Heng Chyu Kee v Far East Square Pte Ltd
[2001] SGHC 348

Case Number : Suit 572/2001

Decision Date : 20 November 2001

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : A Thamilselvam (S Nabham & Partners) for plaintiff; Lim Thian Siong Sean and Tan E-Fang (Hin Tat & Partners) for defendants

Parties : Heng Chyu Kee — Far East Square Pte Ltd

Landlord and Tenant – Distress for rent – Writ of distress – Principles and procedure – Action for damages for wrongful execution of writ of distress – Whether writ illegal, irregular and excessive – Whether defendants negligent in execution of writ – s 5(3) Distress Act (Cap 84, 1996 Ed) – O 46 r 23 Rules of Court

Judgment

GROUNDS OF DECISION

1. This is an action by the plaintiff (PW1) against her former landlords. She is a 46-year old divorcee with three children and was, at the material times, carrying on the business of a hairdressing salon at #B1-06/07, Lucky Chinatown, New Bridge Road. She claimed that she was also carrying on the business of a gift shop. In this action she sued the defendants for damages arising from what she alleged to be a wrongfully executed Writ of Distress issued on 30 November 2000 from the Subordinate Courts at the instance of the defendants. The writ was issued against the plaintiff for arrears in rent in respect of her premises at #B1-06/07 Lucky Chinatown. In June 1999 the plaintiff contracted to rent this unit from the defendants for two years from 1 September 1999. The monthly rental was $1,026.10 and a monthly service charge of $761.50 was also payable under the tenancy agreement. It is relevant to note that at that time the plaintiff was already renting another unit from the defendants also at Lucky Chinatown. That unit was at #B1-15 and was used by the plaintiff for her gift shop, known as *Sweetzy World Gift Shop*, selling "Hello Kitty" products that included soft toys, stationery, toasters and various other items. #B1-06/07 was used by the plaintiff as a hairdressing salon, known as *Sweetzy World Unisex Hair Salon And Beauty Care*. The plaintiff asserted that she moved her gift shop to #B1-06/07 in April or May 1999 and thereafter, #B1-06/07 was used by the plaintiff partly as an hairdressing salon and partly as a gift shop. The apparent inconsistency with the incontrovertible evidence that #B1-06/07 was rented from September 1999 was not explained, but in the event I do not regard this discrepancy to be significant. The plaintiff soon fell into arrears in rent and on 1 February 2001 the defendant's employee, Mr. Sim Mong Hiong (DW4) brought Mr. Yen Meow Thien (DW2), a bailiff from the Subordinate Courts to serve the Writ of Distress on the plaintiff. The writ stipulated as follows:

> "I hereby direct you to distrain the movable property found on the premises at 211 New Bridge Road, #B1-06/07 Lucky Chinatown, Singapore 059432 for the sum of Singapore Dollars only $3,078.30 being all arrears of rent due to the [defendants] for the same from 1 September 2000 to 30 November 2000, together with costs and the prescribed fees and expenses of executing this Writ, according to the provisions of the Distress Act (Cap 84)."

2. The plaintiff alleged that Mr. Yen Meow Thien advised her that if she paid the arrears by 7 March 2001 he would cancel the writ of distress. In the meantime, he would record various items as seized

under the writ but would not actually place the court seal on those items to avoid embarrassing the plaintiff since the amount due was very small. It was not disputed that the items recorded by the bailiff in the inventory of seized items were as follows:

> "(1) 3 sets of Hair Dressing machines;
> (2) CTV 20" (LG);
> (3) Mini compo ("Aiwa");
> (4) 2 Steamers;
> (5) all miscellaneous items in the premises."

