Chan Kin Foo *v* City Developments Ltd
[2013] SGHC 61

Case Number : Suit No 586 of 2011(Registrar's Appeal No 312 of 2012)

Decision Date : 14 March 2013

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Joseph Chen (Joseph Chen & Co) for the plaintiff; Tham Wei Chern, Tan Kai Liang and Faith Boey (Allen & Gledhill LLP) for the defendant.

Parties : Chan Kin Foo — City Developments Ltd

Civil Procedure – Pleadings – Striking Out

Constitutional Law – Discrimination

14 March 2013

Andrew Ang J:

1 This was an appeal against the Assistant Registrar's ("AR") decision to strike out parts of the Appellant's statement of claim pursuant to O 18 r 19(1) of the Rules of Court (Cap 322, R5, 2006 Rev Ed) ("ROC"), on the ground that it disclosed no reasonable cause of action.

2 The Appellant, Chan Kin Foo ("Chan"), was the owner of a unit in Lock Cho Apartments ("the Property") which was sold *en bloc* on 14 August 2006 ("the Collective Sale"). Chan was part of the minority who opposed the Collective Sale. He sued the Respondent, City Developments Ltd ("CDL"), the purchaser of the Property, on the ground that CDL's purchase of the Property was in violation of Art 12 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution") and Arts 1, 7 and 17 of the Universal Declaration of Human Rights ("UDHR") as it discriminated against the rights of the minority to own property.

3 CDL applied to strike out the action, arguing that it disclosed no reasonable cause of action and was an abuse of process as Chan had elected not to raise his objections with the Strata Titles Board ("STB") *before* the Collective Sale was approved on 14 August 2006. On appeal, CDL further averred that the claim was brought against the wrong party; the proper party was the Sale Committee which applied for the Collective Sale ("the Sale Committee"), and not CDL.

4 After hearing the parties, I dismissed the appeal and now give my reasons for the decision.

Factual background

5 Chan acquired strata title to 71C Jalan Raja Udang, Lock Cho Apartments, Singapore 329214, his unit in the Property ("the Unit") on 20 March 1974. He lived in the Unit until it was put up for collective sale pursuant to an agreement for the collective sale of the Property dated 20 February 2006 ("the Collective Sale Agreement").

6 CDL entered a bid for the Property and was awarded the tender for the Property sometime on or about 30 March 2006 ("the Tender Agreement"). The Tender Agreement and the Collective Sale

Agreement were submitted to the STB, which made an order on 14 August 2006 approving and ordering the collective sale of the Property to CDL. The owners were notified of the collective sale on the same date.

7 On 12 September 2006, lawyers for the Sale Committee, Rodyk & Davidson LLP ("Rodyk") wrote to Chan to inform him that the document for transfer of the Property to CDL ("the Transfer Document") was ready for his signature. Sessions for signing of the Transfer Document took place on 19 and 20 September, but Chan did not attend either session. Rodyk wrote to Chan again on 21 September 2006 in an attempt to arrange for signing of the Transfer Document by 28 September 2006. This letter warned Chan that if he did not respond by 28 September 2006, it would be assumed that he was not willing to sign the Transfer Document and an application would be made to the STB pursuant to s 84C of the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) ("the Act") for an ancillary order to appoint a person to sign the Transfer Document on his behalf. The letter was delivered in triplicate (by registered post, by hand to Chan's doorstep, and via the security guard working at the development who delivered it to Chan on 22 September 2006).

8 On 29 September 2006, after receiving no response from Chan, Rodyk sent a final reminder, again in triplicate, to Chan to sign the Transfer Document. Ms Young Poh Yoke ("Ms Young"), one of the three authorised representatives of the owners, deposed that she had hand-delivered this letter to Chan on 30 September 2006. A further attempt to have Chan sign the Transfer Document was made on 2 October 2006 via a note left at Chan's door by Ms Young. In this note, Ms Young warned Chan that if she did not hear from him by 4 October 2006, the three authorised representatives would "proceed to apply to Strata Title Board without further reference to you any more". [note: 1] On 3 October 2006, Rodyk also published a notice in The Straits Times requesting Chan to contact them urgently "regarding the execution of the documents relating to property transaction". [note: 2] According to CDL, Chan did not respond to either reminder.

