IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 84

HC/Originating Summons No 186 of 2018

In the Matter of Section 21(1)(b) of the
Supreme Court of Judicature Act (Cap 322)

And

In the Matter of Order 55D Rule 4(3)(b) of the
Rules of Court (Cap 322 Rule 5)

Between

Edmund Tie & Company (SEA) Pte Ltd

… *Applicant*

And

Savills Residential Pte Ltd

… *Respondent*

JUDGMENT

[Civil procedure] — [appeals] — [leave]

Edmund Tie & Company (SEA) Pte Ltd
v
Savills Residential Pte Ltd

[2018] SGHC 84

High Court — HC/Originating Summons No 186 of 2018
Choo Han Teck J
4 April 2018; 16 April 2018

19 April 2018 Judgment reserved.

Choo Han Teck J:

1 A flat in Simei Street 4 was sold for $1,251,000 in 2011. The purchaser's real estate agent was Lim Chee Mei ("Lim") from the applicant company. The vendor's agent was Fong Kok Hung ("Fong") from the respondent company. The vendor paid Fong 2% of the sale price as his commission. No trouble arose from that, but Fong had a co-broking agreement with Lim. Therein lies the dispute. Lim claims that the co-broking agreement provided that Fong will share the 2% commission equally with her, that is, 1% of the commission amounting to $12,510. The applicant thus sued the respondent for $13,385.70 (which is $12,510 with the Goods and Services Tax ("GST") added).

2 The co-broking agreement was reduced in writing and the material clause reads as follows —

> You hereby agree to pay [applicant] a co-brokerage fee of Singapore Dollars SIX THOUSAND TWO HUNDRED FIFTY-

> FIVE plus GST or 50% of the commission payable by the vendor to you, whichever is higher.

The dispute arises because Fong produced the original agreement with the words "or 50% of the commission by the vendor to you, whichever is higher" struck out. At the trial, Lim produced a copy with those words written back in by Lim.

3 The trial was fought over the correct version of the contract. If the words in question were properly struck out, then all that Lim would have been entitled to was $6,225 plus GST. If not, then Lim would have been entitled to $13,385.70.

4 Evidence was led by counsel for the parties as to how the agreement was executed. Each party has its own version concerning the reference to the entitlement to 50% of the commission.

5 In spite of allusions to Fong having committed himself to sharing the commission with others as well as Lim, the trial judge found in favour of Fong's version. Lim then found herself in a worse position than before she commenced the action – the trial judge found that having claimed a contract specifically for $13,385.70 and nothing less, Lim, having that claim dismissed, had no crumbs to pick. This case is a tragic-comedy of minor proportions. It is entirely plausible that Fong had agreed to share the 2% commission with Lim only to realise that he had committed himself to share it with another agent. If that were the case, he should be paying the other agent from his own share. But the case was not fought on this basis. The applicant's statement of claim prayed for the payment of $13,385.70 as the specific contract sum, no more, no less. And the applicant

fought her case on the basis that the words "or 50% of the commission by the vendor to you, whichever is higher" were improperly struck out.

6 Mr Tan Bar Tien, counsel for the applicant, sought leave before me to appeal against the District Judge's dismissal of its claim. Mr Tan argues that Fong had never denied that $6,255 was due to Lim and that she (Lim) ought to be awarded that sum at the very least. Mr Kenny Khoo, counsel for the respondent, concedes that $6,255 was due to Lim, but submits that the applicant had tied its own hands in the trial by going on an "all or nothing" basis and thus cannot now relaunch its claim when it has gotten nothing. Before me, Mr Khoo further submits that the applicant cannot claim a relief which is inconsistent with the applicant's version of the facts.

7 Mr Tan now claims that he had submitted to the trial judge that his client ought to be paid at least $6,255 but the District Judge had "ignored" that submission. In his arguments before me, Mr Tan submits that although he did not ask to amend his statement of claim, the court ought to have awarded his client $6,255 under the fourth prayer of the reliefs sought in the statement of claim. The fourth prayer reads "such further or other relief as this Honourable Court shall deem fit."

