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

[2023] SGHCR 10

Suit No 81 of 2022
(Summons No 1260 of 2023)

Between

(1) Chye Hwa Luan
(2) Chan Ah Chee
(3) Chan Le Eng Margaret

… *Plaintiffs*

And

Do Allyn T

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure — Pleadings — Striking out]
[Civil Procedure — Pleadings — Amendment]
[Probate and Administration — Grant of letters of administration — Effect]

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v
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AR Wong Hee Jinn:

Introduction

1 A plaintiff has the power to choose who to sue. It is imperative however, that a plaintiff specify with clarity the capacity in which a defendant is sued. This is because a defendant may wear different hats at different points in time, act in different capacities, and thereby have different causes of action accrue against him or her. Precision is hence no pedestrian consideration. A failure to appreciate this can lead to drastic consequences for a claimant's action. This case provides one such illustration.

2 The defendant brought the present application to strike out the entirety of the plaintiffs' Statement of Claim dated 28 January 2023 filed in HC/S 81/2022 (the "Suit") on the basis that the defendant had erroneously been

sued in her personal capacity and thus had no authority and legal standing to defend the claims brought in the Suit.

3 Having heard the parties, I allowed the defendant's application, delivering brief oral remarks then. I agreed with the defendant that the Suit was a nullity, bad in law, and correspondingly dismissed the Suit. I now provide the full grounds for my decision.

Factual background and procedural history

The parties

4 The first and second plaintiffs, Ms Chye Hwa Luan and Mr Chan Ah Chee, are the parents of the deceased, Mr Chan Chong Leong (the "Deceased"). The third plaintiff, Ms Chan Le Eng Margaret, is the sister of the Deceased. She is a nominal plaintiff in these proceedings. The first and second plaintiffs have another son, Mr Chan Kok Leong ("Mr CKL"), who is not a party to these proceedings. The defendant, Ms Do Allyn T, is an American citizen and the Deceased's widow.

5 Sometime in the 1990s, the Deceased went to the United States of America to pursue his tertiary education. He subsequently graduated with a master's degree from the Massachusetts Institute of Technology and after his graduation, the Deceased stayed to work in America and started a family with the defendant. They have two sons.

6 On 3 January 2016, the Deceased passed away unexpectedly in Shanghai, China, without a will.[1]

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1 Statement of Claim dated 28 January 2022, paragraph 14

Procedural history leading up to the Suit

7 On 1 October 2018, some two and a half years after the Deceased's demise, the defendant applied in the Family Justice Courts for a grant of letters of administration to the Deceased's estate *vide* FC/P 4656/2018 ("P 4656").

8 On 23 October 2018, the defendant obtained a grant of letters of administration to the Deceased's estate.

9 On 17 September 2021, the first plaintiff filed a caveat against the grant of letters of administration to the Deceased's estate *vide* FC/CAVP 70/2012 (the "Caveat"). The Caveat was filed on the following grounds:[2]

> … the Caveator as the lawful mother and her husband (Chan Ah Chee as the deceased's lawful father) jointly purchased the [Property]. The purchase price was paid by the deceased's parents. Half of [the Property] was registered in the deceased's name to be held in trust for the Caveator and Chan Ah Chee … the Caveator and Chan Ah Chee are entitled to the half share of [the Property] registered in the deceased's name.

The Caveat was served on the defendant's then-counsel on 20 September 2021. No steps were taken to challenge the Caveat. On 6 October 2021, the defendant's then-counsel applied to discharge themselves from acting for the defendant in P 4656.

10 Till date, the defendant has not extracted the grant of letters of administration to the Deceased's estate. This is not in dispute.[3]

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2 Statement of Claim dated 28 January 2022, paragraph 24

3 Statement of Claim dated 28 January 2022, paragraph 14

The Suit and the present application

11 On 28 January 2022, the plaintiffs commenced the Suit against the defendant. On the face of it, the Writ of Summons and the Statement of Claim reflected that the action had been brought against the defendant in her personal capacity.