9 In any event, Chan did not sign the Transfer Document or get in touch with Ms Young and/or Rodyk. Accordingly, on 6 October 2006, the three authorised representatives applied to the STB under s 84C of the Act to appoint Ms Young for the purposes of, *inter alia*, the execution of the Transfer Document and the delivery of vacant possession. The Transfer Document was executed by Ms Young for and on behalf of the Plaintiff on 14 November 2006 and the collective sale was completed on the same day.

10 On 22 May 2007, a letter of demand for vacant possession of the Unit was issued by CDL's solicitors at the material time, M/s Ramdas & Wong, and delivered by hand to Chan via the security guard. Chan refused to give vacant possession and instead made a police report on 25 June 2007 ("the Police Report"). Chan stated in this report that his signature for the Transfer Document had been forged and/or that "criminal intimidation" had been used in the transaction to wrongfully secure a transfer of the Unit to CDL without his consent. [note: 3] CDL applied for and obtained a writ of possession against Chan on 11 July 2007 and gained entry to the Unit on 20 July 2007. An inventory of the chattels in the Unit was taken before the bailiff sealed the gates of the Unit and changed its locks. On 2 August 2007, the police informed CDL of the Police Report and CDL made five attempts to have the police contact Chan in an effort to return the chattels to him.

11 The Property was demolished between August and December 2007. Prior to its demolition, on or about 26 and 27 July 2007, CDL re-entered the Unit for the removal and storage of the chattels contained within. On 20 September 2007, CDL also obtained a valuation of the chattels. When efforts to locate and contact Chan failed, some of the chattels were sold by auction on 20 October 2008.

12 Chan's share of the proceeds from the sale of the Property, amounting to $840,981.37, was paid into court pursuant to an order of court dated 15 February 2007. The balance stakeholder moneys, an additional sum of $37,985.49, were paid into court pursuant to an order of court dated 1 November 2007. These sums were released to Chan's solicitors, Joseph Chen & Co ("JCC") on 22 March 2011, pursuant to JCC's application for the same.

The Suit and hearing before the AR

13 Chan brought Suit No 586 of 2011 ("the Suit") to recover damages for wrongful transfer of the Property in disregard of the minority owners' interests, for an account of the chattels which were found in the Unit and sold, and a return of all remaining chattels which were found in the Unit.

14 CDL applied with Summons No 2443 of 2012 to strike out the action under O18 r 19(1) of the ROC and pursuant to the inherent jurisdiction of the court. CDL claimed that there was no legal basis for the claim that the sale of the Property was in violation of Art 12 of the Constitution as there was a valid and binding sale of the Property to CDL. CDL also claimed that the entire proceedings were an abuse of process as Chan had the opportunity to raise his objections with the STB but had chosen not to do so and was estopped from now bringing this claim.

15 The AR struck out Chan's claim that CDL had wrongfully taken possession of the Property ("the Property Claim") on the basis that it was "obviously unsustainable" and had not been specifically pleaded. The AR allowed the claim for an account of the chattels sold and a return of unsold chattels removed from the unit, save that he struck out those items which he deemed fixtures.

16 Chan appealed against the AR's decision and in the hearings before me focussed exclusively on the Property Claim. A further ground of appeal was raised, *viz*, that the boundaries of the Property were uncertain and it was incapable of being sold to CDL. However, this argument was quickly put to bed when CDL's lawyers produced a certified survey plan in a subsequent hearing which showed clearly that the boundaries were certain as at the date of the collective sale to CDL. This further ground of appeal hence became otiose. Because it was indicated to me during the hearings that Chan's objection was to the striking out of the Property Claim and not to the striking out of certain parts of the list of chattels ("the chattels claim"), I will confine these grounds of decision to the Property Claim.

Issues

17 The law on striking out is clear; if a claim discloses no reasonable cause of action or defence, is scandalous, frivolous or vexatious, may prejudice, embarrass or delay the fair trial of the action, *or* is otherwise an abuse of court process, it ought to be struck out. However, the power of striking out is to be exercised only in plain and obvious cases and the threshold for striking out an action is very high: see *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin* [1997] 3 SLR(R) 649.

