Lee Tat Development Pte Ltd *v* Management Corporation Strata Title Plan No 301 [2015] SGHC 44

Case Number	: Suit No 1087 of 2012 (Summons No 6062 of 2014)
Decision Date	: 12 February 2015
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Chelva R Rajah SC, Tham Lijing and Stephanie Tan (instructed), and Balasubramaniam Ernest Yogarajah (Unilegal LLC)) for the plaintiff; Tan Chee Meng SC, Quek Kian Teck Gabriel, Sngeeta Rai and Wong Shu Yu (WongPartnership LLP) for the defendant.
Parties	: Lee Tat Development Pte Ltd — Management Corporation Strata Title Plan No 301

Civil Procedure – Striking out

12 February 2015 Judgment Reserved.

Choo Han Teck J:

1 If there is such a thing as an indomitable spirit of litigation, it is exemplified in this action. The parties and their predecessors-in-title first fought over a right of way which was granted to the residents of the "Grange Heights" condominium. That right of way was granted by the High Court over a small piece of land owned by the present plaintiff's predecessor-in-title. The parties fought all the way to the Court of Appeal. That action in Suit 3667 of 1974 commenced in 1974.

2 The result (I cannot bring myself to use the word "final" when these two litigants are concerned) was that the right of way was recognised by the Court of Appeal, but between 1974 to date, a period of 41 years, the parties went to court in several more actions over the same right of way, culminating in the Court of Appeal's decision in November 2010, in what may be described as the fifth action. This suit is the sixth.

3 The story in brief is that the plaintiff who owns the legal title to the property over which the right of way extended, mounted various challenges to the entitlement of the defendant to use that right of way even though that right was recognised by, not one, not two, but three, different Courts of Appeal. Eventually, the plaintiff successfully argued that the right of way could not be used to benefit a non-dominant tenement, and could not be used in an excessive manner, and through that, a fourth Court of Appeal in 2008 extinguished the defendant's right of way through the plaintiff's property.

4 That led to the defendant's attempt to have a fifth Court of Appeal (which was, in fact, the same court as the fourth Court of Appeal) to reverse its previous decision. It failed.

5 Now, the plaintiff has commenced this action seeking damages for decades of, what it considers to be, wrongful use by the defendant of the plaintiff's land. The statement of claim is far too expansive than is required for good drafting. It reads like a mixture of pleadings with affidavit evidence and submissions. But through all that, the thrust of the plaintiff's claim is that although the use of that land was sanctioned by the court, the defendant had abused the court process because

the claim for the right of way was not the real reason the defendant went to court. The real reason, the plaintiff claims, was to enable the defendant to "keep the prestigious name and address to which it also had no lawful entitlement".

6 Secondly, the plaintiff claims that the defendant is liable for damages for malicious prosecution in misleading the court in two of the previous actions between them, and for commencing those actions with no reasonable cause.

7 Thirdly, the plaintiff pleads that the defendant is liable for having made malicious falsehood against it when the defendant's chairman told the press falsely and maliciously that the residents of the defendant's condominium had the right of access "forever" and that they had a right of "convenient access from Grange Road".

8 Fourthly, the plaintiff claims that the defendant's conduct amounted to an exploitation of the plaintiff's land in circumstances that amounted to an actionable trespass.

9 The parties have already reached the stage where the amended defence was filed on 2 October 2014. The action itself having been filed on 24 December 2012 and served on the defendant on 2 January 2013. In my view, this matter should be determined on the merits at trial. The present application before me is an interlocutory application by the defendant to strike out the plaintiff's action. Mr Tan Chee Meng SC, counsel for the defendant, submits that the statement of claim disclosed no reasonable cause of action and that it is a frivolous and vexatious action. He also argues that this action is an abuse of the process of court.

10 Mr Tan SC submits that the defendant's right had been recognised in a total of 11 judicial pronouncements and there is therefore "a clear lack of seriousness and purposelessness in the claim". He submits that the allegations in the statement of claim are "manifestly groundless" and "without foundation". Further, Mr Tan SC submits that the plaintiff's claim based on "malicious prosecution" is misconceived because complaints of malicious prosecution lie in the domain of the criminal law. It has, he argues, no place in the civil law and cannot found any cause of action in that name.

11 Mr Chelva Rajah SC, counsel for the plaintiff, argues that the plaintiff is entitled to claim the benefit of the tort of malicious prosecution. It is not settled law that malicious prosecution lies solely in the domain of the criminal law. It seems to me that even if the law is settled, Mr Rajah SC is entitled to try and unsettle it. It is open to counsel to argue that such a cause of action exists, and if not, that the court should make it so for the benefit of the plaintiff in this sort of situation. Mr Tan SC is, of course, entitled to argue that this would require legislative intervention. Such arguments go to the merits of the action and ought to be answered at trial. They have to be tried and not struck out at an interlocutory stage.

12 Mr Tan SC submits that the thrust of the plaintiff's action is for damages for having deprived it of use of the easement land measuring about 9,300 square feet, but that is a misconceived claim according to Mr Tan SC because that piece of land was designated as a road reserve which precluded the plaintiff from any other use. Mr Tan SC submits that the plaintiff had tried in vain to have the designation changed.

13 An action may be struck out under O 18 r 19 (Cap 322, R 5, 2014 Rev Ed) as "frivolous or vexatious" when it is clearly and manifestly so on a plain reading, or that it discloses no cause of action, or, where the claim is legally or factually unsustainable. Striking out may be a swift and easy way to get rid of a troublesome matter, but one should avoid the temptation to do so if an argument can be made at trial, however weak that argument might be perceived to be. I accept Mr Rajah SC's

submission that there are factual disputes arising from the pleadings that must be for the trial judge to consider.

14 The claim for damages for malicious prosecution seems the strongest of the causes of action pleaded, but it is strong only in relation to the other three causes pleaded. It seems to me, in light of history and the many judgments that preceded this, that the plaintiff's present action is tenuous, but surprises have sprung in the long saga, and who is to say more will not come? The final word will surely be recorded in this series, but it will not be from this court.

15 In this case, either the trial judge accepts Mr Rajah SC's submission that the claim in malicious prosecution is sustainable or he may accept Mr Tan SC's submission that it is not. In either case he will have to evaluate the facts, which are themselves in dispute. The facts that the plaintiff relies on are commingled in all its causes of action and not just for the malicious prosecution claim. Mr Tan SC, however, has another option remaining – to submit no case to answer. I thus dismiss the defendant's application with costs reserved to the trial judge.