12 The claim brought by the plaintiffs in the Suit may be simply stated. The Suit revolves around a property at 12 Tai Hwan Heights, Singapore 555367 (the "Property"). The Property is registered in the names of the third plaintiff and the Deceased, who are tenants in common in equal shares. The first and second plaintiffs' case is that they had purchased the Property for $1.6m in or around 1996. They had the Property registered in the names of the third plaintiff and the Deceased, with the understanding that the Property was to be held on trust for them.[4] The third plaintiff and the Deceased were to take care of the Property of the first and second plaintiffs, with Mr CKL not being included in the title of the Property given his imprudence with money.[5] The plaintiffs further aver that on several occasions after the Deceased's death, the defendant had intimated her intention to return the Deceased's share of the Property to them and acknowledged that they were the rightful owners of the Property.[6]

13 Among other things, the plaintiffs seek the following reliefs in the Suit:[7]

(a) a declaration that the Deceased held his share in the Property on trust for the first and second plaintiffs jointly and severally;

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4 Statement of Claim dated 28 January 2022, paragraph 13

5 Statement of Claim dated 28 January 2022, paragraphs 9 and 10

6 Statement of Claim dated 28 January 2022, paragraphs 16 to 20

7 Statement of Claim dated 28 January 2022, page 9

(b) an order that the defendant, as administrator of the Deceased's estate, transfer to the first and second plaintiffs the Deceased's share in the Property within three months; and

(c) an order that the Registrar of the Supreme Court be empowered to execute, sign and indorse all necessary documents on behalf of the defendant should she fail to effect transfer of the Deceased's share in the Property upon being given 14 days written notice, to effect transfer of the Deceased's share in the Property to the first and second plaintiffs (or to their nominee).

14 On 18 April 2023, following the plaintiffs' several attempts at effecting substituted service of the cause papers out of jurisdiction, the defendant filed her Memorandum of Appearance in the Suit.

15 On 28 April 2023, the defendant filed the present application *vide* HC/SUM 1260/2023 to strike out the entirety of the plaintiffs' Statement of Claim. The application being made pursuant to O 18 r 19(1)(*a*) of the revoked Rules of Court (Cap 322, R 5, 2014 Rev Ed) (the "Rules") and/or the inherent jurisdiction of the court, no affidavits were filed.

16 On 11 May 2023, the parties filed their respective written submissions for the present application.

17 There were developments at the hearing before me on 15 May 2023. Counsel for the plaintiffs informed the court that (a) he had been instructed to take no position on the present application and (b) would seek leave to discontinue the Suit. I informed counsel for the plaintiffs that no formal application had yet been filed seeking permission to discontinue the Suit, and in

that in any event, the present application for striking out remained pending. Unless the defendant indicated that she would be withdrawing the present application, there was no basis for the plaintiffs to seek at this juncture, a discontinuance of the Suit. As counsel for the defendant confirmed that the defendant would be pursuing the present application – as was her prerogative to do so – I proceeded to determine the application on its merits.

The applicable legal principles in an application to strike out

18 I start with the legal principles applicable in a striking out application brought on the basis of there being no reasonable cause of action.

19 The court has the power to strike out a pleading that discloses no reasonable cause of action under O 18 r 19(1)(*a*) of the Rules. It is well-established that the power of striking out should be invoked only in plain and obvious cases (*The Osprey* [1999] 3 SLR(R) 1099 at [6]). A reasonable cause of action refers to a cause of action that has some chance of success only when the allegations in the pleading are considered (*Gabriel Peter Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [21]). This is consistent with O 18 r 19(2) of the Rules, which stipulates that no evidence shall be admissible on an application under this limb. While the threshold for striking out is a high one, it is clear that where the very basis of the claim is either factually or legally flawed and bound to fail upon an examination of the pleadings, the court will be moved to exercise its power to strike out (*Chia Kok Kee v Tan Wah and others* [2012] 2 SLR 352 at [43]). In turn, a legally unsustainable claim has been described as one that is "clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks" (*The "Bunga Melati 5"* [2012] 4 SLR 546 at [39]).