18 The issues were as follows:

(a) whether or not the Property Claim disclosed no reasonable cause of action;

(b) whether the bringing of the Property Claim was an abuse of process; and

(c) whether the Property Claim was brought against the proper party and, if so, whether that was a ground for striking out the claim.

Whether the Property Claim disclosed no reasonable cause of action

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The constitutional claim

19 CDL argued that there was clearly no violation of Art 12 of the Constitution, which provided that "all persons are equal before the law and entitled to the equal protection of the law". It should be noted at the outset that while Chan's argument was that the Collective Sale was in violation of Art 12, his argument was essentially that *all* collective sales made under ss 84A to 84G of the Act violate Art 12 as there will be dissentient minorities whose "rights" may be affected.

20 The issue of whether collective sales in general violate Art 12 has been addressed by Choo Han Teck J in *Lo Pui Sang v Mamata Kapildev Dave (Horizon Partners Pte Ltd, intervener) and other appeals* [2008] 4 SLR(R) 754 ("*Lo Pui Sang*"), where the learned judge opined (at [7]) that:

> … the right to equal protection under Art 12(1) must be determined from the outset, that is to say that when a law is passed, it must apply to everyone equally. Hence, until the subsidiary proprietors decide who wishes to sell, there is no majority nor minority. The opportunity of selling a condominium *en bloc* is an equal opportunity to all subsidiary proprietors. Neither the Legislature nor the STB decides who the minority would be; the minority is decided by a vote of all the subsidiary proprietors. ...

21 While *Lo Pui Sang* was eventually overturned in the Court of Appeal, it was on a different ground and the remarks made in relation to Art 12 remain good law. It was argued on behalf of Chan that there is no clear Court of Appeal decision on this specific context and it cannot be claimed that Chan's case had no hope of success.

22 With respect, this was entirely the wrong approach to take. The fact that there is no Court of Appeal ruling on this particular situation does not mean that the law is murky; it simply shows that there is no real dispute about the application of the law to the situation. The principles which Choo J adopts are well established in the law and common sense, and their application to the context of a collective sale is uncontroversial.

23 There is a presumption that a particular law falls within the scope of Parliament's powers: see *Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR(R) 489 ("*Taw Cheng Kong*") at [79].

24 It is trite law that Art 12 is not intended to be an absolute right. The Court of Appeal in *Taw Cheng Kong* could not be clearer as to the meaning of Art 12. Referring first to the observations of the Malaysian court in *Public Prosecutor v Su Liang Yu* [1976] 2 MLJ 128 at 129 that the principles of equal justice under Art 12 were "settled and accepted", the Court of Appeal went on to opine (at 54):

> Clearly, the concept of equality does not mean that all persons are to be treated equally, but simply that all persons in like situations will be treated alike.

Choo J's approach in *Lo Pui Sang* was simply an application of that principle; the majority and minority at the point at which a collective sale is proposed are in a like situation, and an equal opportunity to sell is presented to both. The equality of this opportunity is reflected in the duty of the Sale Committee. The Court of Appeal opined in *Ng Eng Ghee v Mamata Kapildev Dave (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 ("*Lo Pui Sang (CA)*") (at [107]):

> As the SC [sales committee] is the agent of the subsidiary proprietors collectively, there is no point at which the SC may act solely in the interests of any group of subsidiary proprietors,

whether they are consenting or objecting proprietors. When an SC is first appointed, it is with a view to achieving a collective sale for *the benefit of* all the subsidiary proprietors. ... [emphasis in original]

25 This move toward greater consideration of *all* subsidiary proprietors *without discrimination* is also reflected in the 2007 amendments to the Act. It was explained in the *Singapore Parliamentary Debates, Official Report* (20 September 2007) vol 83 at cols 1994–1995 on the Second Reading of the Land Titles (Strata) (Amendment) Bill (Bill 32 of 2007), that amendments were being introduced to provide:

> ... additional safeguards and greater transparency for *all* owners involved in en bloc sales, *ie*, *both majority and minority owners* … [to] ensure that the interests of *all* owners are taken into consideration more adequately. ... [emphasis added]

26 It is the exercise of a choice which differentiates the minority and the majority, and it is impossible to tell at the outset who will fall into which category. It is therefore impossible for the legislator to be adopting a discriminatory policy at the time of the promulgation of ss 84A to 84G of the Act as there would be no class to discriminate against. Chan's argument is tantamount to saying that a person can unilaterally make a law unconstitutional by making a choice which differentiates him or her from others in his or her class. Such an argument is plainly absurd and cannot support a cause of action to be litigated in our courts.

