

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

[2022] SGHC 285

Suit No 327 of 2022 (Summons No 3754 of 2022)

Between

- (1) Pakirisamy Rajoo
- (2) Sharma Indra Devi

... Plaintiffs

And

Sheila Devi d/o Pakirisamy Rajoo

... Defendant

GROUNDS OF DECISION

[Civil Procedure — Setting aside — Dismissal of claim — Absence of plaintiff at trial]

[Legal Profession — Professional conduct — Duties and responsibilities]

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND TO THE DISPUTE	2
EVENTS LEADING UP TO SUM 3754	3
EVENTS ON THE TRIAL DATE	3
FILING OF SUM 3754 – MR RAJOO’S AFFIDAVIT	5
MR SINGH’S WRITTEN SUBMISSIONS FOR SUM 3754	7
EVENTS AT THE HEARING OF SUM 3754	8
THE SUBMISSIONS IN SUM 3754	9
ISSUES TO BE DETERMINED	10
MY DECISION	10
ISSUE 1: WHETHER THERE WERE GOOD REASONS FOR THE PLAINTIFFS’ AND MR SINGH’S ABSENCE AT TRIAL	10
<i>Mr Rajoo’s reasons for absence at trial</i>	10
<i>Mdm Devi’s reasons for absence at trial</i>	13
<i>Mr Singh’s reasons for absence at trial</i>	14
<i>Supreme Court Practice Directions and counsel’s professional duties</i>	15
ISSUE 2: WHETHER THE PLAINTIFFS HAD AN ARGUABLE CASE WITH A REAL PROSPECT OF SUCCESS.....	17
ISSUE 3: WHETHER THE PLAINTIFFS HAD APPLIED PROMPTLY TO SET ASIDE THE JUDGMENT DISMISSING THEIR CLAIM.....	18
CONCLUSION	19

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Pakirisamy Rajoo and another
v
Sheila Devi d/o Pakirisamy Rajoo

[2022] SGHC 285

General Division of the High Court — Suit No 327 of 2022 (Summons No 3754 of 2022)

See Kee Oon J

27 October 2022

9 November 2022

See Kee Oon J:

Introduction

1 This was a summons filed by the two plaintiffs, who are husband and wife. The plaintiffs filed HC/S 327/2022 (“Suit 327”) against the defendant, their daughter. Suit 327 was dismissed owing to the plaintiffs’ absence at trial, which was scheduled to be heard over two days, commencing 11 October 2022. Not only were the plaintiffs absent without any prior notice to the court, their counsel, Mr Mohan Singh s/o Gurdial Singh (“Mr Singh”) was absent as well. I proceeded to dismiss the claim after hearing brief submissions from the defendant’s counsel, Mr Andrew Hanam (“Mr Hanam”).

2 Medical certificates were subsequently produced on behalf of the first plaintiff (“Mr Rajoo”) and Mr Singh purporting to explain their absence. All the medical certificates did not contain any diagnosis and categorically stated that

they were *not valid* for absence from court proceedings. No medical certificate was produced for the second plaintiff (“Mdm Devi”).

3 On 27 October 2022, at the hearing of the summons (HC/SUM 3754/2022 – “SUM 3754”) that was filed to set aside my judgment dismissing the claim, Mr Singh again did not attend. Another counsel from a different firm appeared instead to argue the matter on the plaintiffs’ behalf. After hearing submissions, I dismissed SUM 3754.

4 I shall proceed to set out the relevant background and chronology, and furnish my reasons for dismissing SUM 3754. It is with considerable regret that I feel compelled to write this grounds of decision, as it is necessary in my view to highlight Mr Singh’s cavalier conduct in these proceedings. It would appear that the plaintiffs themselves had unfortunately also chosen to adopt a similar stance.

Background to the dispute

5 I begin with a brief outline of the background to the dispute in Suit 327, in which the plaintiffs claimed the sum of \$300,000 from the defendant on the basis of promissory estoppel.¹ The plaintiffs alleged that the defendant had made representations to them that they would be allowed to reside in her flat at Blk 307 Woodlands Avenue 1, #09-311, Singapore 730307 (“the Flat”) during their lifetime.² The Flat was formerly owned by the plaintiffs until it was sold

¹ Statement of Claim dated 31 March 2022 (“SOC”) at paras 10–11.