20 The learned author of *Singapore Court Practice* (Jeffrey Pinsler gen ed) (LexisNexis Singapore, 2023) observes that a particular instance where there is no reasonable cause of action that has been disclosed is when it is apparent that an aggrieved party has no *locus standi* to bring an action, so as to render it legally unsustainable (at [9.16.4], citing *Abdul Razak Ahmad v Majlis Bandaraya Johor Bahru* [1995] 2 MLJ 287 ("*Abdul Razak*")). An excerpt from *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) ("*Singapore Civil Procedure*") is to similar effect, stating that an application discloses no chance of success if the applicant is unable to establish the requisite *locus standi* (at para 18/19/15, citing *Madan Mohan Singh v Attorney-General* [2015] 2 SLR 1085 ("*Madan Mohan Singh*") at [21]; see also *Lian Chee Kek Buddhist Temple v Ong Ai Moi and others* [2023] SGHC 172 at [31]).

21 In *Abdul Razak*, the plaintiff sought a declaration against the City Council that the planning permission that it had granted to Johor Coastal Development Sdn Bhd for the development of a floating city in Johor Bahru was void for want of statutory compliance. Abdul Malek J, sitting in the Johor Bahru High Court, struck out the claim on the basis that the proceeding was an abuse of process, finding that the plaintiff had attempted to circumvent the requirement for leave governing proceedings for judicial review. In addition, the court held that the plaintiff did not have the requisite *locus standi* to commence the proceedings against the City Council because he was unable to show that he had his private rights infringed or that he had suffered any special damage; the plaintiff's house was far from the proposed floating city development and hence he was not an adjoining landowner to enable him to assert that his legal position would be affected by the planning permission granted. The court accordingly exercised its discretionary powers to strike out

the originating summons. *Abzul Razak* was later cited with approval by Lai Siu Chiu J in the High Court decision of *Tan Eng Hong v Attorney-General* [2011] 3 SLR 320 (*Tan Eng Hong*") at [5(a)].

22 Other local authorities appear to confirm this general principle of law.

23 In the High Court decision of *Alliance Entertainment Singapore Pte Ltd v Sim Kay Teck and another* [2007] 2 SLR(R) 869 ("*Alliance Entertainment*"), the plaintiff commenced an action against the defendants for allegedly infringing its copyright in certain works. The defendant applied to strike out the proceedings on the basis that the plaintiff did not have title to maintain the action because it was not an exclusive licensee within the meaning of the Copyright Act (Cap 63, 2006 Rev Ed). Sundaresh Menon JC (as he then was) held that the plaintiff was not an assignee of the copyright and was not an exclusive licensee within the meaning of the statute. The plaintiff, having been found to be disentitled to maintain the action, had its action struck out in its entirety (*Alliance Entertainment* at [62]). Rather, it would be the copyright owners that would undoubtedly have a right of action, assuming they had not assigned their interest (*Alliance Entertainment* at [53]). What may be surmised from this case is that where a plaintiff is found to not have the requisite legal standing to maintain an action, the court will not hesitate to exercise its discretion to strike out the action.

24 In *Madan Mohan Singh,* the applicant, a volunteer Sikh religious counsellor at the Singapore prison, sought leave to bring judicial review proceedings against the Singapore Prison Service, seeking among other things, a quashing order against the labelling of Sikh prisoners as being either "practising" and/or "non-practising" in respect of a hair grooming policy. The

respondent, the Attorney-General, then applied to strike out the application on the basis that the applicant lacked *locus standi*. The High Court allowed the application for striking out, finding, among other things, that the applicant lacked *locus standi* because the applicant was not an inmate and the hair grooming policy did not apply to him (at [45]). Quentin Loh J (as he then was) noted that that "[a]n application discloses no chance of success if the applicant is unable to establish the requisite *locus standi*, and may be struck out as being without legal basis" under O 18 r 19(1)(*a*) of the Rules (*Madan Mohan Singh* at [20], citing *Tan Eng Hong* at [5]).

