IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 15

Originating Summons No 682 of 2020

Between

(1) Cheung Phei Chiet
(2) Parameshwara s/o Krishnasamy

… *Applicants*

And

Cheong Yoke Ling

… *Respondent*

GROUNDS OF DECISION

[Civil Procedure] — [Stay of proceedings] — [Abuse of process] — [Private prosecution]
[Civil Procedure] — [Stay of proceedings] — [Abuse of process] — [Requirement of malice]

TABLE OF CONTENTS

Version No 1: 26 Jan 2021 (14:00 hrs)

Version No 1: 26 Jan 2021 (14:00 hrs)

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Cheung Phei Chiet and another
v
Cheong Yoke Ling

[2021] SGHC 15

General Division of the High Court — Originating Summons No 682 of 2020
Chan Seng Onn J
14 October 2020

26 January 2021

Chan Seng Onn J:

Introduction

1 This case involves an application for a permanent stay of criminal proceedings commenced by way of private summonses. The applicants are volunteer council members of MCST Plan No 508 ("the MCST"), which is a strata-titled development located along Upper East Coast Road ("the Development"). The applicants hold the offices of Secretary and Chairman of the MCST. The respondent is the daughter of the late Mr Cheong Kim Koek ("the late Mr Cheong") and one of two executors and trustees of the estate ("the Estate"). The other executor and trustee of the Estate is the respondent's husband. Grant of Probate for the Estate was issued on 8 November 2013.

2 The late Mr Cheong owned unit 53 in the Development ("the Unit") until the time of his passing. To date, title to the Unit remained with the late Mr Cheong and had not been transferred to the beneficiaries of the Estate.

3 In 2019, the respondent commenced private prosecution (*via* private summonses) against the applicants in the State Courts. Subsequently, in early 2020, the respondent commenced a civil action against the applicants and the MCST. Both the private prosecution and the civil action concerned the MCST's removal of kitchen exhaust ducts ("the Ducts") from the exterior of the Unit. In response to the private summonses, the applicants filed the present Originating Summons, and prayed for an order that the private prosecution in the State Courts be permanently stayed.

4 On 14 October 2020, I dismissed the application. The applicants have since appealed against my decision.

The facts

Events leading to the dispute between the parties

5 As mentioned, the late Mr Cheong was the owner of the Unit up until his time of passing. The Ducts serving the Unit were installed in or around 2004. At that time, the late Mr Cheong was the Chairman and a council member of the MCST.

6 As at the date of the hearing of the present Originating Summons, title to the Unit was in the process of being transferred to the respondent and her husband.

Version No 1: 26 Jan 2021 (14:00 hrs)

7 On 14 November 2018, the respondent received a notice and agenda from the MCST calling for an EOGM on 23 November 2018. The purpose of the EOGM was to pass resolutions to authorise the MCST to commence legal proceedings against the respondent to compel her to remove several allegedly unauthorised fixtures and installations, including the Ducts. These resolutions were not passed.

8 On 18 February 2019, the respondent's solicitors received a letter from the MCST dated 11 February 2019, where the MCST took the position that no approval had been given for the allegedly unauthorised fixtures and installations. Notice was given to the respondent to remove the Ducts with immediate effect. In response, the respondent's solicitors informed the MCST by way of a letter dated 20 February 2019 that the requisite approval had been obtained for the installation of the Ducts. The respondent accordingly informed the MCST that a court order should be obtained if the MCST intended to remove the Ducts from the exterior of the Unit.

9 Then, on the morning of 23 February 2019, the MCST engaged 98 Construction (S) Pte Ltd ("98 Construction") to remove the Ducts. As the removal was taking place, the respondent and her husband received a call from the tenant of the Unit, Mikawa Yakitori Bar ("Mikawa"). Mikawa informed them that the Ducts were being removed. Mikawa also reported the matter to the police. The respondent and her husband thus made their way to the Unit.

10 When the respondent and her husband arrived at the Unit, the Ducts had been partially removed. In the process of removal, 98 Construction also allegedly damaged the remaining parts of the Ducts. At this point, the respondent's husband stopped 98 Construction from proceeding with the removal of the Ducts. Soon after, the police arrived at the Unit. The respondent

Version No 1: 26 Jan 2021 (14:00 hrs)

showed the police the letters from her solicitors and requested the police to stop 98 Construction from proceeding with the removal. The police advised the respondent to commence civil proceedings against the MCST.

11 The respondent also requested the applicants, who were present, and 98 Construction to return the removed parts of the Ducts, but they refused. According to the respondent, at this point, the police who were observing the commotion advised the respondent to make a formal police report. The respondent eventually did so on the same day.[1]

Commencement of proceedings against the applicants

12 On 3 June 2019, the respondent filed MAG-900150-2020 and MAG-900151-2020 against the applicants for mischief under s 425 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") for causing destruction to the property of the Estate by engaging 98 Construction to remove and destroy a part of the Ducts. A similar Magistrate's Complaint had been filed against 98 Construction.

13 On the same day, the case was heard by a Magistrate of the State Courts ("the Magistrate"). The Magistrate directed the respondent to write to the Attorney-General's Chambers ("AGC") to inform AGC of the full particulars of the incident and to seek confirmation on whether AGC would proceed with any investigation or prosecution against the applicants.[2]

14 In accordance with the Magistrate's direction, on 18 June 2019, the respondent's solicitors wrote to AGC to seek confirmation on the said issues.

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1 Affidavit of Cheong Yoke Ling ("CYL") at p 46.