The plaintiff testified that she believed Mr. Yen Meow Thien because he had said the same thing in a previous distress action. On that occasion she paid up the arrears and the auction of the distressed items was called off. On this occasion, the plaintiff went to the defendants office on 12 February 2001 to make payment. She paid $3,500 and was given a receipt. This was not disputed by the defendants, but Mr. Lim submitted on behalf of the defendants that the sum of $3,500 was utilised by the defendants towards payment of legal costs and other outstanding debts, so that the sum of $3,078.30 stated in the writ of distress was not fully paid and the defendants were, therefore, entitled to proceed with the auction. The plaintiff testified that after making her payment of $3,500 she left on a cruise for holiday. On 7 March 2001 while still on holiday she was informed by her daughter who, in turn, had been told by a salesgirl from a nearby shop, that an auction had taken place at #B1-06/07. The plaintiff broke off from her cruise and rushed back to her shop. She arrived at her shop about 11.30pm. She testified that she wept when she saw that her entire shop-house had been stripped bare save for the black cupboard fixed against the wall just below the ceiling. The wash basin used for the salon had also been taken away. The locks to the shop had been changed and she was locked out. She called the defendants' employee Mr. Sim Mong Hiong and asked for an explanation. He was surprised because he said that he had checked with a colleague called "Stella" who told him that the plaintiff had not paid the arrears. The plaintiff testified that she went to see Stella the next day but was verbally abused and insulted by her instead of explaining to her why the defendants had proceeded with the auction.

3. The plaintiff commenced this action and sought damages for the wrongful auction. This was the point where the facts on which the plaintiff relied on became grossly exaggerated. They were, in my view, wilfully fabricated. Perhaps in grief; perhaps in fury - whatever the reason - the plaintiff sued for over $300,000 in damages because she claimed that many of her "Hello Kitty" products were original items and were worth a great deal of money, and in order to support this allegation she produced a book of photographs purportedly showing an array of "Hello Kitty" toys in the rented shop. She steadfastly maintained throughout the examination-in-chief as well as the cross-examination that, with the exception of a few photographs, namely P2, P5, P12, P22, all the others marked P1 to P27 were taken of her shop at #B1-06/07. The exceptions were those of her shop at #B1-15. She also said that P14 to P19 - photographs of the ransacked and empty shop - were taken on 29 March 2001 but the rest were taken after the new year this year. This statement was made to show what the state of her shop and the wealth of her products were shortly before the auction. As the cross-examination wore on the truth emerged. Initially, there was still room for a benevolent acceptance that she might have made a dreadful error through sheer carelessness, but eventually, it became obvious that the plaintiff wilfully produced photographs of her former shop at #B1-15 to pass off as #B1-06/07. I will not dwell on the long and excruciating process of the cross-examination, but it was only after I had asked her counsel Mr. Thamilselvam whether he had advised his client on the consequences of perjury, that the plaintiff retracted her evidence, without explanation, during re-examination and conceded that all the photographs (other than P1, P2, P3, P9, P10, P13 to P19) were indeed of #B1-15. By this retraction the plaintiff conceded that P6, P7, and P8 were photographs of #B1-15. These were three photographs she had hitherto been most adamant were of #B1-06/07; and

of which she ventured to explain why the black cupboards could not be seen in these photographs and how she had created a nook behind a pillar in the centre of the unit to erect the glass shelves seen in P7. The entire exercise of proving the photographs was to support the plaintiffs claim as to the extent of her loss as well as the amount of damages she could have recovered in the event that she succeeds in her claim. In the end, all it proved was that she was not a truthful witness.

