole trustee's solicitors, who were not acting for the appellants. The Court of Appeal dismissed this argument at [50]:

> In our view, these arguments have no merit. If the waiver was binding on the sole trustee and the trust, it was binding on the appellants who are the successor trustees of the trust.

48 The Court of Appeal could not have been clearer and I adopted this statement of the law. Syed Jafar was not engaging the Registrar in correspondence in his personal capacity but in his capacity as trustee. The plaintiffs brought this claim not in their personal capacities but in their capacities as trustees. Syed Jafar's acts *qua* trustee bound the plaintiffs *qua* trustees.

49 Accordingly, I found that the trustees of the Aljunied Trust (previously Syed Jafar, but now the plaintiffs) knew about the second defendant's claim to the Property and about the purported fraud because Syed Jafar threatened to commence proceedings in 1994. Hence, even if the plaintiffs' case on fraud were made out, the limitation period would have started to run from 1994. More than 12 years have passed since then and the claim was time-barred. Hence, I found that even if the plaintiffs were able to prove all the facts that they alleged – *ie*, the facts pertaining to the alleged fraud – their case would still be *legally unsustainable* as it fell afoul of the Limitation Act.

50 Finally, the plaintiffs had made an oblique reference to the possibility of the conveyances being obtained by mistake in their written submissions, although the plaintiffs' counsel said that this was "not the main thrust" of their arguments at the hearing before me.[69] I will address this briefly for completeness. Under s 29 of the Limitation Act, if there was a mistake in a conveyances, time also does not begin to run until the plaintiff has discovered

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[69] NE, 22 August 2017, p 74, line 24.

or could have with reasonable diligence discovered the mistake. However, the plaintiffs adduced no evidence to suggest that the conveyances to the defendants were as a result of any mistake. In any event, the plaintiffs would also have discovered any mistake in the title by 1994, when the then-trustee lodged the caveat.

51 Accordingly, I affirmed AR's decision and struck out the plaintiffs' claim on this ground.

Whether the defence of laches applied

52 Even if the plaintiffs' claim were not time-barred under the Limitation Act, the claim would still have failed due to the defence of laches.

53 Before I answer the question of whether the defence of laches applied, a preliminary point that neither the AR nor the parties addressed in detail is whether the Limitation Act's presence precludes the defence of laches from applying. On the one hand, s 32 of the Limitation Act appears to provide that the defence of laches can still apply. Section 32 states:

> **Acquiescence**
>
> **32.** Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence, laches or otherwise.

54 However, a more qualified position appears to have been taken in *UAM v UAN and another* [2017] SGHCF 10 ("*UAM*").[70] In that case, Valerie Thean JC considered the question of whether the defence of laches could apply to probate proceedings in which a son was asking the court to affirm a will made

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[70] DBOA, Tab 21.

in 1981 by his mother and declare invalid a contrary will made in 1980. Thean JC, after going through the authorities, noted at [100] that the authorities seemed to suggest that "an *equitable* defence of laches has no application in a case where a *legal* remedy was sought to enforce a *legal* right, and where a statutory limitation period applied" [emphasis in original]. However, Thean JC also eventually noted that the Court of Appeal in previous cases had "*declined to express any conclusive view on whether the doctrine of laches is applicable to a common [law] claim* … and left this issue to a future court for determination" [emphasis in original].

55 I am of the view that the defence of laches could operate in this case. Section 32 of the Limitation Act suggests that whether the defence of laches could apply does not turn solely on whether a statutory limitation applies. Otherwise, s 32 would be otiose. Rather, as the Court of Appeal noted in *eSys Technologies Pte Ltd v nTan Corporate Advisory Pte Ltd* [2013] 2 SLR 1200 at [37]–[38] (which Thean JC cited in *UAM* at [100]), there is an additional question of whether the plaintiffs were asserting a common law claim or an equitable claim. In the present case, however, neither party disputed that the defence of laches could be applicable. I shall therefore proceed on the basis that it applies and shall now explain how I found that the defence of laches applied even if the claim was not time-barred.