25 The Court of Appeal's decision in *Hin Leong Trading (Pte) Ltd (in liquidation) v Rajah & Tann Singapore LLP and another appeal* [2022] 2 SLR 253 ("*Hin Leong*") is a more recent example. In that case, the first and second appellants were companies that had been placed under interim judicial management. The companies commenced, on the instructions of their directors, a set of applications to injunct the respondent law firm from advising and acting for the appellants. The respondent moved to strike out the applications on the basis that the applications had been brought without due authority as the directors did not possess any managerial powers to commence the applications in the names of the companies, such powers having been displaced by the court orders appointing the interim judicial managers. In affirming the lower court's decision to strike out the applications on the basis that the directors had no standing to commence the applications in the companies' names, the court opined that "it is clear that striking out is warranted where there is an absence of legal standing owing to a lack of authority, because such proceedings ought not, and indeed could not validly, have been brought at all" (*Hin Leong* at [15], citing *United Investment and Finance Ltd v Tee Chin Yong and others* [1965–1967] SLR(R) 349 at [51]–[58]).

26 Having surveyed the cases above, it is apparent that a plaintiff's legal standing to commence an action is of paramount importance to the sustainability of its action and a failure to establish this can result in an action being struck out due to its disentitlement to the reliefs sought. The corollary, as a matter of legal principle, must equally be true. For a defendant that has does not possess the requisite standing, there would be simply no basis on which the court can grant the reliefs sought or make the orders sought against that defendant, nor does the defendant have the legal capacity to comply with any orders made against it. In my view, when determining whether a reasonable cause of action has been disclosed, the court can and should consider *both* the plaintiff's as well as the defendant's legal standing (or lack thereof) to prosecute and defend an action, respectively. In either case, where such legal standing has not been shown, the legal basis for the plaintiff's claim is inherently flawed. I accept, therefore, the proposition that if a named defendant has no authority and legal standing to defend an action brought against him or her, that no reasonable cause of action has been disclosed. Put otherwise, an action commenced against the wrong defendant may furnish grounds for a plaintiff's pleading to be struck out.

My decision

27 The sole legal issue that accordingly arises for this court's determination is whether the defendant has legal standing to defend the claim in the Suit brought by the plaintiffs in respect of the Property. The defendant's case is that, because she is not legally the administratrix of the Deceased's estate, she has no authority to deal on behalf of the Deceased's estate and therefore has no legal standing to defend the action in the Suit. The Suit should accordingly be struck out.

A preliminary point on the capacity in which the defendant was sued

28 I address first a preliminary point.

29 It is clear that the defendant has been sued in her own personal capacity. The plaintiffs *do not* and indeed *cannot* reasonably challenge this fact. This at least, appears to be inadvertence on the part of the plaintiffs, because the Statement of Claim does pray for an order against the defendant as "administrator of the estate of the Deceased" (see [13(b)] above).

30 Nonetheless, neither the Writ of Summons nor the Statement of Claim specifies that the defendant is being sued in her capacity as an administratrix of the Deceased's estate. This is mandated under O 6 r 2(1)(*d*) of the Rules, which specifically requires that before a writ is issued, it must be endorsed "where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued". This rule clearly envisages that a party in his or her *representative* capacity is, in law, considered a different juridical person from a party in his or her *personal* capacity. As such, it is crucial that the representative capacities in which parties are suing and being sued be made clear from the very moment an action is commenced. Likewise, it is necessary that the representative capacity of a defendant be reflected in the title of action in the Statement of Claim and not merely in the body thereof, pursuant to the rule in *In re Tottenham* [1896] 1 Ch 628. This was not done in the present case. It simply cannot be gainsaid that defendant was sued in her personal capacity here.