27 I also note that the kinds of differences which Art 12 envisions are those relating to the nature of the individual and by reason of his or her identity in a particular class. Article 12(2) states that "there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth". These classic categories relate to characteristics inseparable from the individual's identity. The same cannot be said of any class of minorities whose only distinguishing characteristic is that they voted a different way from the majority; their choice is not an essential part of their identity, nor would they identify with that class in all contexts. The only context in which a member of the minority would identify with his or her class is in relation to the specific choice which has been made. I found that Art 12 was clearly not intended to cover a situation where a minority class is created by vote, let alone in the collective sale context where there is due compensation and clear procedure to prevent fraud and ensure that the views of the minority are heard.

The UDHR claim

28 Chan's second claim was that ss 84A to 84G are in violation of Arts 1, 7 and 17 of the UDHR. The only addition this argument makes to the constitutional argument is that it purports to create a right of property in Singapore by way of Art 17 of the UDHR where no such right exists.

29 The observations of Choo J in *Lo Pui Sang* (at [7]) are apposite in this context:

> … unlike the Constitutions of the countries referred to by Mr Rajah, the omission of a provision in our Constitution that would have ensured a fundamental right to own property was a deliberate omission given the scarcity of land in Singapore and as such, the court must recognise that there is no such fundamental right under our Constitution. ...

30 Given that our Constitution does not protect a right to property, Chan must be able to point to some reason why Art 17 of the UDHR forms part of local law. There were no submissions to this effect and I make the following observations.

31 First, the UDHR is not binding. The only argument for Art 17 to have any legal effect in Singapore is to first argue that it forms part of customary international law. Chan has not raised *any* argument that the right to property is, or should be considered, customary international law. There is no state practice or *opinio juris* which supports a right to property. In fact, state practice indicates the opposite conclusion. As CDL has pointed out in its written submissions, many countries have compulsory land acquisition legislation which clearly go against a right to property, including Malaysia (the Land Acquisition Act 1960 (Act 486) (Malaysia)), South Australia (the Land Acquisition Act 1969 (SA)), India (the Land Acquisition Act 1894 (Act No 1 of 1894) (India)) and Pakistan (the Land Acquisition Act 1894 (Act No 1 of 1894) (Pakistan)). This was not lost on Parliament when the Act was amended to make it easier for *en bloc* sales to take place. The *Singapore Parliamentary Debates, Official Report* (31 July 1998) vol 69 at col 602 on the Second Reading of the Land Titles (Strata) (Amendment) Bill (Bill 28 of 1998), states:

> This approach will facilitate the redevelopment of older buildings. It is also in line with the approach in other countries – Nova Scotia, New Brunswick and Ontario in Canada (80%); British Columbia, Canada (75%); Hawaii (80%) and Hong Kong (90%, but where the law also provides that the Chief Executive in Council may specify a lower percentage not less than 80% in certain circumstances). A higher percentage is not practical, a lower percentage not appropriate given the importance of the matter.

Given the widespread state practice allowing for collective sales by majority vote, the assertion that Art 17 of the UDHR is customary international law is wholly untenable and thus cannot support a valid cause of action.

32 Second, even if the right to property were customary international law, it would not be self-executing. It must first be incorporated into Singapore law: see *Yong Vui Kong v Public Prosecutor and another matter* [2010] 3 SLR 489 at [89]. There is no such incorporation and the right to property is wholly inconsistent with the Act.

33 Accordingly, I found that there was no basis whatsoever for the Property Claim and that the AR was right to strike out the claim.

Whether the bringing of the Property Claim was an abuse of process

34 I also found that the Property Claim was a fruitless one and these proceedings served no useful purpose. Chan was advocating a right of ownership which cannot possibly be granted. Subsequent to the collective sale, the strata subdivision scheme shown in the strata title plan from which Chan derived his interst as a subsidiary proprietor will have been terminated and the strata title plan cancelled. The Management Corporation will also have been dissolved. The Property has been razed to the ground and a new development put up. A new strata subdivision scheme will have been made allotting shares to new subsidiary proprietors. There was no possibility of giving Chan any right in the Property. Any attempt to restore Chan to his original position would also have had the absurd result of overriding the rights of the new subsidiary proprietors of the Property.