8 Mr Tan now argues, in a passage in his written submissions under the heading, "Grave injustice and or miscarriage of justice", that

> [t]he only issue and or question for determination that the Honourable [District Judge] should have concentrated her mind on was simply to determine *what* share of commission was agreed upon – whether the sum of $6,692.85 or $13,385.70 was owing from the [respondent] to the [appellant].

He went on to say that "the Honourable [District Judge's] decision effectively deprives the [appellant] of a single cent of commission" [*sic*]. The application before me is an application for leave to appeal against the District Judge's dismissal of the applicant's claim. Since the amount involved is only $13,385.70, at best, or just $6,255, the applicant has to satisfy the court that in spite of the relatively low sum claimed, he should be allowed to appeal, not just because the justice of the case is strongly in his favour, but so are the merits — the two do not always overlap.

9 This is a straightforward claim for a fixed sum under a contract but the applicant's solicitors filed a statement of claim that is nine pages long, and yet missed out eight crucial words – "or such sum as the court deems fit" immediately after the words, "[a]nd the [applicant] claims against the [respondent] ... the sum of $13,385.70". On the applicant's claim, even without the phrase "or such sum as the court deems fit", the court is obliged to find whether the contract sum was $13,385.70 or $6,255.

10 Even at the close of the submissions, before judgment, the applicant could have asked the court for leave to amend its statement of claim by inserting the crucial eight words. The trial judge might not have granted an application to amend the claim, but all that Mr Tan needed to do was to ask. But he did not. Through Mr Tan, the applicant now wants leave to appeal to the High Court, but what can the High Court do in these circumstances? The Court may award less but not more than what an applicant claims; granting leave to appeal will thus be a futile exercise. And an applicant cannot ask for a relief that relies on facts that he has challenged throughout the trial. When procedure has not been observed it is incumbent upon the party in breach to take steps to rectify its error or omission. If, as in this case, the rectification calls for an application to amend

the inadequate claim, the court may grant leave if it appears fair or just to do so. The party in error cannot leap across this step and expect judgment in its favour on a claim that, unamended, has no merits.

11 "The justice of the case" is sometimes, as in this application, a cry in desperation, and one that conceals the fact that "justice" has many facets and may sometimes turn to show another face – that of fairness. The respondent had taken a consistent stand throughout, yet found itself drawn into litigation, which the applicant refuses to abandon even now. The applicant, on the other hand, made two basic errors, and even now, has not addressed them. First, it did not plead its case adequately. Second, it did not make any attempt to rectify its case, but insists that its case was sufficient. Well, it is not.

12 Mr Tan's argument that the applicant was entitled to the award of $6,255 in the court below because he had pleaded "such further or other relief as the court deems fit" is of no help in this case because that was pleaded as a separate relief and such prayers are intended to enable the court to make such orders that may facilitate the execution of the main orders. The main order in this case had the applicant succeeded, would have been that the respondent pays the sum of $13,385.70. The words "or such other sum as the court deems fit" ought to follow the main prayer as mentioned at [9] above.

13 To see this as a triumph of form over substance is to underestimate the full majesty of substance. It is substantive law and not procedure that occupies the throne, but one must climb the steps of procedure if he is to pluck the crown. Part of the reason law is regarded as a discipline is that solicitors are required to observe procedure, which is an essential part of respecting the law. The number of young lawyers today far outnumber that in Mr Tan's youth, and it is crucial

to the profession that fledgling lawyers learn that competence derives its essence from discipline.

14 The trial judge below had made the correct order in not granting something the plaintiff did not ask for. And for the reasons above, I will not exercise my discretion in granting leave to appeal. The applicant's application before me for leave to appeal is dismissed with costs. I will fix costs at $1,500 with reasonable disbursements.

- Sgd -
Choo Han Teck
Judge

Tan Bar Tien (B T Tan & Company) for the applicant;
Kenny Khoo and Chiang Wan Ting (Ascentsia Law Corporation) for the respondent.