

Tan Gek Suan Constance and another v Lau Kean Wah
[2017] SGHC 152

Case Number : Suit No 1226 of 2016 (Registrar's Appeal No 114 of 2017)
Decision Date : 05 July 2017
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Carolyn Tan Beng Hui and Tony Au Thye Chuen (Tan & Au LLP) for the plaintiffs;
Priscilla Wee Jia Ling (Dentons Rodyk & Davidson LLP) for the defendant.
Parties : Constance Tan Gek Suan — Jessie Tan Gek Choo — Lau Kean Wah

Civil procedure – Pleadings – Striking out

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 128 of 2017 was dismissed by the Court of Appeal on 27 February 2018 with no written grounds of decision rendered.]

5 July 2017

Judgment reserved.

Choo Han Teck J:

1 If the basic rule in litigation is to have the correct parties named in the action, the next important requirement is to plead the correct cause of action, and that includes pleading them accurately and clearly because vague and ambiguous pleadings serve no purpose and prolong the litigation leading parties to fight over what the issues are when they ought to be fighting over the issues. A cause of action implies that there must be a cause of action recognised by law. “Damages” is not a cause of action; it is a relief. The statement of claim should only plead the cause of action, the particulars that justify or support the cause, the relief sought, and no more. Evidence and submissions have their proper places elsewhere. Vitriol has no place anywhere.

2 Constance Tan and Jessie Tan, the plaintiff respondents, are the daughters of 94 year-old Tan Geok Lian (“the deceased”) who was admitted to the Accident & Emergency Department of Gleneagles Hospital on 22 November 2013. At that time, her heart rate had fallen to 30 beats a minute and her condition was described as very serious. The defendant appellant, Dr Lau Kean Wah (“Dr Lau”), was the cardiologist who attended to the deceased. He performed temporary cardiac pacing and a diagnostic coronary angiography on her. Dr Arthur Tan, who was the deceased’s regular cardiologist, then took over her treatment. Dr Lau had no further involvement in her treatment or management when she died under the care of Dr Arthur Tan the next day.

3 There is no criticism of Dr Tan, but in a long and rambling 19-page statement of claim the plaintiffs allege that Dr Lau was negligent in failing to provide adequate professional care for the deceased, failing to obtain her consent, and carrying out a dangerous diagnostic procedure on her. They claimed damages, aggravated damages, damages for bereavement, and funeral expenses from Dr Lau. Dr Lau’s solicitors applied to strike out the statement of claim under O 18 r 19 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).

4 The Assistant Registrar ordered that paragraph 13 of the statement of claim and all other references to failure to obtain informed consent from the deceased be struck out. She found that paragraph 13 anomalously claimed damages for not obtaining informed consent, yet no fact was

pleaded that might have given rise to a cause of action in negligence for not obtaining consent from the patient. The plaintiffs had proceeded with their action under s 20 of the Civil Law Act (Cap 43, 1999 Rev Ed) ("the Act"), *ie*, liability for causing wrongful death, yet it was not pleaded that the failure to obtain informed consent was a cause of the deceased's death. There is a further and greater difficulty for the plaintiffs. Lack of consent is a personal cause of action that only the injured or the estate of a deceased injured can sue under. The plaintiffs are daughters of the deceased but they are not the administrators of her estate, and thus cannot sue on behalf of her estate. They have wisely not appealed against this order.

5 This matter now appears before me on an appeal brought by Dr Lau on the scope of s 20 of the Act. This section was fully argued before the Assistant Registrar. Ms Priscilla Wee, on behalf of Dr Lau, argued that if the plaintiffs did not plead how they were financially dependent on the deceased, whose age at death is not in dispute, and in the light of the plaintiffs' admission that they are not dependent on their mother, s 20 of the Act does not confer a right to sue. Ms Carolyn Tan, on behalf of the plaintiffs, argued that s 20 of the Act is far wider than that and permits a claim that a deceased might herself bring had she been alive, and such claims can be made for the benefit of her dependents. It is not the same (although it overlaps) with a dependency claim.

