

Ong Kim Yeng and another v Forte Development Pte Ltd
[2012] SGHC 215

Case Number : Originating Summons No 860 of 2012 (Registrar's Appeal No 416 of 2012) and Originating Summons No 763 of 2012
Decision Date : 24 October 2012
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : David Liew Tuck Yin (LawHub LLC) for the plaintiffs; Edric Pan XingZheng and Khoo Eu Shen (Rodyk & Davidson LLP) for the defendant.
Parties : Ong Kim Yeng and another — Forte Development Pte Ltd

Civil procedure – Originating processes

24 October 2012

Choo Han Teck J:

1 Forte Development Pte Ltd (“Forte”) claimed that it was entitled, under a contract of sale, to the property known as “231B Rangoon Road”. The vendors were Ong Kim Yeng and Ng Goon Tin (“the vendors”). Sometime about 5 December 2011, the vendors were approached by agents from a real estate company, PropNex Realty Pte Ltd (“PropNex”). The vendors claimed that one of the agents, Richard Hau, told them that there was a buyer for their property as well as the other units in the same block. After some discussion, the vendors signed the Option to Purchase prepared by Richard Hau, granting an option to sell the property for \$1.5m. They accepted a deposit of \$15,000. The date of the option was then amended to 9 March 2012 when Forte exercised it and paid a further \$60,000, being four percent of the purchase price.

2 The vendors subsequently refused to complete the sale and Forte sued for breach of contract and sought specific performance by way of Originating Summons No 763 of 2012 (“OS 763”). Thereafter, the process became murky. The vendors’ solicitors filed a counterclaim by way of Originating Summons No 860 of 2012 (“OS 860”). Counsel then applied for OS 860 to be consolidated with OS 763 and for both Originating Summonses to “proceed as if commenced by way of a Writ of Summons”. The vendors also applied for leave to join Richard Hau and PropNex as third parties. The vendors refuted Forte’s claim on the ground that they had been induced by misrepresentations made by Richard Hau. It was apparent that the question whether Richard Hau acted on his own behalf, on behalf of PropNex, or also on behalf of Forte, would be an important issue if there were indeed misrepresentations made by him which induced the vendors to execute the Option to Purchase.

3 In the circumstances, it was clear that OS 763 ought to have been commenced by writ. This was a claim for breach of contract, and unless there was clearly no dispute of fact and the issues are few and clearly defined, the proper course was to commence a writ action. There was no reason for Forte not to have known what the defence would be. No lawyer would have commenced an action without a letter before action stating his client’s claim and the basis for that claim. The defendant’s lawyers would have responded setting out exactly why the claim is disputed. In this case, it was obvious from the contents and affidavits filed under OS 860 that the vendors claimed that they were induced to grant the Option to Purchase because of Richard Hau’s misrepresentations. Issues of law and facts would invariably be raised. Richard Hau and PropNex were clearly relevant parties to the

action. Why then did Forte commence this action by Originating Summons?

4 Mr Pan, counsel for Forte, explained that his client was claiming specific performance and that that was a remedy one may apply for by way of an Originating Summons. Secondly, he said that the parties had been granted leave to cross-examine some of the witnesses. Hence, there was no need to proceed with a writ action. Thirdly, the vendors' claim against Richard Hau and PropNex are contingent upon the result of the litigation between Forte and the vendors. I was unable to agree with these submissions.

5 A contract claim should generally be commenced by writ action unless the parties agree that the facts are not in dispute and where the court is only required to interpret a clause in a written contract, without oral evidence. It is no justification to proceed by an Originating Summons because the claim was for specific performance. Not only may the court not grant it, but the claimant must also state the basis for his claim. There is a clear and fundamental difference between an Originating Summons and a Statement of Claim. Unfortunately, counsel did not seem to understand that when he persisted in pressing for this matter to proceed by way of Originating Summons. The Originating Summons is a court document setting out the remedy sought by the plaintiff on the basis of the facts set out in the affidavit in support. The Statement of Claim, on the other hand, must set out the facts that establish a cause of action for the plaintiff. The defendant will refute the plaintiff's claim by stating the facts that he says will establish a defence to the claim. That is the function of pleadings. If the rules of pleadings are not followed, confusion would follow. The evidence-in-chief of each party then goes towards proving those facts that they aver in the claim and defence respectively. It is the writ system that enables the defendant to join persons such as Richard Hau and PropNex as third parties. If the plaintiff thinks that the defendant has no defence, he may apply for summary judgment.

6 The fact that Richard Hau was called as a witness by Forte was no answer to the vendors' claim that Richard Hau ought to be made a third party. The plaintiff might have thought that Richard Hau's testimony would be totally in its (Forte's) favour, but that might change when Richard Hau and PropNex are officially made third parties. Mr Pan's submission that the vendors' claim against Richard Hau and PropNex are contingent upon the court's decision in the dispute between Forte and the vendors overlooked the importance of having all connected issues and parties heard in the same proceedings by the same judge.

7 Mr Liew explained that he had wanted to apply for Forte's action in OS 763 to be converted into a writ action and to file his defence and counter-claim. But when he appeared before the assistant registrar at a pre-trial conference, he was apparently told by the assistant registrar that he could file his defence and counter-claim by way of an Originating Summons. I was mildly astonished by this but, in any event, Mr Liew must have realised how untenable that route was, although he succumbed to it when he filed OS 860. He subsequently filed an application to convert both Originating Summonses into writ actions and for them to be consolidated, and for leave to issue third party notices against Richard Hau and PropNex. However, that application was heard by another assistant registrar who dismissed it. The vendors appealed by way of Registrar's Appeal No 416 of 2012. That appeal was fixed before me at the same time as OS 763 and OS 860.

8 For the reasons above, I allowed the appeal and directed that OS 763 be converted into a writ action and that Forte was to file its Statement of Claim. I allowed the vendors' application to join Richard Hau and PropNex as third parties. I struck out OS 860 on the ground that the issues therein would have merged in the writ action in the converted OS 763. There was no reason to consolidate the two Originating Summonses when one writ action sufficed.