² SOC at para 7(i).

to the defendant in 2009 for \$410,000.³ The plaintiffs moved out in 2017 and only moved back into the Flat in 2020.⁴

6 The defendant sold the Flat in March 2022 and informed the plaintiffs that they had to move out by May 2022 as she would have to give vacant possession to the purchaser. The plaintiffs informed the defendant that they would not move out. They subsequently filed Suit 327 claiming, *inter alia*, that the defendant had previously represented to them that if she were to sell the Flat, she would pay them \$300,000 which comprised: (a) \$240,000 representing a “discount” between the then purported market price of \$650,000 and the purchase price of \$410,000; and (b) \$60,000 as repayment for the plaintiffs’ assistance to help clear her past debts.⁵

7 The defendant denied the allegations in Suit 327 and put the plaintiffs to strict proof. The trial was scheduled to be heard over two days from 11 to 12 October 2022.

Events leading up to SUM 3754

Events on the trial date

8 The chronology of events that transpired on the morning of 11 October 2022 bears noting. Only Mr Hanam and the defendant were present in court at 10.00am, the scheduled time for the trial to commence. At 10.12am, as neither the plaintiffs nor Mr Singh were present, my Court Manager took the initiative to call up Mr Singh on his handphone to inquire on his whereabouts. Mr Singh

³ SOC at para 7(v).

⁴ Defence and Counterclaim (Amendment No 1) dated 19 April 2022 at para 5; Reply and Defence to Counterclaim dated 4 May 2022 at para 7(vi),

⁵ SOC at paras 7(ii)–7(iii) and 7(v).

informed her that he was unwell and would not be attending court. He mentioned that he had already informed his office and arrangements would be made for someone from his office to attend court. He requested my Court Manager to call his office.

9 At 10.13am, my Court Manager called Mr Singh's office and spoke to a male staff member. He declined to identify himself. He stated that the office would arrange for someone to attend court. The said staff member said that he would return the call to my Court Manager within ten minutes. He did not do so, and hence at 10.23am, my Court Manager called the office again. She was informed by the same male staff member that the office was making some arrangements and a representative from the office would attend court at 10.45am. She was also told that the plaintiffs would not be attending court as Mr Rajoo had just been discharged from hospital at 5.30am that morning and Mdm Devi was not well.

10 At 10.30am, I commenced the hearing in open court. Mr Hanam stated that he had not been previously informed by Mr Singh that neither he nor his clients would not be attending court. In the premises, Mr Hanam submitted for the claim to be dismissed. He pointed out that he had also not received any of the trial bundles and submitted that the plaintiffs had intentionally delayed matters from the start of the proceedings.

11 I stood the matter down to 10.45am in view of the indication from Mr Singh's office that someone would be present in court by then to mention the case on his behalf. When I resumed the hearing at 10.46am, there was no sign of anyone from Mr Singh's office in court. There was also no further communication from Mr Singh's office. It should be emphasised that on each occasion when my Court Manager communicated with either Mr Singh or his

office, this was done entirely at her initiative. No prior notice whatsoever had been given to the court of Mr Singh's or the plaintiffs' non-attendance at trial.

12 Mr Hanam again asked for the claim to be dismissed and I so ordered, pursuant to O 35 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). After ordering costs of the action to the defendant, the hearing in open court was adjourned at 11.02am. No further communication was received by my Court Manager from Mr Singh or his office that day.

Filing of SUM 3754 – Mr Rajoo's affidavit

13 After the claim was dismissed, SUM 3754 was filed in the eLitigation system that very evening to set aside the judgment dismissing the plaintiffs' claim. In support of the application, Mr Rajoo affirmed an affidavit dated 11 October 2022 ("Mr Rajoo's affidavit") seeking, on behalf of the plaintiffs, to set aside the dismissal of the claim on "exceptional grounds mainly due to ill health" and also to "explain [their] Counsel's non-presence on account of his ill health too [that] morning such that alternate arrangements for another Counsel was impeded due to circumstances beyond his control".⁶

14 Essentially, Mr Rajoo's affidavit chronicled his visits to Khoo Teck Puat Hospital ("KTPH") on 8 October 2022, and thereafter to Woodlands Polyclinic and Tan Tock Seng Hospital ("TTSH") on 10 October 2022. Mr Rajoo explained that he was hospitalised for two days at KTPH after a fainting spell on 8 October 2022. Upon discharge the next day at 9.47am, he was given medical leave for seven days from 8 to 14 October 2022 (inclusive) and referred