31 I can do no better than to echo the observations of George Wei J in *Foo Jee Boo and another v Foo Jhee Tuang and another (Foo Jee Seng, intervener)* [2015] SGHC 176 at [32] explaining the rationale underpinning the rule:

> Complying with this rule is not merely important for procedural neatness. **Clarifying the capacities in which parties are suing and being sued forms a crucial backdrop to the plaintiff's claims and has significant *substantive* implications. In many cases, the capacities in which the parties are acting in will affect the rights and obligations they owe to each other.** For example, if certain persons have special rights due to their representative capacities, such rights are usually only enforceable if the action is brought in those representative capacities. **Without clarity as to the capacities in which parties are suing and being sued in, the court will not have sufficient context to properly assess the validity of the claims brought by the plaintiff against the defendant**.
>
> [emphasis added in bold]

32 Operating on the basis that the defendant had been sued in her personal capacity, I proceeded to consider whether she had authority to act on behalf of the Deceased's estate and correspondingly, whether she had legal standing to defend the claim brought in the Suit.

The defendant had no legal standing to defend the claim in the Suit

33 I agreed with the defendant's submission that she had no legal standing to defend the claim brought in the Suit because the grant of letters of administration had yet to be extracted by the time the Suit was commenced (see [10] above). Let me elaborate.

The process to obtain a grant of letters of administration

34 A person who dies with a valid will dies testate, while a person who dies without a valid will dies intestate (G Raman, *Probate and Administration Law in Singapore and Malaysia* (LexisNexis, 4th Ed, 2018) ("*Probate and Administration Law*") at [2.01]). But before a deceased's person's properties can be distributed, whether in accordance with the terms of his or her will or in

accordance with the laws of intestacy, either a grant of probate (in the context of a testate death) or a grant of letters of administration (in the context of an intestate death) must be first obtained. These are collectively referred to as "letters of representation". This is where the law of probate and administration provides a process by which an individual, either an executor to execute the will or an administrator to administer the deceased's estate, is formally appointed or acknowledged by the court and granted authority to deal with a deceased person's assets. The term "personal representative" comprises both an executor (or executrix) and an administrator (or administratrix) (see *Probate and Administration Law* at [7.01] and s 3 of the Trustees Act 1967 (2020 Rev Ed)). These grants authorise the personal representative of the deceased to manage the deceased's estate.

35 In a case of intestacy, such as the one before this court, the Probate and Administration Act 1934 (2020 Rev Ed) (the "Act"), the Family Justice Rules 2014 (S 813/2014) (the "FJ Rules") and the Family Justice Court Practice Directions dated 1 January 2015 (the "FJCPD") collectively lay out the steps that need to be taken for a grant of letters of administration to be obtained. The general process may be summarised as follows:

(a) When a person has died intestate, the court may grant letters of administration to his or her estate (see s 18(1) of the Act). The person so applying will be the person entitled to under the rules of priority (see ss 18(2) and (4) of the Act and Rule 221 of the FJ Rules).

(b) An application for a grant of letters of administration must be made by *ex parte* originating summons supported by an affidavit exhibiting a Statement in Form 51 (the "Statement"), along with the deceased's death certificate, if applicable, with the relevant information

being submitted in the appropriate electronic form (see Rule 208(1) of the FJ Rules and paras 62(1) and 62(4) of the FJCPD). Where an application for a grant of letters of administration is, for the first time, made after the lapse of 6 months from the deceased's death, the Statement must set out the reason for the delay in making the application (see Rule 208(8) of the FJ Rules).

(c) Within 14 days of the filing of the application, the applicant must file an affidavit verifying the information in the Statement, exhibiting the Statement, the Schedule of Assets and all other supporting papers as the Registrar may require, (see Rule 208(2) of the FJ Rules and para 63(2) of the FJCPD). This affidavit shall be in the prescribed format in Form 225 (see para 63(1) of the FJCPD). The administration oath may be filed at this time (see s 28 of the Act and para 62(5)(*c*) of the FJ Rules).

(d) Once the originating summons, the Statement and death certificate (if so required) are filed, an electronic filing checklist will be generated and a provisional reference number will be issued. The electronic filing checklist indicates the status of the documents filed and the provisional reference number allow for referencing and monitoring of the electronic filing checklist during the initial phase of filing (see paras 62(5) and 62(6) of the FJCPD).

