

Ajit Chandrasekar Prabhu and another v Yap Beng Kooi and another
[2014] SGHC 68

Case Number : Suit No 735 of 2013 (Registrar's Appeals No 67 and 80 of 2014)
Decision Date : 11 April 2014
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Lim Tong Chuan (Tan Peng Chin LLC) for the plaintiffs; Ho May Kim (Tan Kok Quan Partnership) for the defendants.
Parties : Ajit Chandrasekar Prabhu and another — Yap Beng Kooi and another

Civil Procedure – Striking out

11 April 2014

Choo Han Teck J:

1 This was a cross-appeal against an order to strike out portions of the plaintiffs' statement of claim by the assistant registrar. The plaintiffs purchased the property known as 19 Camden Park ("the Property") from the defendants for \$25,000,000. The contract was executed on 1 February 2013 and it was agreed that the completion of the sale was to take place on 29 April 2013.

2 The plaintiffs initially claimed that the defendants were in breach of the terms of the contract of sale. They claimed that the defendants gave a warranty that no unauthorised construction had been carried out on the property. They claimed that by reason of the unauthorised construction that was – in fact – carried out on the property, they suffered loss in having to rectify the unauthorised work. The plaintiffs also claimed \$1,000,000, which was alleged interest for late completion. The plaintiffs were represented by Mr Lim Tong Chuan and Miss Ho May Kim represented the defendants.

3 A dispute arose, however, as a result of certain works that were done to the second level of the Property by the defendants in 2008. The plaintiffs claimed that it was only sometime in April 2013 that they were informed that these works on the Property were not duly authorised by the appropriate authorities. In July 2013, the plaintiffs commenced major renovation works, which included rectification works to the second level of the Property, presumably to bring it in line with regulatory restrictions. On 23 July 2013, the plaintiffs, through their solicitors, wrote to the defendants claiming S\$958,018.51. This sum was for the rectification work, loss of use of the building for 6 months, and alternative accommodation costs for 6 months. The defendants claimed they were traveling during this period, and hence did not respond to the plaintiffs' letter.

4 On 16 August 2013, the plaintiffs filed a writ of summons and statement of claim. In their original statement of claim, the plaintiffs claimed the same amount of S\$958,018.51. On 30 September 2013, the plaintiffs amended their statement of claim for the first time, but did not make any substantial change to the amount claimed. On their second amendment dated 15 January 2014, however, they made significant changes. The plaintiffs' amended claim was for "the sum of S\$363,516.54 or S\$572,192.76; and/or the sums of S\$297,516.54 and S\$1,000,000 and/or S\$762,256.25". The latter three figures represent the cost of rectification works, interest for late completion (calculated based on Condition 9.2 of the Law Society of Singapore's Conditions of Sale 2012 ("SLA")) and loss of the use of the balance purchase price for six months. These figures arose

from the introduction of arguments that were not present in the original and amended statements of claim.

5 In the statement of claim (Amendment No. 2), the plaintiffs introduced three new claims, namely, that:

- (a) as a result of the defendants' unauthorised works, there was a defect in the title of the Property ("defect in title argument"),
- (b) as a result of the defect in title, the defendants were not in a position to complete the sale and purchase on 29 April 2013, and that the sale and purchase would not be deemed to have been completed until the unauthorised works were rectified ("failure of completion argument"); and
- (c) it was an implied term of the sale and purchase agreement that the defendants convey to the plaintiffs good title to the Property ("implied term argument").

6 The defendants applied to strike out various paragraphs in the plaintiffs' statement of claim (Amendment No. 2). The assistant registrar struck out paragraphs 3.2, 6, 15.2, 16.2, 16.3 and portions of paragraphs 7 and 17.2. Paragraph 3.2 merely set out Condition 9.2 of the SLA. Paragraph 7 merely stated "[t]he Agreement was purportedly completed on 29 April 2013". It was a one-sentence paragraph. In respect of paragraph 7, the assistant registrar struck out the word "purportedly".