4. I shall now refer to the law and procedure concerning the writ of distress. A writ of distress is a form of relief available to a landlord against his tenant who fails to pay rent. Although it is issued at the instance of the landlord, it is in fact issued by the court, and in that sense, cannot be said to be illegally or unlawfully issued. I will enlarge on this point shortly. The plaintiff's contention in paragraph 10 of her Statement of Claim that the writ was illegal, irregular and excessive cannot succeed in law as well as on the nature of the evidence adduced by her and on her behalf. It is true that the writ appears irregular on the face of it because it fails to identify the person to whom it was addressed, that is usually, the sheriff or his bailiff; but that irregularity occasioned no injustice because the plaintiff knew what it was all about when the bailiff Mr. Yen Meow Thien appeared at her shop on 1 February with the writ. She acknowledged the arrears of rent stated in the writ, and made payment some 12 days later. No particulars were given as to the claim that the writ was excessive, but if by that allegation the plaintiff was referring to that part of the writ that demanded payment of outstanding legal costs on a solicitor and client basis, that allegation ought to have been particularized in the statement of claim. But in any event, an omission in setting out the legal costs due does not render the writ irregular. The legal costs on a party and party basis for this writ in question was stated in the writ to be $900. In my view, that was sufficient. There were, however, other, more serious, grounds of complaint against the present writ of distress which I shall now refer.

5. A few more words regarding the distress procedure is necessary. First, the writ of distress is a notice to an errant tenant that, by its authority, the tenant's movables (and no one else's) in the rented premises (and nowhere else) are being distrained, and that he shall not sell or dispose of them until they are released by the sheriff, and further, that unless payment of the arrears in rent is made the movables will be sold by the sheriff and the proceeds used to pay the landlord towards the arrears in rent. In view of this, it is essential that the writ must set out precisely the amount of money in rent and expenses such as legal costs that the tenant has to pay. Secondly, when the movables are being restrained, the landlord must ensure that the bailiff, who is deemed to be his agent in this regard, affix the court's seal on each of the movables to be distrained. Only items that are thus sealed are subject to the writ of distress because the tenant must know which of his movables he can dispose of and which he cannot. Thirdly, when a sale of the movables is made by reason of the failure of the tenant to make payment within the time stipulated, the landlord must ensure that only the items distressed, and no other, are sold. Fourthly, once the tenant makes payment pursuant to the writ of distress the landlord is obliged to apply for the release of the distraining order. Although the tenant cannot dispose of the movables until they are formally released, neither would the landlord be entitled to sell them once he has been paid because the basis and justification for the writ are gone.

6. So, were the arrears in rent in this case, stipulated as $3,078.30 in the writ of distress, paid after the writ was served on the plaintiff on 1 February 2001? The defendants do not dispute that on 12 February 2001 the plaintiff made a payment of $3,500 but they contended that the payment was only partial and the explanation to this was that in addition to the $3,078.30 stipulated as arrears in rent from 1 September 2000 to 30 November 2000, the plaintiff owed them rent up to February 2001 as well as legal costs. They aver in paragraph 5 of their Defence that the sum of $3,500 paid by the plaintiff was appropriated by them in the following manner (but it will be noted that the receipt - AB59 - itself sets out a different set of component parts):

"Service charge for September 200 (part)	$ 414.45
Costs:	$ 1,802.50
Rent for September 2000:	$ 1,026.10
Service charge for October 2000 (part):	$ 146.88
GST (October 2000):	$ 53.62
Interest (October 2000):	$ 56.45
	_____
Total:	$ 3,500.00"

7. The defendants therefore say that the rents for October and November had not been paid and the sale of the distressed movables was justified. I do not accept this argument. If legal costs, service charges and GST (goods and services tax) are due and owing then they must be expressly stated in the writ and not be submerged, unseen, between the lines. If the demand is for a specified sum for a specific debt, the creditor is not entitled to appropriate payment by the debtor towards some other debt even if that other debt is undeniably due. The creditor may only do so with the express consent of the debtor. If no direction is made by the debtor himself, the inference must be that he was making payment in respect of the specified debt and no other. There is a pertinent reference to a similar issue in *Davenport v Queen* [1877] 3 AC 115, 131. I need not dwell on the details of that case. They are not essential for the appreciation of the Privy Council's approval of an opinion of Justice Williams in *Croft v Lumley* 10 E.R. 1459, 1480 in these terms:

> "It was established as early as *Pennant's Case* 3 Rep. 64a that if a lessor accepted rent, but accompanied the receipt with a protest that he did not accept it as rent, and did not intend to waive any forfeiture. But I am of the opinion the protest was altogether inoperative, as he had no right at all to take the money unless he took it as rent; he cannot, I think, be allowed to say that he wrongfully took it on some other account, and if he took it as rent, the legal consequences of such an act must follow, however much he may repudiate them".