(e) When the court is satisfied that the originating summons, Statement in Form 51 and the supporting documents have been properly filed and verified, a probate number will be issued in place of the provisional reference number, which is tied to the same electronic filing checklist (see para 62(9) of the FJCPD).

(f) The court must not allow any grant to issue until all inquiries which he may see fit to make have been answered to his satisfaction, and except with the leave of the Registrar, no grant of the letters of administration shall be issued within 14 days after the deceased's death (see Rule 207 of the FJ Rules). Upon such satisfaction, the court may make the order for the grant of letters of administration.

(g) For originating summonses filed before 12 April 2023, the applicant must file the appropriate Request in the Electronic Filing Service if the applicant requires a printed grant in addition to an electronic grant. From 12 April 2023 onwards, an applicant is not required to file a request to extract a grant of letters of administration (see para 70 of the FJCPD and K L Wong, *Non-Contentious Probate Practice in Singapore* (Acumen Publishing, 2nd Ed, 2018) ("*Non-Contentious Probate Practice in Singapore*") at [5.33]). The grant of letters of administration, which bears the court's seal, may be extracted after estate duty formalities have been completed (*Probate and Administration Law* at [9.52]).

(h) Where an administrator has failed to extract the grant of letters of administration, the letters of administration may be granted to the Public Trustee, or to other such person as the court thinks fit (see s 55(1)(*e*) of the Act).

The extraction of a grant of letters of administration is the dispositive act

36 In this regard, it is key to bear in mind the distinct sources of an executor's authority and an administrator's authority to act on behalf of the deceased's estate. An executor's authority and title are derived from the

testator's will, while an administrator's authority and title are derived from the grant of letters of administration. *S M K R Meyappa Chetty v S N Supramanian Chetty* [1916] 1 AC 603 ("*Meyappa Chetty*"), a decision of the Privy Council on appeal from the Supreme Court of the Straits Settlements (Settlement of Singapore), makes this clear. While the issue before the court was whether the executor of a will capable of probate in the Straits Settlements was a legal representative capable of instituting a lawsuit, Lord Parker of Waddington observed in passing, the well-settled rule that an administrator derives authority and title solely under the grant (at 608 to 609):

> … It is quite clear that an executor derives his title and authority from the will of his testator and not from any grant of probate. The personal property of the testator, including all rights of action, vests in him upon the testator's death, and the consequence is that he can institute an action in the character of executor before he proves the will. He cannot, it is true, obtain a decree before probate, but this is not because his title depends on probate, but because the production of probate is the only way in which, by the rules of the Court, he is allowed to prove his title. **An administrator, on the other hand, derives title solely under his grant, and cannot, therefore, institute an action as administrator before he gets his grant.** The law on the point is well settled: see Comyn's Digest, '*Administration*,' B. 9 and 10; *Thompson v. Reynolds*; *Woolley v. Clark*. [emphasis added in bold]

37 Until the grant of letters of administration, the deceased's real and personal estate vests in the Public Trustee, pursuant to s 37 of the Act. Further, and bearing in mind the process outlined above at [35], it is clear that there is a distinction between the *grant of the application for grant of letters of administration* and the *extraction of the sealed grant of letters of administration*. It is upon the former that the property of the intestate is vested in the administrator but this does not mean that the administrator is able to immediately take an action on behalf of the estate (see also *Tacplas Property Services Pte Ltd v Lee Peter Michael (administrator of the estate of Lee Ching*

Miow, deceased) [2000] 1 SLR(R) 159 at [40]–[41]). Rather, is only upon the latter that authority is conferred upon the applicant to administer a deceased's estate. Section 2 of the Act expressly defines "letters of administration" to mean "a grant under the seal of the court issuing the same, authorising the person or persons therein name to administer an intestate's estate in accordance with the law" (see also *Chay Chong Hwa v Seah Mary* [1983–1984] SLR(R) 505 at [8]–[9]). The cases make this point clear.