6 The Assistant Registrar agreed that there were merits in Ms Wee's arguments, but declined to strike out the plaintiffs' claim. She held that s 20 of the Act permitted claims other than damages for loss of dependency, so long as the plaintiffs could prove that they had suffered some loss arising from the wrongful death of the deceased. Even if they could not prove any other loss, they would at least be entitled to claim damages for bereavement and funeral expenses pursuant to ss 21 and 22(4) of the Act.

Claim for general and aggravated damages

7 I cannot see how the plaintiffs can succeed in their claim for general and aggravated damages under s 20 of the Act if they are not financially dependent on their 94 year-old mother and have pleaded no other loss. It seems to me that the plaintiffs have lost their way. Section 20 of the Act is a statutory provision that allows a claim to be made by an injured person (even after she has died) for the benefit of her dependents, whether or not the dependents are named as executors. The section states:

Right of action for wrongful act causing death

20.-(1) If death is caused by any wrongful act, neglect or default which is such as would (if death has not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

(2) Subject to section 21(2), every such action shall be for the benefit of the dependants of the person (referred to in this section and in sections 21 and 22 as the deceased) whose death has been so caused.

(3) Every action brought under this section shall be brought by and in the name of the executor or administrator of the deceased.

...

8 Ms Tan contends that actions under s 20 of the Act are not restricted to claims for loss of

dependency. She argues that dependants are empowered under s 20 of the Act to make claims beyond loss of dependency, including "any action arising from wrongful death, such as... in contract and tort for professional negligence". So long as the plaintiffs can prove any loss as a result of the deceased's death, which was wrongfully caused by the defendant, they are entitled to be compensated for it. Section 20 thus does not require the plaintiffs to be financially dependent on the deceased. The plaintiffs only need to show that they are dependants within the meaning of s 20(8) of the Act, *ie*, that their relationship with the deceased falls within a category specified by the Act.

9 I do not accept Ms Tan's submissions. There is a distinction between estate claims and dependency claims made under the Act. Section 10(1) of the Act allows causes of action vested in a person to survive after his death for the benefit of his estate. Such an action has to be brought by the estate, namely persons named as executors or administrators (having obtained the requisite letters of administration). Section 20(1) of the Act fulfils a different role by allowing the dependants of the deceased to claim losses personally suffered by them as a result of the deceased's death. This is why s 20(2) of the Act requires that every action under s 20(1) of the Act "shall be for the benefit of the dependants". Section 20(3) of the Act requires the action to be brought in the name of the executor or administrator unless there is no such executor or administrator or if this executor or administrator does not bring such an action within six months of the deceased's death. This is a procedural rule and does not mean that the causes of action brought under ss 10 and 20 of the Act, even if brought by the same person (*ie*, the executor or administrator) in the same suit, are the same in substance. Dependants who are not executors or administrators of the estate are not entitled to bring claims on behalf of the estate and claim losses suffered by the estate.

10 What losses can the plaintiffs then sue for under s 20 of the Act? The plaintiffs have admitted that they were not financially dependent on their mother. They insist that they are not claiming loss of dependency damages but are somehow still entitled to damages in a general sense, and even to aggravated damages. To have a reasonable cause of action, the plaintiffs are required to plead an actual loss suffered by them as dependants as a result of the deceased's death. The Assistant Registrar also held that where no loss is proven, the claim under s 20 of the Act cannot be sustained. Their statement of claim does not bear out any plausible loss. The section entitled "Damages" in their statement of claim makes allegations regarding the defendant and how he caused the deceased's death. It does not set out any proper head of claim. Without pleading any credible loss, or any loss at all, the plaintiffs cannot be allowed to maintain an unspecified claim for damages.

11 Further, s 20 of the Act, which was derived from Lord Campbell's Act 1846 (now the Fatal Accidents Act) in the United Kingdom, was intended to create a specific cause of action for those who were financially dependent on the deceased, such that they may be compensated for the loss of financial support upon the deceased's death. Usually, an injured plaintiff may claim damages for loss of future earnings if he proves his case against a tortfeasor. Where the tortfeasor causes death, the deceased (through his estate) would be unable to claim damages for loss of earnings. This was an old common law rule and is currently reflected in s 10(3)(a)(ii) of the Act. Thus, if the deceased had been earning an income to provide for his dependants prior to his death, his dependants would lose all future financial support from the deceased. Section 20 of the Act thus seeks to compensate the deceased's dependants for the specific loss of financial support from the deceased. Seen in this light, I cannot see what other losses the plaintiffs can reasonably plead if they were not financially dependent on the deceased.

