

Toh Her Chiew (Zhuo Huoshu) and another v Grand Isle Holdings Pte Ltd
[2012] SGHC 201

Case Number : Suit No 307 of 2012 (Registrar's Appeal Nos 355, 356 and 380 of 2012)
Decision Date : 03 October 2012
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Vijay Kumar Rai (Arbiters' Inc Law Corporation) for the plaintiffs; Jacqueline Lee Siew Hui (Allen & Gledhill LLP) for the defendant.
Parties : Toh Her Chiew (Zhuo Huoshu) and another — Grand Isle Holdings Pte Ltd

Civil Procedure – Pleadings – Further and better particulars – Striking Out

3 October 2012

Choo Han Teck J:

1 This is yet another case which emphasises the importance of pleadings. The facts and dispute that one can glean from the 19 pages of the Statement of Claim, the 18 pages of the Defence, and the 12 pages of the Reply, are as follows. The plaintiffs signed an option to purchase a property known as #18-21, 32 Segar Road in a condominium (known as "Blossom Residences") from the defendant who was the developer. The plaintiffs signed the option to purchase on 15 September 2011 and paid the defendant \$56,050 at the same time "as consideration for the Option to Purchase ("OTP)". The full purchase price for the flat was \$1,121,000.00. The plaintiffs claimed that the defendant made various misrepresentations in the sale brochure as well as through its agent, one Gary Ng. The plaintiffs did not complete the purchase of the flat after an extension of three weeks was granted by the defendant for them to do so. They alleged that they did not complete the purchase because of the misrepresentations made by the defendant. The defendant denied making any misrepresentation and averred that they refunded \$42,037.50 (being 75% of the option fee) when the plaintiffs decided not to proceed with the purchase.

2 When the trial judge has read the pleadings in this case he will be older but not wiser, for, despite being 19 pages long, the plaintiffs' Statement of Claim did not aver to the cause of action to which they are now praying for, and the relief sought, namely a declaration rescinding the option to purchase, a refund of the full option fee (\$56,050) and general damages to be assessed. The only explicit cause of action was a claim for fraud, but fraud is not an easy case to prove. On the facts pleaded, fraud seems to be a questionable claim. If, however, the plaintiffs have a cause of action in contract or tort, that is not apparent on the Statement of Claim. The thrust of the plaintiffs' averments refer to various misrepresentations. They say that by reason of the misrepresentations they "were induced to agree to acquire [the] OTP". The plaintiffs set out the misrepresentations in paragraph 8 of the Statement of Claim which I now set out verbatim –

The Plaintiffs repeat Paragraphs 3 to 7 and aver that the Defendant through its employees, servants or agents, did make the following representations ("the representations") to the Plaintiffs.

Particulars

Verbal Representations by Gary Ng of ERA to the Plaintiffs on 14th and 15th September 2011 at the Showflat

- a. That the Unit was of Type B2PH1 and was a double-storied apartment with a high ceiling in the living hall with 3 bedrooms with a total built-in area of 167 square metres with a great view.
- b. That on the rooftop of the Unit, the Plaintiffs would have an option to partition a room and use it as an additional room for either children or visitors to stay.
- c. Gary Ng also did not make any mention of "void area".

Sale Brochure handed to the Plaintiffs on 14th September 2011 at the Showflat

- d. The Sale Brochure which was handed to the Plaintiffs on 14th September 2011 at the entrance of the Showflat and a copy of which was also handed to the Plaintiffs by Gary Ng stated:-

"TYPE B2PH1

167 sq m/1,798 sq ft

*#18-21**

high ceiling"

- e. The Sale Brochure did not state that the area of 167 square metres was estimated only.
- f. The Sale Brochure did depict "void area" in respect of Type B3b1 (3 bedroom), Type B1PH1 (Penthouse) and Type B3PH (Penthouse) but not in respect of Type B2PH1 which was the Unit #18-21 which the Plaintiffs had intended to purchase.

The Plaintiffs will refer to the Sale Brochure in full during trial for the full terms and effect thereof.

Defendant's website at [http://www.cdl.com.sg/blossom residences/pdf/b2ph1.pdf](http://www.cdl.com.sg/blossom%20residences/pdf/b2ph1.pdf)

- g. The omission to depict the void area in respect of the Unit #18-21 was also true for the Defendant's website at

<http://www.cdl.com.sg/blossomresidences/pdf/b2ph1.pdf>

Option to Purchase (OTP) handed to the Plaintiffs and signed by the Plaintiffs on 15th September 2011 (reference Mktg/760404)

- h. The OTP specifically stated:-

*"... (Estimated Strata Area: 167 square metres including A/C Ledge/PES/Balcony/Roof Terrace/ **Void, where applicable**) on **18th** storey marked in the sale brochure as No **32 Segar Road #18-21 ...**"*

[Emphasis in bold]

The Plaintiffs will refer to the OTP during trial for the full terms and effect thereof.