⁶ Pakirisamy Rajoo's affidavit dated 11 October 2022 ("Mr Rajoo's affidavit") at para 1.

to TTSH for follow-up at the earliest possible date after five days from discharge.⁷

15 On 10 October 2022, Mr Rajoo claimed that he vomited and felt unwell and thus visited Woodlands Polyclinic. He was referred to the TTSH Emergency Department, where he was observed through the night and discharged at about 5.07am on the morning of 11 October 2022. The examining physician at TTSH gave him medical leave for three days from 11 to 13 October 2022 (inclusive). Mr Rajoo said that because he was too exhausted after being discharged, he went to sleep and was thus not present in court on 11 October 2022.⁸

16 Mr Rajoo further stated in his affidavit that Mdm Devi was also on medical leave. He explained that she had difficulty in walking due to right knee osteoarthritis and was “on wheelchair” [*sic*]. He sent Mr Singh the relevant medical documents by WhatsApp as he was “home unable to move about”.⁹

17 Mr Rajoo claimed that he was confident that Mr Singh would handle the matter but did not expect that Mr Singh would also be ill that morning. He exhibited a copy of Mr Singh’s medical certificate in his affidavit. Mr Rajoo also pointed to the grant of an injunction compelling the defendant to pay \$100,000 into court prior to the assignment of trial dates as being conclusive of the merits of the plaintiffs’ case.¹⁰

⁷ Mr Rajoo’s affidavit at para 7.

⁸ Mr Rajoo’s affidavit at paras 8–10.

⁹ Mr Rajoo’s affidavit at paras 10–11.

¹⁰ Mr Rajoo’s affidavit at paras 13 and 15–16.

Mr Singh's written submissions for SUM 3754

18 At the outset, it is pertinent to note that Mr Singh's written submissions for SUM 3754 were filed at the eleventh hour in the eLitigation system at 1.06pm on 27 October 2022, less than 90 minutes before the hearing was scheduled to commence. Quite apart from the tardiness of this filing, there were a few matters which required clarification arising from my perusal of these submissions.

19 First, the written submissions suggested that Mr Rajoo had "filed" the supporting affidavit for SUM 3754 "via Video given [his] medical condition".¹¹ However, I was conscious that Mr Rajoo did not attest to this in his affidavit. I saw no reason why he could not have done so if this was indeed the truth of the matter. As such, the statement that the affidavit had been "filed" "via Video" was inadmissible evidence from the Bar.

20 Second, the written submissions reiterated Mr Rajoo's "firm believe" [*sic*] that the claim was dismissed because "...the Court was not apprised of the circumstances that the Plaintiffs and their Counsel were ill".¹² This was not completely accurate since the court had sought to elicit information from both Mr Singh and a staff member from his office, but had not been afforded any supporting documentation to justify their non-attendance at trial. In any event, it was counsel's primary responsibility to put forth any relevant information or supporting documentation in the first place. This was not done at all in the present case prior to or at the time of the hearing.

¹¹ Plaintiffs' submissions dated 27 October 2022 ("PS") at para 1.

¹² PS at para 4.

21 Third, the written submissions stated that that the plaintiffs, who are aged 73 and 65 respectively, were issued medical certificates by competent practitioners who “had clarified that both were ill; were granted medical leave for certain number of days such that they were absent; [and] *have stated that they were unable to attend Court on 11th October 2022*” [emphasis added].¹³ This was misleading. Only Mr Rajoo had exhibited two medical certificates, both of which contained the unambiguous qualifier: “This Certificate is not valid for absence from court attendance”.¹⁴ Mdm Devi produced no medical certificate. I shall examine the documents relied upon in due course.

Events at the hearing of SUM 3754

22 The parties were duly notified that the hearing of SUM 3754 would take place virtually on 27 October 2022 via Zoom. I noted above (at [18]) that Mr Singh filed written submissions for SUM 3754 albeit at the eleventh hour on 27 October 2022. There was no prior indication that he would not be appearing at the hearing to make his oral submissions. Only Mr Hanam had logged in prior to the scheduled hearing time of 2.30pm. By 2.36pm, Mr Singh had still not logged in for the Zoom hearing.