56 In relation to the defence of laches, the applicable legal principles were not in dispute and have been recently summarised succinctly by the Court of Appeal in *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 ("*Chng Weng Wah*") at [44], which referred to a long string of previous local jurisprudence to this effect:

> … Laches is a doctrine of equity. It is properly invoked where essentially there has been a substantial lapse of time coupled with circumstances where it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equivalent to a waiver thereof; or, where by his conduct and neglect he had, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted … This is a broad-based inquiry and it would be relevant to consider the length of delay before the claim was brought, the nature of the prejudice said to be suffered by the defendant, as well as any element of unconscionability in allowing the claim to be enforced …

57 In *Chng Weng Wah*, the parties initially shared a close relationship but later fell out. While they were still working closely together, the parties bought some shares but these shares were held solely by the appellant. When the parties fell out, the respondent commenced proceedings seeking an account of the shares and the sale proceeds from them. The Court of Appeal found that the doctrine of laches applied and barred the respondent's claim. The court noted that the delay was some ten to 13 years (depending on which party's case was to be taken) and this delay occurred after the parties had essentially come to a stalemate. In correspondence during the period of delay, the respondent merely restated his allegations without attempting to provide further evidence. After the correspondence, the respondent did not commence legal proceedings. The court found that the long silence made it "reasonable for [the appellant] to believe that the matter [was] over" (at [51]). This was even more significant considering that the claim would primarily have to be based on the parties' recollections, since this was an internal share purchase during a period when the parties shared a close relationship, worked on the basis of trust, and therefore limited their formal documentation. The loss of evidence, primarily in the form of the appellant's ability to recall events, amplified the prejudice of the delay in commencing proceedings (at [54] and [59]).

58 With this in mind, I turn now to the present case. Essentially, I had to decide whether the plaintiffs' conduct coupled with the extensive lapse of time prejudiced the defendants to such an extent that it would be unfair to ask the defendants to defend against the claim now.

59 I first ascertained when the delay began. In *Mahidon Nichiar bte Mohd Ali and others v Dawood Sultan Kamaldin* [2015] 5 SLR 62,[71] the Court of Appeal noted at [126] that it is "important to ascertain when the Appellants realised the true manner in which the Property was being held because that is the reference point from which any delay on their part in bringing their claim against [the respondent] must be assessed". In this case, the relevant time when the plaintiffs became aware of the true state of affairs, in the light of the correspondence between the trustees of the Aljunied Trust and the Registrar, was 1994. The proceedings were brought in 2017, which is a delay of 23 years.

60 Having ascertained the delay in this case, I considered whether the delay occasioned any prejudice to the defendants. The defendants relied on *UAM* for the proposition that the plaintiffs' inaction in commencing the proceedings prejudiced their ability to give evidence. This was especially prejudicial for witnesses relying on their personal knowledge of the relevant events. In *UAM*, Thean JC found that if the defence was available it would have been made out on the facts, for the following reasons (at [104]):

> … I am satisfied that it would be unconscionable to allow the plaintiff to pursue his claim based on the length of the delay and of the plaintiff's inaction in pronouncing the 1981 Will that he had since the demise of the mother in 1986. Nothing precluded him from doing so and he has not put forth any

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[71] DBOA, Tab 13.

> satisfactory explanation. Contrary to his assertions, his ability to prove the 1981 Will is in no way contingent upon knowledge of the 1980 Will. … [T]he delay here greatly prejudices the defendants in their ability to defend the claim because it has deprived the defendants of direct evidence of the witnesses with personal knowledge of the circumstances surrounding the execution of the 1981 Will. The solicitors who prepared and witnessed the execution of the 1981 Will have no recollection of the events at the material time, and the physical file opened for the 1981 Will is also no longer in their possession. With regard to the contentions regarding the validity of the 1980 Will, the passing of the brother also prejudices the defendants. Material evidence is no longer available with the passing of almost three decades since the mother's death and a decade since the brother's.

61 I agreed with the defendants that similar considerations were present in this case. The trustees of the Aljunied Trust, albeit not the plaintiffs personally, had the information necessary to commence the present proceedings since 1994. In fact, the then-trustee, Syed Jafar, had indicated to all the parties involved that he wanted to begin proceedings. The Registrar and the second defendant were notified about this intention. So when Syed Jafar took no action not only in 1994 after a series of correspondence but again in 1997 after another exchange of letters, it was reasonable for the second defendant to believe that the trustees of the Aljunied Trust were no longer interested in pursuing the claim. This was similar to the situation in *Chng Weng Wah*. This position was later confirmed by the fact that the trustees allowed its caveat and the Registrar's caveat to lapse.

62 Further, similar to the situation in *UAM*, no cogent explanation was offered to explain the delay. The plaintiffs said that it was only in 2010 when they started the conversion of their properties (including properties unrelated to the present claim) to the Torrens system. It was only when they received a reply from the SLA in 2012 that they realised that there was an issue with the Property. I could not accept this explanation as the plaintiffs were bound by the

knowledge of the previous trustee, Syed Jafar. It cannot be that every time a trust appoints a new trustee or replaces the previous trustees that the time – whether for limitation periods or for delays – starts to run again because the new trustees need to be re-apprised of the situation. Rather, the responsibility lies with the office of the trustee and whoever has been appointed to properly take over the knowledge and documents of the previous trustee.