Unit Layout Plan Annexed to the OTP

- i. The layout plan in respect of the Unit specifically stated SFA = 167 sqm. The Plaintiffs understood SFA to be the abbreviation of Floor Area.
- j. The layout plan in respect of the Unit did not indicate any 20sqm void area. At around dining area, it was denoted "high ceiling".
- k. The layout plan, both lower and upper level drawings did not indicate the 20sqm void area at all.
- l. The layout plan did not state that the area was estimated only.
- m. If the layout was not drawn according to scale, this was not stated.
- n. The Plaintiffs will refer to the Unit Layout Plan during trial for the full terms and effect thereof.

1 (of 2) letter(s) dated 15th September 2011 accompanying the OTP

- o. The letter dated 15th September 2011 which had accompanied the OTP had stated at paragraph 35 "*Double Volume Space at Master Bedroom*".
- p. The Plaintiffs will refer to the 2 letters during trial for the full terms and effect thereof.

3 The plaintiffs claim that each of the representations in paragraph 8 was false "whether individually or taken together". This claim is imprecise. Do the plaintiffs mean to say that not only was each representation false in itself, but read collectively, or perhaps, in context, they were false? Where a plaintiff makes such a claim, it behoves him to explain the context and why the representations taken as a whole were false. It is also puzzling that an averment that "Gary Ng also did not make any mention of 'void area'" can constitute a representation. Furthermore, I am not certain that the plaintiff really intended to say that every representation set out in paragraph 8 was materially false because they included what seem to be innocuous, if not irrelevant, facts, such as, "the sale brochure which was handed to the plaintiffs on 14 September 2011 at the entrance of the show flat". If such representations were false but immaterial, the plaintiffs must justify pleading them. If, for example, the sale brochure was handed to the plaintiff in the car park and not at the entrance, the plaintiffs must state why this fact was wrong and why it was important to the case. However, the proper time and place to do so would be in their evidence-in-chief. It is clear that the plaintiffs' real complaint is that they were not warned that the flat's floor space included 20 square metres of void area. If so, the plaintiff ought to plead that the defendant was obliged to disclose this fact and that the failure to do so amounted to a misdescription of the flat and that that misdescription induced them to pay \$56,050 for the option, which they would not otherwise have done. If the defendant disagrees that it was so bound to disclose, all it has to do is to deny such a duty in law. That would be its defence. It may also, for example, plead in the alternative that should the court find that there was a duty to so disclose, that duty had been discharged. Instead, the present pleadings set out a barrage of evidence as to what the parties did without any relation to the cause of action. Without a cause of action, statements and allegations are merely voices crying in the dark. The primary function of pleadings is to set out the cause of action that the plaintiff relies on to maintain his claim, and the

defence which the defendant relies on to refute that claim. A defendant is at least entitled to know whether the claim against him lay in contract or in tort or any other cause of action. He is not obliged to infer on his own from the plaintiff's assertions what the cause of action might be. It is only when the cause of action has been identified and articulated that the parties can proceed to decide what evidence will be necessary for trial. We are not there yet in this case.

4 The plaintiffs here appealed against the assistant registrar's order compelling them to give further and better particulars of paragraph 22(i), "damages for loss of opportunity to be assessed estimated at between \$53,000 and \$1,254,700". The plaintiffs' Statement of Claim provided six items of what they considered comparable sales as particulars of this head of loss. Counsel for the defendant submitted that the defendant was unable to comprehend how the plaintiffs' claim under this head could be calculated. In the pleadings, the defendant need only deny that the plaintiffs were entitled to such damages (damages for loss of opportunity and 'inconvenience'), and, alternatively, if they were, the plaintiffs are put to proof as to the damage. That would have been adequate in the circumstances. If the plaintiffs cannot make their claim understood to a reasonable lawyer, presumably, they would not have fared better before the court. In which event, their claim would fail at trial. I am of the view that no further particulars are needed as to the damages claimed. The defendant was only looking for evidence. If the defendant needs evidence in rebuttal and such evidence can only be identified after it has seen the plaintiffs' evidence-in-chief, then it is at liberty to apply for leave to adduce rebuttal evidence after the plaintiffs' evidence-in-chief. It must not make that application in the guise of an application for further and better particulars of a Statement of Claim. Accordingly, the plaintiffs' appeal on this point was allowed.

5 The plaintiffs also appealed against the assistant registrar's order that further particulars be given in respect of paragraph 6 of the Statement of Claim where the plaintiffs had averred:

"the Plaintiffs were advised by Gary Ng how to write the letter of appeal for eligibility which they subsequently did. At all material times, the Defendant and Gary Ng were keen to lend their assistance to the Plaintiffs to appeal to the Housing and Development Board to allow the Plaintiffs to purchase #18-21".