35 Chan had also been given due compensation for the Unit and there was no suggestion that the price given was unfair. It was unclear what damages could be rewarded given that a fair price had already been paid for the Unit and collected by Chan's lawyer on his behalf. It was unclear what useful purpose the claim had, given that this was not an application for *certiorari* but one for damages payable by CDL, a private party.

36 I am mindful of V K Rajah J's dictum on abuse of process for the purposes of striking out in *Chee*

Siok Chin v Minister for Home Affairs [2006] 1 SLR(R) 582 (at [34]), where he stated that one of the categories of abuse of process was where the proceedings brought were "*manifestly groundless or without foundation* or ***which serve no useful purpose*** " [emphasis in original in italics; emphasis added in bold italics]. On top of finding that the proceedings were manifestly without foundation, and I also found that they served no useful purpose.

37 I should add that I found the delay in bringing this claim inexcusable. Chan was legally advised in 2007. CDL had written to Joseph Chen & Co, counsel for Chan, as early as November 2007, while the Property was being demolished. It was submitted on behalf of Chan that it was not open to Chan to raise his objections with the STB within 21 days after the date of the notice of collective sale pursuant to s 84A of the Act because the STB had no jurisdiction to hear a constitutional claim. However, the fact that the STB did not have jurisdiction over a constitutional claim would not necessarily prevent it from referring that claim as a question for resolution to the High Court. Even if it were the case that the STB could not have done so, there would be nothing stopping Chan from bringing his constitutional claim directly before the High Court to impugn ss 84A to G of the Act and the collective sale of the Property. Proper process required Chan to bring this claim as soon as possible and, in any event, before the Property was demolished and new strata title issued. Yet, inexplicably, he chose to wait three years; it was his own deliberate inaction which made this claim purposeless.

38 Counsel for CDL also submitted that the Property Claim was an abuse of process on the basis of an extended doctrine of *res judicata*. It was argued that the proper process for bringing a claim against the Collective Sale was to raise an objection before the STB and that a failure to raise such objection precluded Chan from raising this objection in present proceedings. I was initially inclined to agree but, upon further reflection, I found that the doctrine of *res judicata* did not apply.

39 Counsel for CDL raised the decision in *Ashmore v British Coal Corporation* [1990] 2 QB 338 ("*Ashmore*") as support for the proposition that it was an abuse of process not to raise an objection before the preliminary tribunal. However, *Ashmore* was distinguishable. *Ashmore* concerned a joint complaint to an industrial tribunal of 1,500 female workers who were employed on less favourable terms than their male counterparts. The tribunal ordered that sample cases be selected for trial which would represent interests common to all 1,500 cases. The applicant did not seek to put her claim up for selection and when the test cases lost their claims, she sought to put her claim forward, arguing that she had objections to raise which were in addition to those issues which had been litigated. The Court of Appeal dismissed her application and found that this was a collateral attack on the earlier tribunal's decision, which had been made final.

40 In *Ashmore* and the other cases which CDL referred to, the concern was with an additional issue which should have been, but was not, raised before a lower tribunal. In *Ashmore*, the additional issues sought to be raised was an attempt to re-open a final decision of a lower tribunal by a side wind. The Court of Appeal went on to find that if there was fresh evidence which could "entirely change the aspect of the case" (at 354), this would not have been an attack on *res judicata*. This is different from seeking to litigate a claim which had not been, but could have been, decided by a lower tribunal. There is no final decision that the additional claim seeks to re-open and impugn. In other words, where a claim has not been litigated, the doctrine of *res judicata* cannot possibly apply. A failure to bring a claim may be a waiver of the applicant's rights, but it is not a collateral attack on some illusory final decision.

41 The decision to litigate an objection which had previously been waived may not always be an abuse of process. In any event, Chan's behaviour was inconsistent with a waiver of his rights to object to the Collective Sale. He continued to protest against the Collective Sale, refused to sign the

Transfer Document and refused to deliver vacant possession. In the Police Report (see [10] above), Chan stated that he had made "many personal complaints (more than 35)" to the Sale Committee.