63 The unexplained delay by the plaintiffs caused significant prejudice to the defendants. Like *UAM* where the witnesses with direct evidence of the events have been deprived of their personal recollection, the witnesses here were clearly prejudiced in terms of their ability to recall what happened regarding the conveyances which the plaintiffs claimed were tainted by fraud. And similar to *Chng Weng Wah*, the prejudice in this case was amplified because the claim was based primarily on the parties' recollection. Since the cause of action is fraud, the oral evidence of the parties who were present at the conveyances is of particular importance in allowing the court to ascertain their state of mind. The same applied to the defendants' evidence, which the plaintiffs would have needed to test in order to establish their claim that the defendants could have checked the Property for prior encumbrances at the time of the 1977 conveyance, but did not. These were issues which the documents did not reveal and which required oral evidence. Accordingly, I was satisfied that applying the doctrine of laches, the plaintiffs' own unexplained delay resulted in a loss of the defendants' evidence, prejudicing their ability to conduct their defence.

64 Hence, I also found that the plaintiffs' contentions in relation to the defence of laches were also legally unsustainable and I therefore struck out the plaintiffs' claim.

Whether fraud under s 46(2)(a) of the LTA is present to displace the first defendant's indefeasible title

65 Even if the plaintiffs' claim was not time-barred or barred by the defence of laches, I would have found that there was no reasonable cause of action disclosed as regards the claim to defeat the first defendant's title on account of fraud under s 46(2)(*a*) of the LTA.

66 The starting point is s 46 of the LTA. Although the plaintiffs relied only on the fraud exception in s 46(2)(*a*), it will first be useful to set out some of the other provisions which set s 46(2)(*a*) in its proper context:

> **Estate of proprietor paramount**
>
> **46.**—(1) Notwithstanding —
>
> > (*a*) the existence in any other person of any estate or interest, whether derived by grant from the State or otherwise, which but for this Act might be held to be paramount or to have priority;
> >
> > …
>
> any person who becomes the proprietor of registered land, whether or not he dealt with a proprietor, shall hold that land free from all encumbrances, liens, estates and interests except such as may be registered or notified in the land-register, but subject to …
>
> (2) Nothing in this section shall be held to prejudice the rights and remedies of any person —
>
> > (*a*) to have the registered title of a proprietor defeated on the ground of fraud or forgery to which that proprietor or his agent was a party or in which he or his agent colluded;
> >
> > …
>
> (3) Nothing in this section shall confer on a proprietor claiming otherwise than as a purchaser any better title than was held by his immediate predecessor.

67 Although the plaintiffs relied on s 160 of the LTA to seek rectification of the land register, s 160 does not provide any additional grounds other than what is already found within s 46(2). The relevant portions of s 160 provide:

> **Rectification of land-register by court**
>
> **160.**—(1) Subject to subsection (2), the court may order rectification of the land-register by directing that any registration be cancelled or amended in any of the following cases:
>
> …
>
> (*b*) where the court is satisfied that any registration or notification of an instrument has been obtained through fraud, omission or mistake; or
>
> …
>
> (2) The land-register shall not be rectified so as to affect the registered estate or interest of a proprietor who is in possession unless that proprietor is a party or privy to the omission, fraud or mistake in consequence of which rectification is sought, or has caused that omission, fraud or mistake or substantially contributed thereto by his act, neglect or default.
>
> …

68 The plaintiffs' reference to s 160 (in particular, s 160(1)(*b*)) of the LTA did not broaden the fraud exception in s 46(2)(*a*), nor did it make it any easier for the plaintiffs to establish. The Court of Appeal in *United Overseas Bank Ltd v Bebe bte Mohammad* [2006] 4 SLR(R) 884 ("*Bebe*")[72] made this clear in the following passages after going through a detailed analysis of the parliamentary debates relating to s 160. The court said at [50]–[51] that:

> 50 … we should read s 160(1)(*b*) as stating the consequences that are to flow from any fraud, omission or mistake of the party who obtained the registration of the instrument. Section 160(1)(*b*) provides the means to rectify the

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[72] DBOA, Tab 22.

> land-register on the ground of fraud, omission or mistake that may be referable to the acts of the registered proprietor coming within the exceptions to s 46(2) of the LTA.
>
> 51 The construction we have given to s 160(1)(*b*) disposes of the argument … as to whether the fraud contemplated by s 160(1)(*b*) could refer to the fraud of any person. …

In other words, s 160 only gives the power to rectify the land register. The grounds for doing so are provided by s 46(2) alone.