2 CYL at para 13.

Version No 1: 26 Jan 2021 (14:00 hrs)

The respondent's solicitors also sought AGC's opinion on whether it had any objections against the respondent commencing private prosecution against the applicants and 98 Construction under s 425 of the Penal Code.[3]

15 On 11 September 2019, AGC responded. They informed the respondent that:[4]

(a) the Prosecution would not be taking action against the applicants and 98 Construction; and

(b) they had "no comments" as to the respondent's intention to commence private prosecution against the applicants and 98 Construction.

16 On 3 January 2020, the respondent and her husband instructed their solicitors to file DC/OSS 3/2020 ("OSS 3") against the MCST and the applicants in their personal capacities. They sought an order that an alleged AGM held by the MCST on 13 December 2018, along with all motions purportedly passed during the AGM, be invalidated pursuant to the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("BMSMA").[5] They also sought, *inter alia*, damages to be assessed for the allegedly wrongful removal of the Ducts.

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3 CYL at para 14 and p 41.

4 CYL at p 67.

5 CYL at para 19.

Version No 1: 26 Jan 2021 (14:00 hrs)

17 On 23 January 2020, the Magistrate issued the following private summonses against the applicants and 98 Construction, pursuant to the charges brought against the applicants as mentioned at [12] above:

(a) The first private summons (Private Summons No 900010-2020) was served on the first applicant on 25 February 2020 at or around 2.45pm pursuant to an application for substituted service of summons, application number APP-2020-0227-56469.

(b) The second private summons (Private Summons No 900011-2020) was served on the second applicant on the same day at or around 2.40pm pursuant to an application for substituted service of summons, application number APP-2020-0227-56465.

I refer to these collectively as "the private summonses". Separately, the private summons against 98 Construction was also served.

18 On 5 May 2020, the applicants, corresponding *via* their solicitors, invited the respondent to withdraw the private summonses. One day later, on 6 May 2020, the respondent rejected the invitation.[6]

19 Following this, on 14 July 2020, the applicants filed the present Originating Summons. On 7 August 2020, the applicants again invited the respondent to withdraw the private summonses, but this request was yet again rejected by the respondent. On 20 August 2020, the respondent informed the State Courts that she would not be withdrawing the private summonses.

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6 Applicants' Written Submissions ("AWS") at para 7.

Version No 1: 26 Jan 2021 (14:00 hrs)

The parties' cases

20 I briefly summarise the parties' cases in this section.

The applicants' case

21 The applicants first raised a preliminary objection as regards the respondent's *locus standi* in respect of the private summonses. They noted that the respondent's name was not listed in the land register as a subsidiary proprietor of the Unit. It was not disputed that the title to the Unit had not been transmitted or transferred to the respondent. The applicants accordingly contended that the respondent would have no standing in bringing the private summonses on behalf of the Unit until such time that she registered herself as the subsidiary proprietor of the Unit.[7] The applicants relied on various provisions in the BMSMA and the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) ("LT(S)A") to justify their preliminary objection.

22 The applicants' substantive argument was that the private summonses were "without legal basis, an abuse of process and [were] bound to fail".[8] The various appendages of this argument were as follows:

(a) The respondent brought the private summonses against the applicants in their personal capacities. However, it was clear that the applicants were acting in their *official capacities as officers of the MCST*. The suggestion was that the applicants were not the proper

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7 AWS at paras 15 and 16.

8 AWS at para 21.

Version No 1: 26 Jan 2021 (14:00 hrs)

defendants to the criminal proceedings; that ought to have been the MCST.[9]

(b) The act of removing the Ducts was not wrongful to begin with. The respondent's case with respect to the mischief charges under the private summonses was therefore untenable.[10] Sub-arguments in this regard included:

(i) the Ducts were fixtures that were common property;[11]

(ii) the respondent's claim that the requisite approval had been obtained for the installation of the Ducts on common property was founded on a forged document, namely the "2004 Minutes";[12] and

(iii) the relevant provisions of the BMSMA and LT(S)A showed that the respondent and/or the Estate and/or the late Mr Cheong were not entitled to install the Ducts on common property as there was no prior authorisation.[13]

(c) OSS 3 substantially overlapped with the private summonses, and the issues raised in the private summonses were not "separate and distinct from those raised in OSS 3".[14]

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9 AWS at paras 26 to 34.

10 AWS at paras 35 to 38.

11 AWS at para 36.

12 AWS at paras 37 to 50.

13 AWS at paras 51 to 85.

14 AWS at paras 86 to 92.

Version No 1: 26 Jan 2021 (14:00 hrs)

23 Based on the foregoing, the applicants submitted that the respondent's claim by way of the private summonses was without "basis or foundation" and therefore constituted an abuse of process.[15]

The respondent's case

24 Based on the Originating Summons as filed, the respondent regarded the applicants' case as comprising the following arguments:[16]

(a) that the applicants had at all material times acted in good faith, for and on behalf of the MCST in their capacities as Council members while the respondent adduced no evidence demonstrating otherwise;

(b) that the subject matter of the private summonses was already before the court in the ongoing civil matter in OSS 3;

(c) that the private summonses were nothing more than the respondent's attempts to stifle the appellants' attempts to carry out their duties and obligations under the BMSMA;

(d) that the charges in the private summonses were built upon forged documents;

(e) that the Magistrate who authorised the issue of the private summonses had been misled; and

(f) that the charges in the private summonses would not succeed.

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15 AWS at paras 93 to 99.

16 Respondent's Written Submissions ("RWS") at para 25.

Version No 1: 26 Jan 2021 (14:00 hrs)

25 The respondent argued that all the above arguments were untenable, with the result that the application should be dismissed. She first responded to the argument on *locus standi*, and argued that title to the Unit was in the process of being transmitted to the respondent. The delay in the transfer was due to administrative issues.