8. The principle that where money was paid, it was to be applied according to the expressed will of the payer and not that of the receiver has also been recognized in our courts in the short judgment of Winslow J in *South Union Co Ltd v Seng Hin Ltd* [1972-74] SLR 326. I find, on the evidence before me, that when the plaintiff made payment on 12 February 2001 she was paying up as her debt as specified under the writ of distress even though she paid a little more than was demanded. There was no evidence that she was informed or that she had agreed to make only partial payment under that writ. Miss Toh Wee San (DW1) stated that she received payment of the $3,500 from the plaintiff but she had appropriated the payment according to the instructions of her superior officer namely, Miss Ng Beng Choo (DW5). The evidence of Miss Ng Beng Choo (DW5), the assistant credit officer of the defendants was that the standing instructions from the management was to allocate payments by a tenant in accordance with the defendants' internal guidelines that included the apportionment at the defendants' discretion for interests, services tax and legal fees. She testified that the defendants would not appropriate payment towards the satisfaction of a writ of distress unless the tenant specifically asked them to do so. In my view, that is to place an unfair burden on the debtor tenant. When a landlord issues a writ of distress specifying the payment of a specific sum, any payment by the debtor must go towards satisfying that sum first and foremost. I am, therefore, of the opinion

that the sum of $3,500 paid by the plaintiff must be used to satisfy, and must be deemed to have satisfied the debt of $3,078.30 specified in the writ of distress. There was a sum of $900 costs as well as court charges of $100 but after deducting them from the $3,500, there was still a debt of $578.30 due. The continued seizure of $2,000 worth of the plaintiff's goods and their subsequent sale for $1,200 was, in this regard, wrongful, but this is not the same as saying that the writ of distress was illegal. That is a point of law which I shall revert shortly.

9. Continuing with the procedure of a distress action, it will be noted that the defendants were obliged, if payment had been made, to apply for the discharge of the writ. But they did not do so and instead, a date was fixed for the distressed goods to be sold by auction. This was done on 7 February 2001 at the plaintiff's shop. The auction was conducted by a licensed auctioneer, Mr. Lean Lam Bong (DW6) appointed by the bailiff Mr. Yen Meow Thien, who was also present. It is not disputed that the total proceeds from the auction came to only $1,200 but was still more than the $578.30 due under the writ of distress at that time. The ensuing furore between the plaintiff and the defendants arose because the successful bidder carted away the plaintiff's entire stock as well as some items, which were immovables, namely fixtures such as the washbasin. Once again, the failure or omission on the part of the defendants in this regard may expose them to an action in negligence or breach of statutory duty whichever may be the case, but not that the writ was illegal.

10. I would, in passing, observe that some of the problems in this sale would not have arisen had the bailiff been precise in his recording of the inventory. I accept that there may be occasions in which it would be expedient to record certain items as "miscellaneous" items, but if that should become necessary, the items must be packed together in a box or container and sealed with the court's seal, and the description should then be "miscellaneous items in box A", for example. To state merely "miscellaneous items" without any means of identifying what they are, and relying solely on the bailiff's memory is an unreliable, and therefore, undesirable method. There is authority in the case of *Davies v Property and Reversionary Investments Corporation Ltd* [1929] 2 KB 222 for the proposition that if the notice of writ identifies all items in the shop as subject to the seizure the notice may be regarded as sufficient; but it is one thing to say that all the goods in the shop are seized and another to say that miscellaneous items are seized. The difference is stark and obvious and requires no further explanation. Mr. Yen Meow Thien also admitted under cross-examination that he did not stick the court seal on the miscellaneous items he noted in the inventory, and his explanation in re-examination was that he found the miscellaneous items "loose and scattered" and therefore he did not think that it was necessary to affix the court seal on them. If that was his reason, it was not only inadequate but also compounds the vague description of the so-called miscellaneous items.