23 Once again, my Court Manager had to call Mr Singh on his handphone to ascertain his whereabouts. The call went unanswered. She then called Mr Singh’s office and spoke to one Mr Roy at 2.42pm, who informed her that Mr Singh was engaged with another matter in the State Courts and another solicitor, one Mr Lawrence Tan (“Mr Tan”) would mention SUM 3754 on Mr Singh’s behalf. I pause to note that this was an unusual course to adopt, as

¹³ PS at para 11.

¹⁴ Mr Rajoo’s affidavit at pp 11 and 20.

it is settled practice that in the event of any conflict in counsel's hearing schedules, Supreme Court hearings would take precedence over State Courts hearings.

24 Mr Tan did not log in for the Zoom hearing until about 2.45pm. When I queried him as to why Mr Singh was not able to attend the hearing, he stated that Mr Singh was attending another State Courts hearing. Mr Tan clarified that he was from another firm (Prestige Legal LLP), and confirmed that he had instructions to proceed with the application in SUM 3754.

The submissions in SUM 3754

25 Mr Tan raised three main points in his submissions. First, he submitted that the plaintiffs' absence at trial was on account of their being elderly and sick. They had been hospitalised and were on medical leave. He pointed out that Mr Singh had also been given a medical certificate. Second, he submitted that there was no undue delay in making the application in SUM 3754 and no prejudice would be suffered by the defendant if the claim were to be reinstated since the Flat had already been sold. Third, he argued that there were triable issues and merits to the application. He did not specify what those merits were, but simply referred the court to paras 15 and 16 of Mr Rajoo's affidavit which referenced the grant of the injunction as being conclusive of the merits of the plaintiffs' case (see [17]).

26 In response, Mr Hanam pointed to the Court of Appeal decision in *Su Sh-Hsyu v Wee Yue Chew* [2007] 3 SLR(R) 673 at [44] and submitted that the reason for a party's absence is the predominant consideration for the court in determining whether a judgment entered at trial in the absence of that party ought to be set aside. Further, among other relevant factors, the court would

consider whether the applicant in a setting aside application would have a real prospect of success at trial.

27 Mr Hanam submitted that the plaintiffs had not addressed anything on affidavit or in their written submissions to show that there were merits to their claim. Mr Hanam further submitted that Mr Rajoo had made a deliberate decision not to attend court while Mdm Devi had not filed any affidavit to explain her reasons for absence. Lastly, he noted that Mr Singh's medical certificate was not valid for absence at the trial.

Issues to be determined

28 The following issues arose for my determination:

- (a) whether there were good reasons for the plaintiffs' and Mr Singh's absence at trial;
- (b) whether the plaintiffs had an arguable case with a real prospect of success; and
- (c) whether the plaintiffs had applied promptly to set aside the judgment dismissing their claim.

My decision

Issue 1: Whether there were good reasons for the plaintiffs' and Mr Singh's absence at trial

Mr Rajoo's reasons for absence at trial

29 I have set out Mr Rajoo's account of his visits to KTPH, Woodlands Polyclinic and TTSH earlier (at [14]–[15] above). While I did not doubt that Mr Rajoo had multiple documented ailments, I found that the reasons he had

proffered for his absence at trial were unconvincing and contrived. I came to this conclusion upon careful scrutiny of the contents of the various documents he had exhibited in his affidavit.

30 To begin with, the two medical certificates Mr Rajoo tendered both stated unequivocally that they were *not valid* for absence from court attendance.¹⁵ Evidently, he was not assessed by the examining doctors to have been so unwell as to be *unable* to attend court. This would have sufficed to indicate that no good reasons had been shown, but I would go further to note that Mr Rajoo had obviously taken pains to highlight to the examining physician at Woodlands Polyclinic that he was “[d]ue for court hearing on 11-12 Oct 2022”, as recorded in the referral note to the TTSH Emergency Department.¹⁶ Moreover, his vital signs appeared to be normal and he was alert. No remarkable symptoms were reported. The TTSH referral note which was issued upon Mr Rajoo’s discharge merely noted a primary diagnosis of “dehydration”, consistent with him allegedly having vomited, apart from recording his past medical history and current range of medical conditions.¹⁷

31 If indeed Mr Rajoo had genuinely been afflicted by severely debilitating illness or had experienced serious physical discomfort after being discharged from KTPH on 9 October 2022, it was odd that he was not warded for further observation at TTSH beyond 11 October 2022. Instead, he was found well enough to be discharged after being placed under what he described as “intense observation” for less than seven hours.¹⁸ Most tellingly, the examining

¹⁵ Mr Rajoo’s affidavit at pp 11 and 20.