26 The respondent emphasised that the private summonses were taken out in good faith,[17] and to seek legitimate redress for the applicants' (and 98 Construction's) act of removing the Ducts.[18] The issue relating to the Ducts had been in dispute since February 2018, and required determination.[19] Given the long outstanding dispute concerning the installation of the Ducts, the applicants ought to have first sought a court order instead of taking matters into their own hands and forcibly removing the Ducts and not returning any part of the removed Ducts even after the respondent had requested for them. Any findings made by the Magistrate in issuing the private summonses was on a *prima facie* basis, and did not preclude the need for proper ventilation of the relevant issues at trial.[20]

27 The rest of the respondent's arguments broadly pertained to the point that there existed serious issues to be tried in relation to the parties' conduct, the relevant provisions of the BMSMA and LT(S)A, the allegedly forged 2004 Minutes, and in particular the distinction between the claims under the private summonses and those under OSS 3.[21] The overarching thrust of the respondent's

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17 RWS at paras 53 to 63.

18 RWS at paras 50 to 52.

19 RWS at paras 65 to 67.

20 RWS at paras 99 to 104.

21 RWS at paras 69 to 71, 80 to 90, 94 to 107.

Version No 1: 26 Jan 2021 (14:00 hrs)

arguments was that the applicants' invocation of the relevant statutes and/or their capacities as officers of the MCST did not preclude an inquiry into whether the applicants committed a criminal offence of mischief in their personal capacities.[22]

Issues

28 The parties did not dispute that the court possessed the inherent power to permanently stay criminal proceedings. What was in contention was whether there were grounds to warrant the issuance of such a stay. Consequently, there were two main issues that I addressed:

(a) first, the preliminary issue of the respondent's *locus standi*; and

(b) second, the substantive grounds of the application, namely whether the respondent's act of bringing criminal proceedings against the applicants *via* the private summonses was an abuse of process.

29 Before dealing with these two issues, I set out the law on permanent stays of criminal proceedings on grounds of abuse of process.

The law

The court's inherent power to grant a permanent stay of criminal proceedings

30 I begin with the recent High Court decision of *Public Prosecutor v Soh Chee Wen and another* [2020] SGHC 186 ("*Soh Chee Wen*"). In *Soh Chee Wen*, Hoo Sheau Peng J comprehensively set out the law on the court's inherent

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22 See RWS at paras 91 to 93.

Version No 1: 26 Jan 2021 (14:00 hrs)

power to stay criminal proceedings for abuse of process. Hoo J thoroughly canvassed a myriad of authorities spanning multiple jurisdictions. I reiterate herein only the salient aspects of her Honour's decision (at [31], [39]–[40] and [46]):

> 31 … the constitutional separation of judicial and prosecutorial powers does not preclude the existence of an inherent power to stay criminal proceedings for an abuse of process. … in the exercise of its criminal jurisdiction, the inherent power is meant to "prevent abuses of [the court's] process and to control [the court's] own procedure" and to "safeguard an accused from oppression or prejudice".
>
> …
>
> 39 … I am of the view that the superior court has the inherent power to stay criminal proceedings for abuse of process, and that this does not contravene the constitutional separation of judicial and prosecutorial powers.
>
> **The circumstances in which the court would exercise the inherent power to stay criminal proceedings**
>
> 40 … the inherent power may be exercised in two categories of cases, namely, ***(i) where it will be impossible to give the accused a fair trial; or (ii) where the particular circumstances are such that to try the accused would offend the court's sense of justice and propriety*** …
>
> …
>
> 46 … I make a few comments about the second category of cases. According to *Maxwell*, ***a stay of criminal proceedings should be granted where the court concludes in all the circumstances [that] a trial will "undermine public confidence in the criminal justice system and bring it into disrepute" so as to militate against the public interest in trying persons charged with criminal offences … In undertaking this enquiry, there is a balancing of competing public interests ie, that of ensuring that those who are charged with crimes should be tried with that of ensuring that the integrity of the criminal justice system is upheld.*** …
>
> [emphasis in bold in original; emphasis added in bold italics; additional emphasis added in bold underlined italics]

Version No 1: 26 Jan 2021 (14:00 hrs)

31 I agreed with Hoo J's observations in *Soh Chee Wen*. The court must be able to wield the power to protect the integrity of its criminal justice processes. If allowing a prosecution to proceed will represent an abuse of process, the court will intervene to ensure that public confidence in the administration of justice will not be undermined.

32 Hoo J thus identified two alternative grounds under which a stay may be granted (*Soh Chee Wen* at [40]):

> (a) where it will be impossible to give the accused a fair trial ("the first limb"); or
>
> (b) where the particular circumstances are such that to try the accused would offend the court's sense of justice and propriety ("the second limb").

33 Relevant for present purposes was the second limb. It was apparent from the framing of the Originating Summons, the parties' written submissions and their arguments in the course of the oral hearing that the applicants were not arguing that a fair trial was impossible.

34 It may be observed that Hoo J's reasoning in *Soh Chee Wen* was in the context of a *public* prosecution commenced by the Public Prosecutor. In my view, as a matter of good sense, the rationale espoused therein applies with equal, if not greater, force in the context of *private* prosecutions, which are commenced by individuals making a complaint to a Magistrate pursuant to s 151 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). The cases dealing with private prosecutions bear this out.