11. The plaintiff called the erstwhile security officer Mr. Biremkumar (PW3) at Lucky Chinatown to testify on her behalf. He said that he was on duty on the day when Mr. Sim Mong Hiong, the bailiff and the auctioneer arrived at the plaintiff's premises. They brought along a locksmith who broke the lock. The party entered, and a short while later, a person described as "the purchaser" arrived. They spoke in Chinese inside the shop and after some time they left. The locksmith replaced the lock. The purchaser did not take anything with him at that point, but he returned in the evening with a 20-footer lorry, a one-ton truck and a van to collect the items purchased. Mr. Biremkumar initially refused him entry on the ground that the security policy was not to allow anyone in after 7pm for such purposes. The purchaser insisted; and Mr. Biremkumar then asked him to speak to Mr. Chandrasekar (PW2) his security supervisor. Mr. Chandrasekar consented to let the purchaser take away the movables from the plaintiff's shop. The exercise ended about 11pm. The only item they could not take away was the receptionist's counter because the purchaser's vehicles were full. So he gave the counter to the security guards who immediately used it as their security counter at the warehouse entrance. That was the entrance for the tradesmen and was the entrance used by the purchaser on the evening in question. According to Mr. Biremkumar, the plaintiff came to the building with a man

about midnight and noticed her counter at the security post and asked why it was there. Then she went to her shop and broke down when she saw the empty shop. Shortly after, she fainted and Mr. Biremkumar called for assistance. So, as it transpired, the successful bidder in this case returned to the shop to collect the purchased goods after the defendants' representative, the auctioneer and the bailiff have left the premises. There was therefore no one to supervise the collection. A letter dated 14 June 2001 from the Head Bailiff Mr. Ghani Majid to defendants' previous solicitors reported that some movables that were not seized had been taken away by the purchaser. Mr. Yen Meow Thien conceded under cross-examination that looking at the photographs taken after the sale, it was obvious that the purchaser had taken away items that were not seized. It hardly needs explanation that an execution creditor, in this case the defendant landlords, must ensure that not only are correctly identified goods sold, but also that the purchasers take away only the goods that they had purchased. A dereliction of this duty may expose the creditor to civil liability in negligence.

12. Mr. Yen Meow Thien was either unaware or decided to ignore the full import of O 46 r 23 of the Rules Of Court which requires the bailiff to post a copy of the Notice of Sale on the premises. Mr. Yen Meow Thien's evidence was that he only shoved the notice into the plaintiff's letterbox; but the plaintiff denied receiving it. When asked by counsel why he did not "paste" the notice at the premises he said at first that the premises had glass door and therefore the notice could not be pasted. When he was corrected by the court that the rule stipulated that the notice must be "posted" not "pasted" at the premises, Mr. Yen Meow Thien replied with a hint of facetiousness that he had indeed posted the notice by putting it into the plaintiff's letter-box. That was not good enough. The rule required him to post the notice at the premises unless it was not practicable to do so. There was no valid reason why he found it impracticable to do so. This case is a clear example of the importance of adhering strictly to proper procedure for seizure and sale. Those who are involved in the execution process of any court order must behave responsibly and respect the property of the debtor as they ought to anyone else's property. They fail in that duty if they exceed the terms of the order or ignore the provisions of proper procedure. It is important that these duties and responsibilities must be properly discharged by the executing creditor otherwise he may give the impression of plundering his debtor under the guise of a writ of distress or seizure and sale. The court's writ will not be used as a licence for any adventure of that sort.