7 Paragraphs 15.2, 16.2 and 16.3 (which were sub-paragraphs in the particulars of the plaintiffs' losses), and 17.2 were also ordered to be struck out. These paragraphs are set out below for easy reference:

15.2the Defendants were not in a position to complete the sale and purchase on 29 April 2013 and the same shall not be deemed completed until the rectification works on the Illegal Extension are completed and/or the defect to the title of the Property is removed.

...

16.2Interest under Condition 9.2 of the SLA; and/or 8% x 6 months x
SGD25,000,000: SGD1,000,000.00

16.3Loss of use of balance purchase price of SGD23,750,000 for 6 months SGD762,256.25

...

17.2[the plaintiffs claim] the sums of SGD297,516.54 and SGD1,000,000 and/or SGD762,256.25 on the breach of the implied warranty on good title;

...

The rest of paragraphs 15, 16 and 17 were not disturbed.

8 Also, the assistant registrar granted leave to the plaintiffs to amend their statement of claim (Amendment No. 2) by replacing paragraph 6 (which had been struck out) with "[i]t is an express term of the Option to Purchase that "The Property is sold subject to any restrictive and other covenants and conditions, easements and reservations affecting the Property but otherwise free from

encumbrances"" and adding the words "pursuant to cl 2 of the Option to Purchase" at the end of paragraph 13.4. Paragraph 13.4 read, "[t]he Defendants have failed... to convey to the Plaintiffs, a good title to the Property". Clause 2 of the option to purchase read, "the Property is sold subject to any restrictive and other covenants and conditions, easements and reservations affecting the Property but otherwise free from encumbrances". In sum, these amendments served to replace the "implied term argument" – which had been struck out – with an "express term argument". The assistant registrar also ordered costs to be paid by the plaintiffs to the defendants, fixed at \$3,500.

9 Parties subsequently appealed against the orders of the assistant registrar. In Registrar's Appeal No 80 of 2014, the defendants appealed against:

- (a) the refusal to strike out paragraphs 13.4, 15.1, 16, 16.1 and part of 17.2; and
- (b) the order for leave to the plaintiffs to amend their statement of claim, as specified in [8].

10 In Registrar's Appeal No 67 of 2014, the plaintiffs appealed against the assistant registrar's decision, praying for an order that his decision be set aside, and that the plaintiffs be granted the following orders, namely:

- (a) that the defendants' Summons No 297 of 2014 against the plaintiffs be dismissed with costs,
- (b) that the costs of the appeal be paid by the defendants to the plaintiffs; and
- (c) such further or other orders as the Honourable Court deems fit or just in the circumstances.

11 I am of the view that this was not an appropriate case for an application under O 18 r 19(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed). The power to strike out a statement of claim – or parts of it – should only be exercised in plain and obvious cases, and not "by a minute and protracted examination of the documents and facts of the case to see if the plaintiff really has a cause of action" (see *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [18]). The power to strike out under O 18 r 19(1)(a), in particular, is draconian and "can only be exercised if it is patently clear that there is no reasonable cause of action on the face of the pleadings" (see *Ng Chee Weng v Lim Jit Ming Bryan and another* [2012] 1 SLR 457 at [110]).

12 In this case, even if the plaintiffs' "failure of completion argument" and "implied term argument" seemed weak, it was not plain and obvious that these arguments should have simply been struck out at this interlocutory stage. There may still be room for arguments on the law regarding the legal meaning of "completion" in a conveyance. There may also be issues regarding the facts of the case (the significance of the defect in question and whether there were any safety implications). I need not concern myself with the merits of this case – these are matters for the trial judge. The defendants are entitled to submit that there is no case to answer after the plaintiffs have presented their case at trial.

13 I thus dismiss the defendants' appeal and allow the plaintiffs' appeal in part (subject to their appeal against costs). Costs of the application below and this appeal shall be costs in the cause.