Version No 1: 26 Jan 2021 (14:00 hrs)

Permanent stays of private prosecutions

Cases lacking basis or foundation

35 The decision of Woo Bih Li J (as he then was) in *Sum Lye Heng (also known as Lim Jessie) v Management Corporation Strata Title Plan No 2285 and others* [2003] 4 SLR(R) 553 ("*Sum Lye Heng*") is on point. *Sum Lye Heng* was a case that, much like the present one, involved an application for a permanent stay of criminal proceedings that emanated from a *private* prosecution. Woo J held that the High Court possesses the inherent jurisdiction to grant a permanent stay of criminal proceedings commenced by way of private summonses (at [47]). Having considered the parties' arguments, Woo J granted the application and permanently stayed the criminal proceedings commenced against the applicant. His Honour observed as follows (at [54] and [80]):

> 54 … If a case lacked foundation, it would be an abuse of process to pursue it. …
>
> …
>
> 80 I should add that although it is my view that an action or proceeding will be an abuse of process if there is no basis or foundation for it, I have some hesitation in accepting the views of the majority bench in *Williams v Spautz* that a predominantly improper purpose will suffice to constitute an abuse of process. As Deane J said, an action may be initiated for a multitude of reasons. Generally speaking, a reason which is different from the relief sought in the action does not, *per se*, constitute an abuse of process. Even malice or vindictiveness *per se* will generally not amount to an abuse of process if there is a valid basis for the action.

The latter part of the reproduced excerpt, concerning the relevance of *malice*, was *obiter* given that Woo J granted the application on the sole basis of the lack of foundation in the complainants' action in that case.

36 Woo J's decision was upheld on appeal in *Management Corporation Strata Title Plan No 2285 and others v Sum Lye Heng (alias Lim Jessie)* [2004]

Version No 1: 26 Jan 2021 (14:00 hrs)

2 SLR(R) 408 ("*Sum Lye Heng (CA)*"). There, the Court of Appeal observed as follows (at [15]–[16]):

> 15 While the High Court may stay proceedings which are an abuse of its process, ***such an order should only be made if there is very clear evidence of such abuse***. In the present case, the essence of the complaint lodged by the fourth appellant, CTS, on behalf of the MC, was that there were sufficient grounds for proceeding against Jessie for contravening ss 66(1) and 67(2) of the Land Titles (Strata) Act. Section 66(1) of the Act provides as follows:
>
> > Subject to this section, every member of a council who is in any way, directly or indirectly, interested in a contract or proposed contract with the management corporation shall as soon as practicable after the relevant facts have come to his knowledge declare the nature of his interest at a meeting of the council.
>
> Section 67(2) states:
>
> > A member of a council … shall not use his position as a member of the council … to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the management corporation.
>
> 16 It is quite obvious that ***CTS had no cause whatsoever to lodge the complaint which led to the private summons*** against Jessie. Woo J rightly pointed out that it was not open to the MC to make the complaint that Jessie had breached ss 66(1) and 67(2) of the Land Titles (Strata) Act because all parties concerned had acted on the basis that Jessie had complied with the requirements of the Land Titles (Strata) Act and SCMS had even been encouraged to tender for the management contract in question.
>
> [emphasis added in bold italics]

The Court of Appeal did not address Woo J's *dicta* in *Sum Lye Heng* regarding the point on malice, given that it was not an issue on appeal.

37 Based on the above authorities, it is apparent that the threshold for granting a permanent stay of criminal proceedings commenced by way of private summonses is a high one. The complainant must have had "no cause whatsoever to lodge the complaint which led to the private summons" (*Sum Lye*

Version No 1: 26 Jan 2021 (14:00 hrs)

Heng (CA) at [16]). If the merits of the case are in question and there are triable issues to be ventilated at trial, a stay ought not to be granted given its permanent nature. The bar to meet is that a permanent stay will only be granted if there is *very clear evidence* of an abuse of process. As will be made clear, this high threshold was material in my decision.

The relevance of malice or mala fides

38 Given the express averments made by the applicants that the respondent acted maliciously in taking out the private summonses, a discussion on the issue of malice is warranted. The applicants averred that the private prosecution was commenced "for no reason other than to intimidate and inundate the [a]pplicants … and [was] an attempt by the [r]espondent to strong arm her way to act as she deem[ed] fit".[23]

39 In this regard, I concurred with Woo J's *dicta* in *Sum Lye Heng*. It is worth reproducing, *in extenso*, Woo J's observations (at [52]–[54], citing the judgment of Deane J in *Williams v Spautz* (1991–1992) 174 CLR 509 ("*Williams v Spautz*")):

> 52 The dissenting judges Deane and Gaudron JJ, however, were of the view that it was not sufficient to establish that the predominant purpose for instituting a proceeding was something else other than the relief sought. Thus Deane J said at 543:
>
> > The subjective purposes which might lead a plaintiff, claimant or informant legitimately to institute civil or criminal proceedings are manifold. Indeed, they are almost unlimited. ***It has never been the policy of the common law that a plaintiff's predominant subjective purpose in instituting civil proceedings must be that of obtaining the orders sought in them or that committal proceedings can be instituted by***

[23] AWS at para 101(c).

Version No 1: 26 Jan 2021 (14:00 hrs)

> ***a private informant only for a predominant purpose of obtaining the punishment of the defendant and/or the protection of the community.*** Most civil proceedings are instituted in the hope that the defendant will settle before the action ever comes to trial or formal orders are made. Frequently, they are instituted for the predominant subjective purpose of obtaining an object which it would be beyond the power of the particular court to award in the particular proceedings. For example, the predominant subjective purpose of a plaintiff in a common law action for damages for wrongful dismissal may well be to obtain a settlement involving reinstatement in his or her former position under a contract for personal services of a type which a court would not enforce by specific performance or injunction.