13. Mr. Yen Meow Thien assessed the value of the items noted in the inventory of seized items, including the dubiously named "miscellaneous items", to be $2,000. He conceded that he arrived at this figure based only on his experience although he had no qualifications as an expert valuer. Even so, a person who relies on the vastness of his experience to claim some degree of expertise must at least provide some explanation or grounds as to how he arrived at that valuation. I do not think that it is sufficient to rely on an assertion that the debtor did not object to his assessment. In this case, mindful that Form 94 was dated 1 February 2001, I am not satisfied it had been properly served on the debtor. I came to this conclusion after considering, reviewing and finally, rejecting Mr. Yen Meow Thien's evidence; in so doing I had also taken into account the evidence of the defendants' representative, Mr. Sim Mong Hiong, who said that he informed the plaintiff by telephone, some nine days after the seizure, that the bailiff had inserted some documents in her letter-box. He did not specify what those documents were because Mr. Yen Meow Thien did not tell him. The valuation of $2,000 in this case was also significant in another aspect. At that time, the prevailing rule as Mr. Yen Meow Thien explained, was that no advertisement of sale was necessary if the valuation was not more than $2,000. Hence, where there was no advertisement of sale save the notice that is put up at the bailiff's office, only regulars like the purchaser Mr. Tan Ting Koon (DW3) - as he was so described by the auctioneer Mr. Lean Lam Bong - will attend the sale and meet with little competition for bids. In this case, there were only three bidders. They had been informed beforehand by the bailiff that the assessed value of the seized goods was $2,000. According to Mr. Lean Lam Bong, the opening bid was only $300 and finally, the purchaser, whose penultimate bid was $1,000, was persuaded by Mr.

Lean Lam Bong to increase his bid to $1,200. Mr. Sim Mong Hiong testified that he telephoned his superiors and was instructed to accept only if the bid was no less than $1,200. The auction was conducted by the bailiff, the defendants' representative and the auctioneer. The plaintiff claimed that she was completely unaware of the sale and was on a holiday cruise. She subsequently said that she was also doing business trading "Hello Kitties" on board the cruise vessel. Whether that is true or not was not crucial for the purposes of my judgment.

14. On the other facts as I have found, I am of the view that although the writ of distress was not illegal the defendants were, however, negligent in the execution of the writ in failing to ensure that the value of the goods seized did not exceed the debt; secondly, in failing to identify the goods seized by affixing the court seal on all the items seized; thirdly in failing to sell only such items as were seized; fourthly, in failing to give adequate notice of the sale; fifthly, in failing to ensure that only seized goods are sold; and sixthly, failing to ensure that the purchaser takes away only the items that he had bought. However, the tort of negligence requires proof of damage. It is in this regard that the plaintiff failed. One cannot begin to consider the quantum of damages until the cause is proved, and the cause in this case requires proof of damage. There is no question in my mind that the vast sums of money attributed to the alleged valuable "Hello Kitty" products were deliberately fabricated. So far as her evidence related to the transfer of her "Hello Kitty" business to unit #B1-06/07 was concerned, I reject them entirely. I accept that there were some remnant pieces that were showcased in the hairdressing salon, but the value of those were not proved. More importantly, the undisputed evidence was that within a day or so, the purchaser Mr. Tan Ting Koon re-sold virtually all the items to the plaintiff for $2,000. Mr. Tan told the court that in September or October 2001 the plaintiff spoke to him and asked him "not to say too much to the lawyer representing Far East" and also "not to tell the lawyer representing Far East that she had bought the things from me." This evidence was not contradicted or challenged. In my view, the plaintiff was bound to state in her case that she had re-purchased the goods but she did not do so and did not make it part of her case. It was the defendants who produced this evidence. The plaintiff ought to have pleaded this so that the true extent of damage may be understood by the court (quite apart from the question of assessing the quantum of damages). She had first to prove that she had suffered damage before she can succeed in her claim and have damages assessed. In ordinary circumstances, I would have said that the damage so far as it appears from the evidence would at least be the difference between the $2,000 the plaintiff paid Mr. Tan, set-off, if necessary against the $1,200 credited to her account in respect of any outstanding debt to the defendants. But the plaintiff never accepted the fact that she had re-purchased the goods, and instead, she went to remarkable lengths to conceal and fabricate evidence of damage. In view of her false evidence and conduct in this trial I do not accept any of her evidence especially when it related to the question of damage (apart from the issue of the quantum of damages). The burden lies with the plaintiff in proving all the constituents of the tort of negligence and if any aspect is not proved the claim must fail as I so find in this case. It is relevant to note, however, that although the measure of damages is not in issue at this point, it was the plaintiffs case that the bulk of the claim was based on the assertion that the defendants took away valuable "Hello Kitty" products and counsel submitted that these came to about $300,000. It is therefore relevant and essential for me to say that I find as a fact that this assertion was not proved at all. Added to the evidence of the purchaser Mr. Tan who testified that he had re-sold virtually all the items that he had bought, the loss (if any) suffered by the plaintiff would not even have exceeded the magistrates scale of jurisdiction. I am mindful that once the slightest damage is proved the plaintiff is entitled to an assessment of the quantum of that damage. In the event, I have found that the plaintiff here failed to prove damage entirely for not a word from her concerning this aspects of her case can be accepted.