69 Turning to s 46(2), the general approach towards a challenge under this section was summarised by the Court of Appeal in *Loo Chay Sit v Estate of Loo Chay Loo, deceased* [2010] 1 SLR 286 at [14][73] as follows. The first defendant, as the party claiming that he owns the Property, must establish his legal title to it. But in doing so he is entitled to rely on the presumption of indefeasibility afforded to a registered owner of a property under the LTA. All he needs to show, therefore, is that he is the registered owner of the Property. The plaintiffs will then bear the legal burden of establishing one of the limbs under s 46(2) so as to impugn the first defendant's title.

70 In this case, the parties did not dispute that the first defendant paid the second defendant for the Property and is the current registered owner. The first defendant enjoys indefeasibility of title unless the plaintiffs can show one of the grounds prescribed under s 46(2). The plaintiffs relied on the fraud exception under s 46(2)(*a*). There are two aspects to this analysis which I shall deal with in turn. First, what is fraud under s 46(2)(*a*)? Second, who does this fraud need to be perpetrated by?

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[73] DBOA, Tab 12.

71 The definition of fraud under s 46(2)(*a*) of the LTA is neatly encapsulated in the following two passages in *Bebe* (at [22] and [34]):

> 22 … the mere failure to make further inquiries could not amount to wilful blindness akin to fraud as there was no dishonesty, moral turpitude, want of probity, or intent on the part of UOB's solicitors to disregard the respondent's rights. At worse, as counsel contended, Ms Loo was guilty of negligence or a failure to exercise due diligence. Counsel … [contended] that a mere failure of UOB's solicitors to be more vigilant and to make further inquiries would not *of itself* prove fraud on their part unless their suspicions that a fraud was being perpetrated had been aroused and they abstained from doing so for fear of finding out the truth. … We accept counsel's submission that the evidence showed that the conduct of UOB's solicitors amounted to no more than negligence or lack of due diligence in finding out the true state of affairs.
>
> …
>
> 34 The hallmark of fraud is dishonesty or moral turpitude, which usually stems from greed, and greed simply means taking something of value which does not belong to you. …

In other words, there must be either an actual intent to deceive or to be dishonest, or there must be wilful blindness in the sense that the defendants' suspicions were aroused but they did not take steps to find out more for fear of discovering the truth. Negligence will not suffice.

72 As to the question of who the fraud must be perpetrated by, the plain words of s 46(2)(*a*) make clear that the fraud must have been perpetrated by the registered proprietor or his agent. This is again confirmed by *Bebe*, where the Court of Appeal at [15] cited with approval the following passage from the Privy Council decision of *Assets Company, Limited v Mere Roihi* [1905] AC 176 at 210:

> Fraud by persons from whom [the registered proprietor] claims does not affect him unless knowledge of it is *brought home to him or his agents*. The mere fact that he might have found out

> fraud if he had been more vigilant, and had made further inquiries which he omitted to make, does not of itself prove fraud on his part. But if it be shewn that his suspicions were aroused, and that he abstained from making inquiries for fear of learning the truth, the case is very different, and fraud may be properly ascribed to him.
>
> [emphasis added]

This passage and the above passages (at [71]) work hand in hand. Because only fraud by the registered proprietor or his agents will suffice to fulfil the requirement under s 46(2)(*a*), it follows that the mere failure to inquire cannot satisfy the fraud requirement as the dishonesty will not have been "brought home". Only if the registered proprietor deliberately fails to inquire despite being given a chance to find out the truth can the fraudulent intention properly be inferred against him.

73 In the present case, the registered proprietor is the first defendant and therefore the fraud must have been perpetuated by him or his agent. However, the plaintiffs' statement of claim and submissions disclose that the main fraud that they complained of was that Kavena conveyed the Property a second time in 1895 to the Hindoo Temple Trustees when he knew that he had no title to transfer, because he had already transferred title to the Property to Jayna in 1879. Among other things, the plaintiffs also alleged that the common solicitors to the transactions failed to conduct proper title searches and that the defendants ought to have known that Kavena had conveyed title to the Property to Jayna who in turn conveyed it to Syed Allowei and finally to Syed Ahmat. Hence, the alleged fraud lay in the defendants knowing that they did not have title to the Property but continuing to insist that they did.[74]

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[74] ABD, Tab 1, pp 10-11.