53 At 547, Deane J said:

> ***If the proceedings obviously lack any proper foundation in the sense that there is no evidence capable of sustaining a committal, they will obviously be vexatious and oppressive***. In such a case, the proceedings themselves are an abuse of the process of the Local Court and will inevitably result in the discharge of the defendant. Notwithstanding the fact that it is ordinarily inappropriate for a supervisory court to stay proceedings in an inferior court on the ground that they will ultimately fail, I am inclined to think that, if it is clear that the proceedings are brought to serve some collateral purpose of the informant and that the charges against the defendant lack any foundation, the Supreme Court would be justified in intervening to halt the proceedings *in limine* in order to prevent the defendant from being subjected to unfair vexation and oppression.

At 550, Deane J reiterated:

> The proceedings themselves, if otherwise regularly conducted, will constitute an abuse of process only if the circumstances (including X's collateral purposes and actions) are either such that the proceedings are vexatious and oppressive for the reason that they lack any proper foundation or such that any subsequent trial will be necessarily and unavoidably unfair. Such circumstances plainly have not been shown to exist in the present case where there is no suggestion that, if committal orders were made, any trial would be unfair and where it is not argued that Dr Spautz's charges lack foundation.

Version No 1: 26 Jan 2021 (14:00 hrs)

> 54 Although Deane J's judgment at 547 may at first blush suggest a dual requirement of both improper purpose and lack of foundation before a case of abuse of process is made out***, it seemed to me that he was not suggesting a dual requirement. If a case lacked foundation, it would be an abuse of process to pursue it.*** The collateral purpose or motive of the party pursuing the action might be taken into account in determining the absence of foundation but was not a discrete requirement.
>
> [emphasis added in bold italics]

From the above excerpt, and bearing in mind the Court of Appeal's observations in *Sum Lye Heng (CA)*, I make two critical observations.

40 First, and as a matter of *stare decisis*, I was bound by the Court of Appeal's pronouncement in *Sum Lye Heng (CA)*, *ie*, a total lack of basis or foundation in a complainant's claim would suffice to constitute an abuse of process, absent any malice. Woo J's observation at [54] of *Sum Lye Heng* (as reproduced and emphasised at [39] above) was upheld on appeal. I wholly agreed with the rationale behind this rule; if it is patently clear that no valid complaint whatsoever exists, then the complainant's invocation of the court's processes under the CPC would clearly be abusive and serve only as a waste of judicial resources. This is something the court will not allow as a matter of justice and propriety.

41 Second, in my view, I considered malice on the complainant's part to be *insufficient* as a standalone requirement to constitute an abuse of process. Deane J's observations in *Williams v Spautz*, as reproduced at [39] above, were apposite; in essence, the law recognises that in reality, complainants and claimants may often be angry people. They seek redress and vindication through the court mechanism. Their motivations notwithstanding, the court's duty is to scrutinise the merits of their complaints or claims in accordance with the established principles of law. If a case is meritorious, it does not matter if it was

Version No 1: 26 Jan 2021 (14:00 hrs)

brought in anger or spite. The converse is true: if a case is wholly and patently unmeritorious, it matters little if it was brought in good faith. The court might still find this to be an abuse of process (in line with the observations in *Sum Lye Heng* and *Sum Lye Heng (CA)*). This turns on the specific facts of each case. Malice does not discount the need for an applicant who prayed for a permanent stay of criminal proceedings to prove that the respondent's private prosecutions were wholly without basis, although, as observed by Woo J, malice where present might "be taken into account in determining the absence of foundation [in a complainant's case]" (at [54]).

42 With the law as set out above, I turn to address the merits of the parties' respective cases.

Whether a permanent stay should be granted

The respondent's locus standi

43 The applicants identified this as a preliminary issue to be dealt with at the outset.[24] I did not accept the applicants' argument that the respondent's (lack of) *locus standi* was a basis to permanently stay the criminal proceedings.

44 "Complaint" is defined in s 2 of the CPC to mean "any allegation made orally or in writing to a Magistrate with a view to his taking action under this Code that some person, whether known or unknown, has committed or is guilty of an offence". Sections 151 and 153 of the CPC provide as follows:

> **Examination of complaint**
>
> **151.**—(1) Any person may make a complaint to a Magistrate.

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24 NEs, 14 October 2020, pages 7 to 17.

Version No 1: 26 Jan 2021 (14:00 hrs)

> (2) On receiving a complaint by a person who is not a police officer nor an officer from a law enforcement agency nor a person acting with the authority of a public body, the Magistrate —
>
> > (a) must immediately examine the complainant on oath and the substance of the examination must be reduced to writing and must be signed by the complainant and by the Magistrate; and
> >
> > (b) may, after examining the complainant —
> >
> > > (i) for the purpose of inquiring into the case himself, issue a summons to compel the attendance before him of any person who may be able to help him determine whether there is sufficient ground for proceeding with the complaint;
> > >
> > > (ii) direct any police officer to make inquiries for the purpose of ascertaining the truth or falsehood of the complaint and report to the Magistrate the result of those inquiries;
> > >
> > > ….
>
> …
>
> **Issue of summons or warrant**
>
> **153.**—(1) A Magistrate must issue a summons for the attendance of an accused if —
>
> > (a) he finds sufficient reason to proceed with a complaint made by a person who is not a police officer nor an officer from a law enforcement agency nor a person acting with the authority of a public body;
> >
> > …
> >
> > (c) he knows or suspects that an offence has been committed;
> >
> > …
>
> and the case appears to be one in which, according to the fourth column of the First Schedule, the Magistrate should first issue a summons.

45 For the purpose of initiation of criminal proceedings, s 150 of the CPC provides as follows:

Version No 1: 26 Jan 2021 (14:00 hrs)

> **Initiation of criminal proceedings**
>
> **150.** Criminal proceedings against any person may be initiated pursuant to an arrest, a summons, … as the case may be.