¹⁶ Mr Rajoo’s affidavit at p 13.

¹⁷ Mr Rajoo’s affidavit at pp 15–16.

¹⁸ Mr Rajoo’s affidavit at para 9 and p 20.

physician from the TTSH Emergency Department ordered a referral to a General Practitioner or Polyclinic after having recorded an observation that he was only “[v]ery [m]ildly [f]rail”.¹⁹

32 The fact that the TTSH medical certificate covered a shorter duration of three days (11 to 13 October 2022) as compared to the seven-day duration in the KTPH medical certificate (8 to 14 October 2022) was significant. The three-day medical certificate issued by TTSH was telling; it served no purpose at all since the three-day duration was wholly subsumed under the existing seven-day medical certificate issued by KTPH. More importantly, despite the referring physician from Woodlands Polyclinic having scrupulously noted Mr Rajoo’s concern that he was “due for court hearing on 11-12 Oct 2022”, neither Woodlands Polyclinic nor TTSH issued him any medical certificate excusing him from court attendance.

33 In addition, I found it rather curious that although Mr Rajoo’s residential address was stated in the polyclinic and hospital records as 645 Ang Mo Kio Avenue 6, #08-4963, Singapore 560645, he chose to travel a not inconsiderable distance to Woodlands Polyclinic on 10 October 2022, reportedly over a bout of vomiting. He did not explain why there was any “compelling” reason for him to do so, when he could conceivably have returned to KTPH or sought treatment at another polyclinic or a general practitioner nearer his residence. He merely asserted that as he had vomited and was “unwell”, he was compelled to visit Woodlands Polyclinic.

34 It would appear that Mr Rajoo was more intent on either getting himself hospitalised for an extended spell or seeking to obtain medical leave for a longer

¹⁹ Mr Rajoo’s affidavit at p 15.

duration and to be specifically excused from having to attend court. As it transpired, none of these materialised. In the premises, I rejected Mr Rajoo’s explanations for his absence at trial. I placed no weight on his medical certificates. They clearly did not operate to excuse him from court attendance and were obtained under questionable circumstances.

Mdm Devi’s reasons for absence at trial

35 Next, I consider the reasons for Mdm Devi’s absence. Put simply, Mdm Devi had no medical certificate to excuse her from attending court. She did not file any affidavit to attest to her medical conditions.

36 Mr Rajoo purported to speak on Mdm Devi’s behalf in claiming that she was “unable to walk and in pain [and] on wheelchair” [*sic*]. He had misrepresented in his affidavit that she was on “medical leave” when the documentation he produced in support of this claim was not a medical certificate.²⁰ It was an unsigned note dated 10 October 2022 purportedly issued by one “Kok Kuan TEO” from Woodlands Polyclinic.²¹ The note was addressed to “whomever it may concern”, stating that Mdm Devi had “a right knee osteoarthritis flare resulting in significant knee pain and difficulty in walking” and “seek[ing] ... understanding on this matter”. It was not clear in what capacity the said “Kok Kuan TEO” had issued the note, or whether he or she was a registered medical practitioner, let alone whether Mdm Devi had even sought medical attention at the Woodlands Polyclinic on or around 10 October 2022. As such, I placed no weight on the note.

²⁰ Mr Rajoo’s affidavit at para 10.

²¹ Mr Rajoo’s affidavit at p 22.

37 Regrettably, as noted above (at [21]), Mr Singh chose to repeat Mr Rajoo's claim that Mdm Devi was on *medical leave* in his written submissions for SUM 3754. This claim was patently false. It was evident that Mr Singh was knowingly misleading or attempting to mislead the court, both in the contents of the affidavit he had drafted for Mr Rajoo's affirmation and in his written submissions.

Mr Singh's reasons for absence at trial

38 Lastly, I address Mr Singh's reasons for absenting himself at the trial. Mr Singh did not have the basic courtesy to inform Mr Hanam and the court beforehand that he was unwell (assuming for the moment that he was indeed unwell). Instead, he was content to wait for the court to contact him to ascertain why he was not present at the scheduled hearing time. His bland response was that he had already informed his office that he was unwell and would not be attending court. His office had made no apparent effort to apprise Mr Hanam or the court of this at any point (see [8] above).

