

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 6

Suit No 3 of 2021
(Summonses Nos 287 & 344 of 2022)

Between

WKK

...Plaintiff

And

WKL

... Defendant

AND

Between

WKL

... Plaintiff in Counterclaim

And

WKK

... Defendant in Counterclaim

GROUNDS OF DECISION

[Civil Procedure — Extension of time]

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WKK
v
WKL

[2023] SGHCF 6

General Division of the High Court (Family Division) — Suit No 3 of 2021
(Summonses Nos 287 and 344 of 2022)

Choo Han Teck J
10 February 2023

16 February 2023

Choo Han Teck J:

1 The plaintiff and defendant are brothers. After their father died, they quarrelled over his will executed on 28 September 2019 because he had another will, executed on 29 August 2016. The plaintiff thus commenced HCF/S 3/2021 seeking a declaration that the 28 September 2019 will was the lawful last will of the father. The defendant filed a defence and counterclaim, to have the 29 August 2016 will declared the lawful will. HCF/S 3/2021 was deemed discontinued in its entirety on 15 September 2022 when the plaintiff failed to set it down for trial as directed by an unless order made in HCF/ORC 272/2022.

2 Now, by way of Summonses 287 and 344 of 2022, the plaintiff seeks to reinstate HCF/S 3/2021 and obtain an extension of time to set down for trial. The suit was discontinued pursuant to non-compliance with an unless order. But this non-compliance was just one of the plaintiff's numerous non-compliances

with court deadlines. At the Probate Case Conference (“PCC”) on 2 August 2022, in which the plaintiff was late, an unless order was made for the exchange of AEICs by 8 August 2022, failing which the plaintiff’s action would be deemed discontinued. The plaintiff was unable to exchange AEICs. At a further PCC on 16 August 2022, which he was again late, the plaintiff sought a further extension of time to exchange AEICs, in breach of the unless order made on 2 August 2022. An extension was granted to 19 August 2022, and the action was to be set down for trial by 22 August 2022. 22 August passed, and the action had yet to be set down. This marked the 6th non-compliance with court ordered deadlines. At the PCC on 7 September 2022, the plaintiff’s counsel submitted that the plaintiff’s non-compliance had been due to his lack of funds to pay the setting down court fees, but he claimed that the plaintiff had now found the money and was ready to pay. On that basis, the assistant registrar issued another unless order in HCF/ORC 272/2022 for the setting down of the suit for trial by 14 September 2022. This was not complied with as well, and, consequently, the plaintiff’s action was discontinued on 15 September 2022. On 28 September 2022, the plaintiff filed an affidavit saying that he only raised \$30,000 of the \$51,000 required for setting down of the 12-day trial, contradicting his counsel’s previous submission at the PCC on 7 September 2022 that the funds had been raised and the plaintiff was ready to pay.

3 Yet rather than appealing against the discontinuance of the suit pursuant to the unless order, the plaintiff applied by way of Summonses 287 and 344 on 5 October 2022 to reinstate the suit and set down for trial. Given the facts, an appeal would probably have been hopeless. The question is whether this application holds out any hope.

4 In this case, the entire suit had been discontinued. It is vastly different from *Jiangsu New Huaming International Trading Co Ltd v PT Musim Mas and*

another [2023] SGHC 27 (“*Jiangsu*”) where I allowed an amendment of pleadings to include an item of claim that had been struck out. In that case, the suit was not struck out, only the item relating to a claim for a specific sum of commission payment. A severed limb can still be saved and reattached to a body that is still warm, as was the case in *Jiangsu*. But the resurrection of the dead is a different matter. Yet that is precisely what counsel, Mr Riyach Hussein, wants to do by way of his applications. An action that has been discontinued can only be recommenced as a fresh action, subject to the defendant’s rights to strike out. Alternatively, the plaintiff has to apply for leave to appeal out of time to set aside the “unless order” by which his suit was discontinued. Neither of these was done. The unless order stands, and unlike *Jiangsu*, the plaintiff here is not applying to amend a part of the claim. He wants the entire action revived. The application to reinstate is wrong and futile, and given the facts, even if I were to have any discretion to reinstate it, I would not. The plaintiff has disregarded too many deadlines. His explanations have not been credible, even contrary to what his counsel had told the court. I thus dismissed both the plaintiff’s applications with costs fixed at \$2,500 for each application.

5 A litigant, especially the plaintiff, should be advised of the costs of litigation from the outset. If it cannot pay the court fees, then it cannot pay the legal fees which may be ten times more. Ironically, had the plaintiff complied with the court deadlines, the costs that were incurred from the further summons might well have been enough to pay for setting down the action for trial.

- Sgd -
Choo Han Teck
Judge of the High Court

Muhammed Riyach bin Hussain Omar (H C Law Practice) for the
plaintiff;
Lee Chung Yen Steven (Hilborne Law LLC) for the defendant.