46 After examining the complainant under s 151(2)(*a*), and making inquiries under s 151(2)(*b*)(i) and/or considering the result of inquiries under s 151(2)(*b*)(ii), the Magistrate must issue a summons for the attendance of an accused under s 153(1) after finding that there is sufficient reason to proceed with the complaint or a suspicion that an offence has been committed. Criminal proceedings in the form of a private prosecution may thus be initiated against the accused under s 150 upon issuance of a summons by the Magistrate.

47 As the trustee of the Estate, the respondent would have a duty to protect and preserve all the property of the Estate in the interest of and for the benefit of the beneficiaries. I could not see how the respondent would have no *locus standi* to make a complaint to the Magistrate pursuant to s 151(1) of the CPC that the applicants had committed an offence of mischief against the property of the Estate by causing "*the destruction to the property of the Estate …, to wit, by engaging one [98 Construction], … to remove and destroy part of the [Ducts] installed on the back wall of the property…*" as was stated in the respective charges. There is nothing in s 151 of the CPC which restricts a complainant only to the *person injured* as a result of an alleged offence, or the registered *owner of property* damaged as a result of an alleged offence.

48 As such, I found that the applicants' preliminary objection on the respondent's lack of *locus standi* based on the mere fact that the respondent's name was not listed in the land register as a subsidiary proprietor of the Unit was simply without basis.

Version No 1: 26 Jan 2021 (14:00 hrs)

49 In any event, the applicants' preliminary objection would not cross the high threshold required for a permanent stay of the private prosecutions brought by the respondent. It is worth noting that the present private prosecutions could not be initiated without the Magistrate being satisfied that there was sufficient reason to proceed with the respondent's complaint that the applicants had committed an alleged offence of mischief under s 425 of the Penal Code. Below, I explain in detail why there is good reason for the matter to proceed to trial.

Whether the court should exercise its inherent jurisdiction to grant a stay

Reiterating the test for abuse of process

50 I point out preliminarily that the respondent conflated the two alternative grounds for a permanent stay, as espoused in *Soh Chee Wen* ([30] *supra*). Counsel for the respondent provided their interpretation of the *first limb*, *ie*, the "fair trial" limb, of *Soh Chee Wen* (see *Soh Chee Wen* at [40], as well as the emphasised portion of the excerpt reproduced at [30] above). However, the applicants did not argue that a fair trial would be impossible if the matter were to proceed. Their argument was that the respondent was abusing the court process, *ie*, the second limb in *Soh Chee Wen* involving a situation "where the particular circumstances [were] such that to try the accused would offend the court's sense of justice and propriety".

51 The threshold for this second limb, as mentioned earlier with reference to *Sum Lye Heng* ([35] *supra*) and *Sum Lye Heng (CA)* ([36] *supra*), would be met if it could be shown that the complainant's case was wholly devoid of merit. In the words of Deane J in *Williams v Spautz* ([39] *supra*), the threshold is met when "the proceedings obviously lack any proper foundation in the sense that

Version No 1: 26 Jan 2021 (14:00 hrs)

there is *no evidence* capable of sustaining a committal" [emphasis added] (at p 547).

52 Viewed another way, an application for a permanent stay of criminal proceedings bears shades of an application for striking out of a party's pleadings in civil proceedings under O 18 r 19 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). A striking out application often involves scrutiny of the lack of merit to a party's claim in law or in fact (*eg*, under the "discloses no reasonable cause of action or defence" limb under O 18 r 19(1)(*a*)). This is a similar threshold to that of "no basis or foundation" as espoused in Woo J's decision in *Sum Lye Heng* and the Court of Appeal's observations in *Sum Lye Heng (CA)*. I have emphasised this point above at [37] and [44].

53 If the applicants were of the view that respondent's private prosecutions were wholly without merit despite the respondent providing *some* evidence in support of her case, then a submission of no case to answer after the close of the private prosecution could be adopted by the applicants. If the evidence at the close of the Prosecution's case could not withstand scrutiny at that juncture, then the applicants would be acquitted of the charges without their defence being called. That is a decision to be made *at trial*, and not at this juncture.

Whether the present case amounted to an abuse of process by the respondent

54 With the above in mind, all of the applicants' arguments that the respondent's commencement of private prosecution amounted to an abuse of process were untenable.

Version No 1: 26 Jan 2021 (14:00 hrs)

(1) The capacities of the applicants

55 The first argument was that the respondent brought the private summonses against the applicants in their personal capacities, but the applicants were acting in their *official capacities as officers of the MCST* (see [22(a)] above). As I mentioned, the argument appeared to be that the MCST, *not* the applicants, ought to be the subject of criminal proceedings.

56 For offences such as mischief under s 425 of the Penal Code, a non-natural entity such as the MCST would inevitably have to act through natural persons, such as the applicants. There was evidence that the applicants were personally involved in organising and carrying out the removal and destruction of the Ducts with the assistance of 98 Construction. That they might also have acted in their official capacities as officers of the MCST would not necessarily preclude them for being criminally liable in mischief if their acts were in contravention of s 425 of the Penal Code. I accordingly did not see the applicants' argument as meritorious; it by no means rendered the respondent's claim as baseless or without foundation. This issue of the applicants' capacity should be better left for trial.