42 Accordingly, I found that the Property Claim was not an abuse of process in the way in which CDL claimed, but it was an abuse of process in that it served no useful purpose and was inexplicably brought only after the point where the claim had become futile. The claim should therefore be struck out for abuse of process.

Whether the Property Claim was brought against the proper party

43 It was manifestly clear to me that the claim was misdirected. It was brought against CDL, a private party, but the action sought to be impugned was not CDL's action, but STB's action pursuant to its powers under s 84A of the Act. In fact, it was the entire scheme of ss 84A to 84G of the Act which Chan sought to impugn. It would be an absurd stretch of the imagination to hold CDL responsible for an act which was promulgated by Parliament. The proper way to have brought this complaint was by way of *certiorari* or declaration, not for damages against a private third party.

44 The collective sale is completed not when the tender is awarded but only when the STB makes an order approving the Collective Sale after receiving the Tender Agreement *and* the Collective Sale Agreement endorsed by the Sale Committee. As such, it was outside CDL's powers to have secured the Collective Sale by itself. I found that the submissions made on behalf of Chan were wholly misconceived as they focussed on the Tender Agreement and the "unconscionable bargain" made. [note: 4] This contractual understanding was entirely wrongheaded and should be disregarded.

45 I should add that I disagree with the submissions made on behalf of CDL fingering the Sale Committee as the proper party. The amended claim did not suggest that the Sale Committee had breached its fiduciary duties as agent of the subsidiary proprietors and, therefore, of Chan. The Property Claim was essentially about the legality of the Collective Sale process as outlined in ss 84A to 84G of the Act and the corresponding power which the STB exercised when it approved and ordered the Collective Sale on 14 August 2006. The STB was to play a proactive inquisitorial role in determining applications whenever objections had been filed (see *Lo Pui Sang (CA)* at [173] ([24] *supra*)) and approval was not a mechanistic process following submission of the Tender Agreement and Collective Sale Agreement. The decision of the Sale Committee, barring any wrongdoing, was insufficient to constitute the entire collective sales scheme.

46 While I found that the Property Claim was brought against the wrong party, I did not find that this was sufficient to strike out the claim. *Hong Alvin v Chia Quee Khee* [2011] SGHC 249 ("*Hong Alvin*"), which CDL raised in its support, was distinguishable from this case. *Hong Alvin* concerned the issue of *locus standi* and whether the *plaintiff* had the standing to bring a claim against the defendant. Quentin Loh J drew support from the English case of *Bradshaw v University College of Wales* [1988] 1 WLR 190 ("*Bradshaw*"), where executors for a settlor who had given some farmland to a college on charitable trust attempted to commence proceedings for breach of trust. Hoffmann J found that the executors had no interest in the charity and could not be regarded as beneficiaries. He accordingly struck out the claim. The issue in both *Bradshaw* and *Hong Alvin* relate to *locus standi*, which could not be remedied by an amendment to the pleadings. It was thus wholly consistent with O 18 r 19(1) of the ROC for such claims to be struck out. By contrast, it is not disputed that Chan has *locus standi* to bring a constitutional claim. If it had simply been that the Property Claim was brought against the wrong party, this could have been remedied by allowing for an amendment to the pleadings to join the correct party to the suit while litigating the remainder of the chattels claim against CDL. Any prejudice to CDL could be compensated with costs. This was thus not a valid ground for striking out the Property Claim.

Conclusion

47 I was mindful throughout that, as was so succinctly stated in *Singapore Civil Procedure* (Sweet & Maxwell, 2013) at para 18/19/6:

> ... the claim must be obviously unsustainable, the pleadings unarguably bad and it must be impossible, not just improbable, for the claim to succeed before the court will strike it out. ...

However, I was satisfied that the Property Claim was entirely hopeless and an abuse of process, for which it would be unjust to put CDL to the expense of litigation.

48 I accordingly dismissed the appeal and awarded CDL $20,000 in costs plus reasonable disbursements.

[note: 1] Annexure 8, affidavit of Young Poh Yoke dated 6 Oct 2006.

[note: 2] Annexure 7, affidavit of Young Poh Yoke dated 6 Oct 2006.

[note: 3] *Ibid.*, p 6.

[note: 4] Appellant's Written Submissions at para 19.