74 I did not accept these submissions. The plaintiffs were alleging that the fraud in this case was in Kavena's conveyance to the Hindoo Temple Trustees (who in turn conveyed the Property to the second defendant, who then further conveyed it to the first defendant). To begin with, there was no evidence that Kavena's conveyance were tainted by fraud. Apart from saying that the solicitors to the conveyances were common to both sides, the plaintiffs did not adduce any evidence to show that there was fraud involved when Kavena made the transfer to the Hindoo Temple Trustees in 1895. To the extent that the plaintiffs were saying that the common solicitors failed to conduct title searches, this would not be fraud but merely negligence.

75 Even if Kavena's conveyance to the Hindoo Temple Trustees was tainted by fraud, there is absolutely no evidence that the second defendant knew of or participated in this fraud. And although wilful blindness can lead to an inference of fraud, I found that there was no such wilful blindness on the part of the second defendant. The time interval between 1895 (when Kavena conveyed the Property to the Hindoo Temple Trustees) and 1977 (when the Hindoo Temple Trustees conveyed it to the second defendant) was about 82 years. It was very unlikely that a conveyance some 82 years ago would arouse the suspicions of the second defendant when the Property was conveyed to him, especially since the plaintiffs could not show that there was any suggestion of impropriety that had been specifically brought to the second defendant's attention. To the extent that the plaintiffs said that the second defendant would have discovered Kavena's fraud by looking into the historical conveyances of the Property, this, again would amount to negligence or lack of due diligence at most, which *Bebe* has made clear does not amount to fraud.

76 Given that I have found no fraud on the part of the second defendant, the plaintiffs' case against the first defendant similarly fails. The first defendant is even further removed from the conveyances than the second defendant and any fraud is simply too far away to tarnish him.

77 The plaintiffs' entire case seemed to be founded on a misguided understanding of the Torrens system. The plaintiffs' submissions amounted to saying that because they had an interest in the Property prior to it being brought under the Torrens system, every subsequent registered proprietor of the Property under the LTA must check afresh to see whether the plaintiffs had an interest; otherwise they would have assumed title fraudulently. This would make a mockery of the Torrens system and the indefeasibility of title that it affords. In *TSM Development Pte Ltd v Leonard Stephanie Celine* née *Pereira* [2005] 4 SLR(R) 721 ("*TSM*"),[75] the Court of Appeal was faced with a similar challenge but from an adverse possessor. The court noted at [44] that interests in land which already subsisted when that land was brought under the Torrens system would have to be protected by lodging a caveat while the land is qualified. Once the land becomes unqualified, then all unprotected interests which are not overriding interests would be overreached. This was to ensure the integrity of the Torrens system. In the present case, the plaintiffs did indeed lodge a caveat but had allowed it to lapse. The first defendant's title is now indefeasible and the plaintiffs cannot impugn it based on the fact that it may have had an interest in the Property prior to it being brought under the Torrens system.

78 Hence, even though the threshold for striking out a claim is high, I found that it was met on these facts. The plaintiffs' allegations of fraud were bare

[75] DBOA, Tab 19.

assertions and the evidence did not indicate that there was fraud in the conveyances of the Property to the defendants who were *bona fide* purchasers. This is especially so in the face of the Torrens system which *explicitly* precludes parties like the plaintiffs from going behind the indefeasibility of title except in very limited circumstances. The plaintiffs' claim fell far outside these circumstances.

Conclusion

79 In summary, I affirmed the AR's decision to strike out the plaintiffs' claim on the following grounds:

(a) The action was clearly time-barred under s 9 (read with s 10) of the Limitation Act as more than 12 years had passed since Kavena's initial transactions of 1895. Even if there were fraud and s 29 of the Limitation Act applied to postpone the time limitation, it would have started to run from 1994. By then the trustees would have known of the purported fraud as Syed Jafar had lodged a caveat with the Registry and threatened to take action against the second defendant. The action would have been time-barred in 2006.

(b) The plaintiffs' considerable delay in taking action after the discovery of purported fraud in 1994 prejudiced the defendants who could avail themselves of the defence of laches.

(c) The defendants, specifically the first defendant, had an indefeasible title under the LTA. The plaintiffs could not show any evidence that there was fraud in the defendants' conveyances in 1977 and 2000.

80 Accordingly, I dismissed the appeal. I also ordered the plaintiffs to pay to the defendants the costs of the appeal fixed at $16,000 (inclusive of disbursements).

Tan Siong Thye
Judge

Kirpal Singh s/o Hakam Singh and Oh Hsiu Leem Osborne (Kirpal & Associates) for the plaintiffs;
Tan Hsuan Boon (Wee Swee Teow LLP) for the defendants.