(2) The removal of the Ducts

57 The applicants' next argument was that the act of removing the Ducts was not wrongful to begin with, for a myriad of reasons including (see [22(b)] above):

(a) the Ducts were fixtures that were affixed to common property, and accordingly the property interest in the Ducts resided with the MCST;

Version No 1: 26 Jan 2021 (14:00 hrs)

(b) the respondent's claim that the requisite approval had been obtained for the installation of the Ducts on common property was founded on a forged document, namely the "2004 Minutes"; and

(c) the relevant provisions of the BMSMA and the LT(S)A showed that the respondent and/or the Estate and/or the late Mr Cheong were not entitled to install the Ducts on common property as there was no prior authorisation.

In my view, these were all issues that had to be ventilated at trial. The first issue involved a question of law. The second issue involved a question of fact. The third issue involved a mixed question of law and fact.

(A) THE ISSUE OF FIXTURES

58 On the issue of fixtures, counsel for the applicants cited *People's Park Chinatown Development Pte Ltd v Schindler Lifts (Singapore) Pte Ltd* [1992] 3 SLR(R) 236 ("*People's Park*") at [10] as standing for the proposition that title to any fixtures reverts to the freeholder of the property, *ie*, the MCST in this case.

59 It would *prima facie* appear that the Ducts were fixtures, given the manner in which they were affixed to the Development (albeit I make no definitive finding on this factual issue, given that the respondent disputed the Ducts' status as fixtures in her affidavit).[25] However, and more importantly, counsel for the applicants omitted to cite the full extract in *People's Park* in context. While the Court of Appeal noted at [10] that as against a *builder*, a

[25] CYL at para 39.

Version No 1: 26 Jan 2021 (14:00 hrs)

freeholder to a property has incontrovertible title, the Court of Appeal also noted the exception of *tenant's fixtures*, and that in such cases a tenant might be entitled to "sever" the fixture as against other persons, *eg*, the freeholder. Indeed, it would seem offensive to common sense that a tenant who expended funds on procuring a fixture would not be allowed to sever and reclaim the fixture for his own benefit (which in my view is the basis of the rule on tenant's fixtures).

60 In line with such concerns, in *Riduan bin Yusof v Khng Thian Huat and another* [2005] 4 SLR(R) 234 ("*Riduan bin Yusof*"), the Court of Appeal restated the rule on tenant's fixtures as follows (at [25]–[26]):

> 25 … the category of fixtures is further divided into landlord's fixtures, which must be left by the tenant at the expiry of his lease, and tenant's fixtures which the tenant is permitted to remove. …
>
> 26 The policy consideration behind the exception of tenant's fixtures is alluded to in Woodfall's *Landlord and Tenant* at para 13.142 (Sweet & Maxwell, Release 58, May 2004) in these terms:
>
> > The policy of the law which led to the relaxation of the rule prohibiting the removal of trade fixtures is plain. It was evolved "in support of the interests of trade, which have become the pillar of the state". Thus the courts considered that the commercial interests of the country might be advanced by the encouragement given to tenants to employ their capital in making improvements for carrying on trade, with the certainty of having the benefit of their expenditure secured for them at the end of their terms.

61 In a similar tenor, Judith Prakash J (as she then was) observed in *BP Refinery Singapore Pte Ltd v Amazon Group Ltd* [1998] 3 SLR(R) 4 that "[t]enant's trade fixtures have *long occupied a special place in the law of fixtures* … they may be removed from the land by the tenant during or at the expiration of his tenancy" [emphasis added] (at [18]).

Version No 1: 26 Jan 2021 (14:00 hrs)

62 Whether the Ducts could be regarded as fixtures and whether the doctrine of tenant's fixtures could be invoked in the present case would be issues for trial, and I make no further comment on them. As the Court of Appeal noted in *Riduan bin Yusof* at [27], "[w]hat would constitute … tenant's fixtures must depend on *the circumstances of the case*, in particular, the *purpose* for which the article is affixed onto the land" [emphasis added]. What was clear to me was that the respondent's private prosecution could not be regarded at this preliminary stage as unsustainable simply by virtue of the Ducts being fixtures affixed to the Development.

63 I add a further point on this issue: the relevant provisions of the BMSMA on the issue of "common property" do not appear to derogate from the doctrine of tenant's fixtures. The respondent did not appear to dispute that the Ducts were in fact built on common property.[26] However, the relevant provisions of the BMSMA dealing with common property, which the applicants relied on,[27] say nothing about *title* to tenant's fixtures reverting to the landlord:

> **29.**—(1) … it shall be the duty of a management corporation —
>
> (*a*) to control, manage and administer the common property for the benefit of all the subsidiary proprietors constituting the management corporation;
>
> …
>
> **By-laws for common property**
>
> **32.**—(1) Every parcel comprised in a strata title plan shall be regulated by by-laws.
>
> …

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26 RWS at para 106: "[t]he Applicants surely cannot be saying that there can never be a criminal offence… just because the [Ducts are] on common property".

27 AWS at para 14(a).

Version No 1: 26 Jan 2021 (14:00 hrs)

> (3) Save where otherwise provided in section 33, a management corporation may, pursuant to a special resolution, make by-laws … for the purpose of controlling and managing the use or enjoyment of the parcel … including all or any of the following purposes:
>
> …
>
> (*b*) details of any common property of which the use is restricted;
>
> …
>
> **Exclusive use by-laws**
>
> **33.**—(1) Without prejudice to section 32, with the written consent of the subsidiary proprietor of the lot concerned, a management corporation may make a by-law —
>
> (*a*) pursuant to an ordinary resolution, conferring on the subsidiary proprietor …
>
> (i) the exclusive use and enjoyment of; or
>
> (ii) special privileges in respect of,
>
> the whole or any part of the common property, upon conditions … specified in the by-law;
>
> …
>
> …

64 Two important things may be gleaned from the above.

(a) First, nothing is said about title to fixtures affixed on common property; the relevant provisions simply deal with *use* of common property and restrictions to the same. As the respondent correctly pointed out, at first blush, "[t]he Applicants surely cannot be saying that there can never be a criminal offence … just because the [Ducts are] on common property".[28]

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28 RWS at para 106.