39 In any case, Mr Singh produced no basis other than his own say-so for the court to excuse him from attending the trial. Mr Singh did not deem it fit to affirm an affidavit to explain his absence and tender his own medical certificate. Instead, he felt it was expedient to introduce his medical certificate via Mr Rajoo's affidavit.²² I placed no weight on the said medical certificate. Not unlike Mr Rajoo's two medical certificates, Mr Singh's medical certificate

²² Mr Rajoo's affidavit at p 23.

stated in no uncertain terms that it was “not valid for absence from court or other judicial proceedings”.

Supreme Court Practice Directions and counsel’s professional duties

40 In seeking to rely on the various medical certificates to excuse himself and Mr Rajoo from attending court on 11 October 2022, Mr Singh had failed to comply with the Supreme Court Practice Directions 2021 (“Supreme Court PD”), in particular Practice Direction No 89 – “Absence from Court on medical grounds”, which requires that *original* medical certificates must be tendered to explain a party or counsel’s absence from court. In addition, the medical certificate(s) must contain a statement to the effect that the person in question is “unfit to attend Court”. The medical certificate must therefore expressly state that it is *valid for absence* from court proceedings. It must also contain a diagnosis of the person concerned (unless the diagnosis cannot or should not normally be disclosed). None of these requirements were met in the present case. Mr Singh’s complete and utter disregard of the Practice Directions meant that the medical certificates were of absolutely no assistance to him or his clients.

41 I have alluded to the dubious circumstances under which Mr Rajoo’s medical certificates were obtained. It is well-established that the courts will insist on a strict approach towards both the parties’ and counsel’s absence from court proceedings. In this connection, the observations by Steven Chong J (as he then was) in *Ching Chew Weng Paul, deceased, and others v Ching Pui Sim and others* [2011] 3 SLR 869 at [14] as cited by Mr Hanam are apposite –

absence from trial due to personal reasons or difficulties would not necessarily prevent the court from finding that the absence was nonetheless deliberate.²³

42 I should highlight that Mr Singh had also potentially contravened his duties under the Legal Profession (Professional Conduct Rules) 2015 (“PCR 2015”). At a *prima facie* level, he could have been in breach of r 7 of the PCR 2015, for failing to act with courtesy and fairness in omitting to keep Mr Hanam apprised of his intended non-attendance in court, both for the trial on 11 October 2022 and for SUM 3754 on 27 October 2022. He had also failed to ensure that appropriate arrangements were made timeously for the matters to be heard in his absence. In so doing, he had demonstrated gross discourtesy to his opposing counsel and disrespect for the authority of the court. On the same facts, he could also have potentially been in breach of r 13 of the PCR 2015, for failing to demonstrate adequate respect and courtesy to the court.

43 In addition, Mr Singh could also have been *prima facie* in breach of r 9(2)(a) of the PCR 2015 in misrepresenting in his written submissions that Mdm Devi was on medical leave when she was not. He was knowingly misleading or attempting to mislead the court. Furthermore, he had drafted an affidavit which was affirmed by Mr Rajoo containing the same misrepresentation (that Mdm Devi was on medical leave). This could also have demonstrated a *prima facie* breach of r 9(2)(g) of the PCR 2015, as it could amount to concocting evidence or contriving a fact which was untrue.

²³ Defendant’s submissions dated 21 October 2022 (“DS”) at para 3.

Issue 2: Whether the plaintiffs had an arguable case with a real prospect of success

44 The only argument put forward by Mr Singh in his written submissions touching on the merits of the plaintiffs' claim was that the plaintiffs had obtained an injunction compelling the defendant to pay into court the amount of \$100,000.²⁴ I was not persuaded that this would suffice by itself to demonstrate that the claim had a real prospect of success. In any event, the court had ordered a payment into court of a reduced portion of the disputed sum of \$300,000 and this order was made at the preliminary stage of the proceedings, well before the parties' affidavits of evidence-in-chief and any supporting documents had been filed for the purpose of the trial.