12 I thus strike out the plaintiffs' claim for damages and aggravated damages as disclosing no reasonable cause of action. I also strike out paragraph 15 of the statement of claim and paragraphs 20 to 24 of the statement of claim. Paragraph 15 is titled "The Defendants Aggravation" and lists out various aggravating factors that are basically accusations against the defendant's character and lack

of repentance. Not only is this unwarranted, it is irrelevant as the plaintiffs are not entitled to any aggravated damages. Paragraphs 21 to 24 follow the heading "Damages". They do not contain any particulars as to damages suffered by the plaintiffs, and only describe how the defendant wrongfully caused the deceased's death. They are also irrelevant.

Claim for funeral expenses and damages for bereavement

13 The plaintiffs also claimed funeral expenses and damages for bereavement in their statement of claim. These are specific categories of damages created by the legislature under ss 20(4) and 21 of the Act. Section 21 of the Act provides that an action under s 20 of the Act can include a claim for damages for bereavement if they fall into one of the categories under s 21(2) of the Act. This is a fixed sum awarded as a form of consolation to the deceased's family. Similarly, s 22(4) of the Act provides that the dependants can recover any funeral expenses they had incurred.

14 But s 20 of the Act requires that the plaintiffs fall into one of the specific categories of dependants as listed in s 20(8) of the Act. Section 21 similarly states that a claim for damages for bereavement shall only be for certain persons that survive the deceased. The plaintiffs are therefore required to plead their specific relationship to the deceased. All they have pleaded is that they are "the lawful next-of-kin" of the deceased. It is not sufficient for them to point to the one reference in their statement of claim where they had alleged that the defendant had "uttered the words 'Do you want your mother to die?' in a rude and aggressive manner". This does not plead their relationship with the deceased, but it is not a fatal omission that warrants this part of the claim to be struck out. Thus, if the plaintiffs still wish to continue with their claim for damages for bereavement and funeral expenses, they will have to apply for leave to amend their statement of claim to specifically plead their relationship with the deceased.

The possibility of the plaintiffs bringing an estate claim

15 If the pleadings do not show any cause of action based on dependency, then the claim for negligence per se must be commenced by the proper party, namely, the administrator or executor of the estate of the deceased. The plaintiffs claim that there is nothing precluding them from applying for letters of administration and subsequently bringing an estate claim, whether for failure to obtain informed consent from the deceased or otherwise.

16 Even if they did so later, the plaintiffs cannot commence a fresh action as the relevant limitation period has already expired. The plaintiffs argue that the limitation period for actions founded on contract or tort is six years under s 6(1)(a) of the Limitation Act (Cap 163, 1996 Rev Ed). But the plaintiffs are claiming damages in respect of personal injuries in tort. They have not pleaded a claim in contract. The governing provision is hence s 24A(2)(a) of the Limitation Act, which imposes a limitation period of three years from the date on which the cause of action accrued. This does not change even if the claim is brought by the estate. The deceased passed away on 23 November 2013 and more than three years have passed since then. I would not have allowed them to amend the writ to change the capacity in which they sue for the same reasons: see O 20 rr 5(2) and (4) of the Rules of Court. The plaintiffs did not have the capacity to sue as executors or administrators at the time of filing of the writ and allowing the amendment would prejudice the defendant's limitation defence.

17 For the reasons above, in addition to the Assistant Registrar's order (to strike out paragraph 13 of the statement of claim and all other references to failure to obtain informed consent), I also strike out the plaintiffs' claim for damages and aggravated damages, and, as a consequence, paragraphs 15 and 20 to 24 of the statement of claim. If they still wish to continue with their claim for damages for bereavement and funeral expenses, they will have to apply for leave to amend their statement of

claim to specifically plead their relationship to the deceased. The plaintiffs may wish to consider the potential damages recoverable in their pursuit of the limited claim for bereavement and funeral expenses against the costs of doing so.

18 I therefore allow the appeal in part and award two-thirds costs, here and below, to the defendant to be taxed if not agreed.

Copyright © Government of Singapore.