15. Finally, Mr. Thamilselvam also submitted that the writ of distress was also illegal because it was exercised simultaneously with the exercise of forfeiture. He submitted, on the authority of *Dovey*

Enterprises Ltd v Guardian Assurance Public Ltd [1993] 1 NZLR 540, and *Metro Mechanical Ltd v Neil Day Motors Ltd* [1995] DCR 232, that in such cases, the termination of the tenancy by re-entry is regarded as the primary step and the distrain becomes illegal because the landlord-tenant relationship had been terminated. I will not comment on the authorities cited nor do I need to question the ostensibly sound principle that counsel advanced, although in a quick rejoinder, Mr. Lim pointed out that under s 5(3) of the Distress Act, the landlord is entitled to distrain even after termination provided that the tenant is still in occupation or that his goods are still on the premises. Both these conditions were present in this case. In any event, it was not pleaded by the plaintiff that the tenancy had already been terminated when the writ of distress was served on the plaintiff. That would have been an issue of fact which the defendants would have been entitled to demur. I will not allow a party to raise such an argument in final submission in these circumstances. I will take this moment to float a gentle reminder to counsel that an advocate fights with the sword of a warrior and not the dagger of an assassin.

16. In conclusion, I find that although the process of execution by way of a writ of distress was not properly carried out, the claim based on illegality failed. The issue of illegality had arisen and was considered in two local cases. The first of which, *Chop Chye Hin Chong v Ng Yeok Seng* [1934] MLJ 265 was followed by Judith Prakash J in *Ginsin Holdings Pte Ltd v Tan Mui Khoon t/a Chan Eng Soon Service* [1997] 1 SLR 55. The principle there espoused, and which I accept entirely, was that where a writ of distress is issued by the court no cause of action for damages for wrongful distress can arise. The writ is an embodiment of law. The law may be harsh or even unjust, but save in the case of *ultra vires*, which is not relevant here, it will be a contradiction in terms to say that the law is illegal. An aggrieved plaintiff, however, is entitled to apply to set aside the writ, or alternatively, sue for malicious prosecution. In so far as the omissions and irregularities in the conduct of the sale were concerned, the remedy lay in other causes of action such as negligence or breach of statutory duty. Only negligence was pleaded and I have dealt with this aspect above.

17. For the foregoing reasons I dismissed the plaintiff's claim. Mr. Lim then revealed that he had made an offer to settle at $8,000 on 5 October 2001 but that was rejected by the plaintiff. Mr. Thamilselvam confirmed the offer. Since the offer was more favourable to the plaintiff than the final decision of this court I ordered that plaintiff to pay costs on the standard basis up to 5 October 2001 and thereafter on an indemnity basis.

Sgd:

Choo Han Teck
Judicial Commissioner