The defendant had requested "full particulars of how the Defendant was keen to lend its assistance to the Plaintiffs to appeal to the Housing and Development Board". It has been said many times before, and I had so held in *Sharikat Logistic Pte Ltd v Ong Boon Chuan & Others* [2011] SGHC 196 ("*Sharikat Logistic*") that pleadings are not evidence. Paragraph 6 of the Statement of Claim in this case is a shining example of pleading evidence if an illustration between pleadings fact and evidence is required. The entire paragraph is set out for ease of reference —

At the same meeting on 15th September 2011, the Plaintiffs had raised their concerns to Gary Ng that they were ineligible to purchase a unit at Blossom Residence because their then gross monthly household income of S\$12,103 exceeded the prevailing maximum gross monthly household income of S\$12,000 allowed for the purchase of Executive Condominiums. Gary Ng even went to check with the backend staff at the Showflat and came back to the Plaintiffs to advise that:-

- (a) their income ceiling should not be an issue if it was slightly exceeded;
- (b) the Plaintiffs needed to write an appeal letter to developer for the Housing and Development Board to approve;
- (c) the Plaintiffs must declare if they owned properties outside Singapore. The Plaintiffs then disclosed to Gary Ng that they already had an interest in two private properties, which were

located outside Singapore. Gary Ng then advised that the Plaintiffs needed to obtain valuation report for the 2 overseas properties; and

- (d) the Plaintiffs would get a full refund if the Housing and Development Board did not allow their appeal, but if the bank declined their loan application, the Plaintiffs would only get back 75% of booking fee.

The Plaintiffs were advised by Gary Ng how to write the letter of appeal for eligibility which they subsequently did. At all material times, the Defendant and Gary Ng were keen to lend their assistance to the Plaintiffs to appeal to the Housing and Development Board to allow the Plaintiffs to purchase #18-21.

Counsel for the defendant referred to *Sharikat Logistic* but she submitted that nonetheless further particulars were sought in the present case because the defendant would not otherwise know how to respond to the statements made by the plaintiffs in the Statement of Claim. The defendant's difficulty will not be solved by having more evidence in the pleadings. Its problem is that the pleadings have not identified a cause of action. There is no need for further and better particulars of evidence. In any event, the defendant must know whether it had advised the plaintiffs as alleged. If it did not, a denial would be sufficient. Thirdly, paragraph 6 seems to indicate that Gary Ng might be advising the plaintiffs outside his role as agent of the defendant. The pleadings would not be improved just by adding more evidence on matters that are already unnecessary. The plaintiffs' appeal was thus allowed. No further particulars should be ordered.

6 The plaintiffs also appealed against the orders requiring them to furnish further and better particulars in paragraphs 30 and 31 of the Reply. The requests in themselves indicate that what was sought was evidence. In respect of paragraph 30 the defendant asked the plaintiff to give "full particulars of the Plaintiffs' efforts since 6 December 2011 to seek redress from the Defendant". In paragraph 31 the defendant requested for the "gist" of a "conversation between the 1st Plaintiff and May Wong by which the 1st Plaintiff spelt out the same concerns of the Plaintiffs regarding the 20sqm void space" and the "gist of the email sent by the Plaintiffs to May Wong on 15 December 2011 at 14:36 hours". These are prime examples of requests for evidence. The defendant ought to have known that further and better particulars of a Reply are rarely, if at all, necessary. The plaintiffs' appeals in respect of these two requests were thus also allowed.

7 Finally, I come to the plaintiffs' appeal against the assistant registrar's order striking out passages of the Reply. The defendant's objections were based on the claim that the passages referred to "without prejudice" communication including text messages sent through cell phone. The Reply consists almost entirely of evidence. Whether that evidence is privileged is not an issue that needs to be decided now. The admissibility of evidence is a function reserved to the trial judge. Evidence does not belong in the Reply. The Reply in pleadings is a reply to any Defence pleaded that might have strayed beyond the facts pleaded in the Statement of Claim. A Reply is generally not necessary where it is clear that the parties are joined in issue through the Statement of Claim and the Defence. In this case, the Reply added nothing of relevance to the pleadings and the appeal against the order striking out parts of it was therefore dismissed. This was also a case which, on the basis of the Statement of Claim and Defence, no Reply was required.

8 While the parties withdraw to consider the state of the pleadings, the plaintiffs might also consider whether their claim (if they are so entitled to it) for the balance of the deposit (\$14,012.50) should be commenced in the High Court. Their other major items are damages for "inconvenience" and "loss of opportunity", and they have not presently made clear whether those damages are sought in contract or in tort. They will have to assess whether they would be entitled to damages on a High

Court scale, otherwise, they will only succeed in increasing their financial loss, inconvenience, and despair when the costs of litigation are finally counted.

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