45 The Statement of Claim suggests that the claim was premised on promissory estoppel and not proprietary estoppel, contrary to what the plaintiffs asserted in their Reply and Defence to Counterclaim and Opening Statement for the trial.²⁵ The plaintiffs did not put forth any objective evidence in support of their allegations that representations were made by the defendant to permit them to occupy the Flat during their lifetime. The plaintiffs also did not adduce any reliable evidence to show that the fair market value of the Flat was allegedly \$650,000 in 2009 when the Flat was sold to the defendant.

46 The plaintiffs may have been named as permitted occupiers in the Flat but this would not necessarily demonstrate that the defendant must have made representations to the effect that they could stay in the Flat during their lifetime. Their status as permitted occupiers did not confer on them any proprietary interest as claimed.

²⁴ DS at para 15.

²⁵ Reply and Defence to Counterclaim at para 9; Plaintiffs' Opening Statement at para 1.

47 Further, there was no objective evidence of any reliance or detriment suffered by the plaintiffs. Despite their claims of having paid for renovation and maintenance expenses for the Flat,²⁶ there was no evidence of any invoices or receipts for such payments.

48 As for the plaintiffs' claim for \$60,000 being the repayment of moneys extended to the defendant to help clear her debts prior to her purchase of the Flat in 2009, it was pleaded by the defendant in para 4(d) of the Defence and Counterclaim (Amendment No 1) that the claim is time-barred under the Limitation Act 1959 (2020 Rev Ed) ("Limitation Act"). The plaintiffs did not put forth any response to this in their Reply and Defence to Counterclaim. It is manifestly clear that this claim is time-barred under s 6 of the Limitation Act after 2015.

49 In all the circumstances, I found that the plaintiffs did not have a good arguable case with a real prospect of success.

Issue 3: Whether the plaintiffs had applied promptly to set aside the judgment dismissing their claim

50 There was no question that the plaintiffs had applied promptly to set aside the dismissal of their claim. Perhaps the plaintiffs had found themselves in a Catch-22 situation of having to file the setting aside application expeditiously in spite of their alleged ailments.

51 What was highly telling however was that despite their alleged poor state of health, both Mr Singh and Mr Rajoo were well enough to arrange to prepare the affidavit for the application on the very same day that the claim was

²⁶ SOC at para 9.

dismissed, and have it affirmed and filed with supporting documents annexed. All this was done barely 12 hours after I dismissed the claim. This greatly undermined their claims that they were so ill that they could not even be present in court for the trial.

Conclusion

52 This was a highly unusual case where the plaintiffs must have decided that they would not attend court on the scheduled trial date. Mr Singh's absence at the trial was also questionable. No effort whatsoever was made to inform Mr Hanam or the court beforehand, or to arrange for another solicitor to mention the matter on his behalf and to explain the circumstances for his and his clients' absence at trial. I did not accept that the circumstances were beyond the plaintiffs' or Mr Singh's control, or that they were in such poor health or incapacitated to a point that they could not attend the trial.

53 The only inference I could draw was that the plaintiffs, for reasons best known to themselves, did not wish to be present for the trial. They were not serious about prosecuting their claim, and must have known that the claim was unmeritorious. It was clear that they had deliberately absented themselves to cause further inconvenience to the defendant, add to the defendant's legal costs and frustrate and protract the proceedings. This was a flagrant abuse of the court's process.

54 For the reasons stated above at [42]–[43], this might have been a suitable case to consider initiating disciplinary action for Mr Singh's possible breaches of the PCR 2015. I would however stop short of doing so. I take the opportunity instead to sound a warning that such conduct is unacceptable and unbecoming of an officer of the court. Should the court encounter future similar infractions

whether from Mr Singh or other like-minded counsel, these may be met with grave consequences.

55 I found that no good reasons had been furnished for both Mr Singh's and his clients' absence. The plaintiffs had failed to show that they had an arguable case with a real prospect of success at trial. Accordingly, I saw no basis to set aside my decision to dismiss the claim in their absence. I awarded the costs of the application in SUM 3754 to the defendant fixed at \$4,000, inclusive of disbursements.

See Kee Oon
Judge of the High Court

Mohan Singh s/o Gurdial Singh (S K Kumar Law Practice LLP) and
Tan Wei Chieh (Chen Weijie) (Prestige Legal LLP) (instructed)
for the plaintiffs;
Andrew John Hanam (Andrew LLC) for the defendant.