Version No 1: 26 Jan 2021 (14:00 hrs)

(b) Second, there are many discrete issues that arise concerning the operation of ss 29 to 33 of the BMSMA. Not all of these issues have been fleshed out in detail in these proceedings. These are serious issues to be tried, and matters *better left for trial*. They involve intertwined questions of law and fact dealing with, *inter alia*, the interpretation of the BMSMA provisions as well as how the MCST's power to enact by-laws has been invoked in the present case. I elaborate further on the issues on statutory interpretation at [67]–[68] below.

(B) THE 2004 MINUTES

65 Counsel for the applicants claimed, in written submissions, that the report stating that the 2004 Minutes were forgeries ("the TFEG Report") was not disputed by the respondent, the argument being that the respondent did not challenge the conclusion that the said minutes were forged.[29] Specifically, the applicants argued that:

> 44. It is worthwhile to note that the TFEG Report is **not disputed** by the Respondent and in the various affidavits that were filed in OSS 3 as well as this proceedings after the TFEG Report was produced, she has not provided any cogent explanation for the forged Minutes. Instead, she has responded with even more statements that continue to cast doubt on their credibility.
>
> [emphasis in original]

66 The respondent, in her affidavit, however had "categorically reject[ed]" the applicants' allegations of forgery.[30] Needless to say, this would be an issue to be tested at trial, given that a closer examination of the factual evidence,

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29 AWS at para 44.

30 CYL at para 73.

Version No 1: 26 Jan 2021 (14:00 hrs)

including the 2004 Minutes, would be required. This would foreseeably include forensic analyses of the 2004 Minutes and cross-examination of the relevant personnel involved in the preparation of these minutes.

(C) THE PROVISIONS OF THE BMSMA AND LT(S)A

67 On the issues relating to the BMSMA and the LT(S)A, this boiled down to a proper interpretation of the relevant statutes. I accepted that the applicants made a compelling case regarding their unilateral right to remove the Ducts pursuant to s 30 of the BMSMA given that no exclusive use by-laws had apparently been made by the MCST pursuant to relevant resolutions, and more particularly the 90% resolution under s 33(1)(*c*), allowing the subsidiary proprietor of the Unit to mount the Ducts on common property resulting in exclusive use of the common property since 2004.

68 However, the respondent correctly pointed out in written submissions that s 30 of the BMSMA appears to be silent on whether the MCST would, after dismantling the Ducts installed on common property, be entitled to refuse to return the removed parts of the Ducts to the respondent and/or the trustees of the Estate upon their request, and even to go further to dispose of or destroy the removed parts of the Ducts to the detriment of the respondent and/or the Estate. The refusal to return and the forceable disposal or destruction of the removed parts of the Ducts despite requests for the return of the items by the respondent at the time of the dismantling of the Ducts no doubt would be relevant to a charge of mischief against the applicants in their personal capacities under s 425 of the Penal Code. To date, it would appear that the respondent had not been informed of the whereabouts of the removed parts of the Ducts. These disputed issues in my view were better left for trial. On the face of the applicants'

Version No 1: 26 Jan 2021 (14:00 hrs)

arguments, I was not persuaded that the relevant provisions of the BMSMA rendered the respondent's private prosecutions wholly unviable.

(3) The overlap between OSS 3 and the private summonses

69 The applicants' final contention was that OSS 3 substantially overlapped with the private summonses, and the issues raised in the private summonses were not "separate and distinct from those raised in OSS 3" (see [22(c)] above). This argument was essentially a suggestion that there was only one real dispute between the parties, and that this dispute ought to be heard in a single set of proceedings.

70 I found this argument to be unmeritorious. The objects of a criminal prosecution with a higher standard of proof *beyond a reasonable doubt* differ from that of a civil claim with a lower standard of proof *on a balance of probabilities*, though both could stem from the same broad set of facts. Civil and criminal liability do commonly coexist, and they serve different purposes. I did not see how the overlap could preclude either a civil claim or private prosecution on a criminal charge, where both the civil claim and criminal charge would be separately made out on the facts. I did not think that an accused person could escape criminal liability simply because he might also be liable at the same time under a civil claim for having committed acts which made him liable for both. A clear example would be accident cases where an accused person could be sued for compensation by the injured accident victim and yet be prosecuted for a traffic offence committed. Overlap of the issues raised in OSS 3 and in the private summonses would therefore be insufficient, *ipso facto*, to warrant a permanent stay of the criminal proceedings.

Version No 1: 26 Jan 2021 (14:00 hrs)

(4) Concluding remarks on the issue of abuse of process

71 In totality, I observed that the various arguments raised by the parties lent themselves to several serious issues to be tried. There was no basis to conclude at this preliminary juncture that the respondent's case was wholly untenable or unsupported by any evidence at all. This matter should be left to the scrutiny of the trial judge, who would have the opportunity to hear the parties' cases in full and review the salient aspects of the evidence.

Conclusion

72 I accordingly dismissed the application. I ordered costs of $3,500, inclusive of disbursements, in favour of the respondent against the applicants.[31]

Chan Seng Onn
Judge of the High Court

Subir Singh Grewal and Kang Hui Lin Jasmin (Aequitas Law LLP) for the applicants;
Jason Yan Zixiang and Yeo Teng Yung Christopher (Legal Solutions LLC) for the respondent.

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[31] NEs, 14 October 2020, page 36.

Version No 1: 26 Jan 2021 (14:00 hrs)