

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 21

HC/Suit No 1212 of 2017
(HC/Summons No 5340 of 2018)

Between

JTrust Asia Pte Ltd

... Plaintiff

And

- (1) Group Lease Holdings Pte Ltd
- (2) Mitsuji Konoshita
- (3) Cougar Pacific Pte Ltd
- (4) Aref Holdings Limited
- (5) Adalene Limited
- (6) Bellaven Limited
- (7) Baguera Limited

... Defendants

JUDGMENT

[Civil Procedure] — [Striking out]

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JTrust Asia Pte Ltd
v
Group Lease Holdings Pte Ltd and others

[2019] SGHC 21

High Court — HC/Suit No 1212 of 2017 (HC/Summons No 5340 of 2018)
Choo Han Teck J
18 January 2019

1 February 2019

Judgment reserved.

Choo Han Teck J:

1 This is an application by the first and second defendants to strike out the plaintiff's action on the grounds that there is an abuse of the process of the court by the plaintiff, denying the defendants a fair trial, and that the conduct of the plaintiff was so contumelious that it is sufficient to strike out its action. This application to strike out arose from a single event that the applicant here, supported by the intervener, regard as a major catastrophe in the litigation in Singapore.

2 The action in this suit is part of a wider legal action by the plaintiff against the defendants and Group Lease Public Company Limited, a public listed company in Thailand, in which the plaintiff had invested much money. Many other actions are ongoing in various jurisdictions including Luxembourg, the British Virgin Islands, Cyprus, Japan, Thailand, Hong Kong and Cambodia.

3 There are seven defendants in the Singapore action. The second defendant is alleged to be the individual behind the third to seventh defendant companies connected to the first defendant, and all defendants are being sued for conspiracy to defraud. This action is scheduled for trial this September, but now, the first and second defendants allege that sometime from May to June 2018, the third defendant was acquired by the plaintiff and is now its puppet. Prior to the takeover, the third defendant was represented by Mr Pradeep Pillai (“Mr Pradeep”) from PRP Law LLC, who now appears as counsel for one Yoichi Kuga (“Kuga”).

4 Kuga claims to be the beneficial owner of Pacific Opportunities Holdings S.A.R.L (“POH”), a company incorporated in Luxembourg, as one Tep Rithivit (“Tep”) agreed to hold Kuga’s shares in POH on trust for him. The third defendant is a wholly owned subsidiary of POH. Consequently, Kuga also claims to be the beneficial owner of the third defendant. Kuga alleges that Tep, in breach of trust wrongfully transferred the shares in POH to Saronic Holdings Limited (“Saronic”), a company incorporated in Hong Kong. Kuga is suing Tep in Luxembourg and the matter has not been resolved.

5 The direct consequences of the transfer in ownership of the third defendant are that Mr Pradeep had been discharged as its counsel, and another firm, WongPartnership LLP, had taken over as the solicitors for the third defendant. Saronic removed the existing directors of the third defendant, appointed itself as corporate director, and appointed three new directors, including one Mr Hopkins. Mr Hopkins is the sole shareholder and director of Saronic. Both the plaintiff and Kuga claims that Mr Hopkins is acting against the interests of the third defendant because he has been feeding the plaintiff with information and documents he had obtained in his capacity as director of the third defendant. It is not known what role Mr Hopkins plays in the main action.

6 With the third defendant now seemingly the fifth column in the defendant bloc, not only has its unity been broken, but serious damage is being done because the third defendant is now not only acting against its own interests, it is also acting against the interests of its co-defendants.

7 Mr Chan Leng Sun, SC, counsel for the plaintiff, argues that Mr Hopkins is an independent director and that if he believed that the third defendant had not conducted its business properly, or has not complied with any order of the court, he is entitled to correct the company's errors. This includes the duty to correct any misstatements or misleading affidavits previously filed by the third defendant, and telling the plaintiff that it (the third defendant) had given wrong information to the plaintiff in the past.

8 Mr Edric Pan, counsel for the second defendant, and Mr Pradeep argued that the recent events had prejudiced the defence of the other defendants. Mr Pradeep invites the court to make a finding of fact that the plaintiff controls the third defendant, and that the plaintiff's pretence of treating the third defendant as an adversary when they are actually in cahoots justify the striking out application. Mr Pradeep also relied on *ANB v ANC* [2015] 5 SLR 522 ("*ANB v ANC*") in support of his argument that the plaintiff and the third defendant had acted contumeliously by having the third defendant surreptitiously turned over to the control of the plaintiff.

9 I need only say that *ANB v ANC* does not apply in this case. That case dealt with a clear finding of fact of contumelious conduct, where the respondent broke into the appellant's house to obtain evidence found on the appellant's personal notebook computer. Nothing by way of the affidavits in this case satisfied me, at this stage, that the plaintiff and the third defendant had acted contumeliously. All the allegations made against them may turn out to be true

and it seems to me that there is a great deal more to learn about the facts of this case. We are presently only skimming the surface.

10 The evidence has yet to be tested. If there were a fraud or conspiracy, it is yet to be determined who the villain is. It may be the plaintiff, or the individuals behind it, or Mr Kuga and Mr Mitsuji Konoshita, or some other. More importantly, with so many actions around the world, it is not yet clear where the mother lode is. It could be in Singapore, in relation to the plaintiff's claim under the tort of conspiracy, or in Luxembourg, where the beneficial owner of the third defendant will be determined. The rest are placer mining. Hence, the first and second defendants and Kuga may be right in the end, but only a full trial will determine whether they or the plaintiff's position is true.

11 I am therefore of the opinion that the plaintiff's action cannot be struck out on the grounds that Mr Edric Pan and Mr Pradeep claim. This application is therefore dismissed with costs reserved to the trial judge.

- Sgd -
Choo Han Teck
Judge

Chan Leng Sun SC, Sheik Umar Bin Mohamed Bagushair and Lee Ying-Ying Michelle (Wong & Leow LLC) for Plaintiff;
Edric Pan Xingzheng, Chia Huai Yuan and Zheng Huaice (Dentons Rodyk & Davidson LLP) for 1st and 2nd Defendants;
Daniel Tan Shi Min and Nigel Teo (WongPartnership LLP) for 3rd Defendant;
Pillai Pradeep G, Simren Kaur Sandhu and Caleb Tan (PRP Law LLC) for Intervener, Yoichi Kuga;
Kenneth Yap (Withers KhattarWong LLP) watching brief for 4th to 7th Defendants.