38 An early authority is the Malaysian case of *Chia Teck Liang v Tan Soo Khiang* [1936] MLJ 148 ("*Chia Teck Liang*"). There, the Magistrate had given judgment for the respondent and the appellant appealed on the ground that he was not the administrator of the estate. The Assistant Registrar had made an order that the letters of administration be issued to the appellant but he had not made a grant under seal in the form prescribed in s 70 of the Probate and Administration Enactment. In allowing the appeal, the court considered the issue of whether the appellant could be sued in his capacity as administrator *before* the court had made such a grant under the seal. Holding in the negative, Mills J opined as follows:

> … no authority was quoted to me in support of the proposition that an administrator can be sued in respect of a debt due by the deceased before letters of administration have been granted to him: as regards the position of an executor the Privy Council has laid down the general proposition that he cannot be sued, 'It is perfectly clear that Susy Fernando Bastian Appu, not having obtained a grant of probate, did not represent the estate of the deceased in the creditor`s action'; *cf Mohimadu Mohideen Hadjar v Pitchey,* (1894) App Cas at p 443: there being no statutory provision in Johore to the contrary, I think the Court must accept that general proposition as being correct with reference both to an executor and to an administrator: consequently **I hold that an administrator cannot be sued in**

> **respect of a debt due by the deceased, until letters of administration have been granted under seal.**
>
> [emphasis added in bold]

39 A similar issue arose in the High Court of Malaysia case of *P Govindasamy Pillay & Sons Ltd v Lok Seng Chai and others* [1961] MLJ 89 ("*Govindasamy Pillay*"). In *Govindasamy Pillay*, the plaintiff commenced an action against the defendants in their capacity as administratrix and administrator of the estate of the deceased for breach of contract and negligence, alleging that the deceased had been entrusted with certain goods for conveyance by boat and that the goods were lost during transit. The defendants argued that they could not have been constituted the legal representative of the deceased and could not be sued in that capacity as the grant of letters of administration had not been extracted. Ismail Khan J agreed with the defendants' submission that they had no *locus standi* as representatives and therefore could not be sued in a representative capacity. The action was dismissed *in limine*. In arriving at that conclusion, and following *Meyappa Chetty* and *Chia Teck Liang,* Khan J relied on the definition of the expression "letters of administration" in the Malaysian Probate and Administration Ordinance (SS Cap 51) (which is substantially similar to the definition in the Act (see [37] above)) and held as follows (at 90 to 91):

> … In my opinion the overriding words in both are the words 'grant under seal' and they mean that when a Court makes grant, what is contemplated is a granted under its seal, and until the grant is extracted the order of a Court that the letters of administration do issue is only a conditional order subject to the compliance by the petitioner with the further requirements as to the provision of two sureties to the administration bond or obtaining an order of the Court to dispense with such sureties, payment of estate duty, or obtaining a certificate of postponement thereof, and swearing the administration bond along with the sureties. It is indeed a direction not to issue grant until those conditions are fulfilled … In my opinion, **it is only on extracting the grant of letters of administration that the**

> **petitioner can be said to be duly clothed with a representative character and to have acquired a title to the estate**.
>
> [emphasis added in bold]

40 The decision of the High Court in *Singapore Gems Co v Personal representatives of the estate of Akber Ali Mohamed Bukardeem, deceased* [1992] 1 SLR(R) 362 ("*Singapore Gems*") puts this point beyond doubt. There, Chao Hick Tin J (as he then was) had occasion to consider the divergence in authorities, namely between *Govindasamy Pillay* and an earlier decision of *Chia Foon Sian v Lam Chew Fah* [1995] MLJ 203 ("*Chia Foon Sian*"), the latter of which held that the legal authority of an administrator was acquired on the mere grant of letters of administration by the court. Chao J declined to follow the approach in *Chia Foon Sian,* and instead preferred the approach in *Govindasamy Pillay*, concluding thus (at [19]):

> While the Malaysian authorities are not binding on me and are only of persuasive authority, **I accepted the reasoning of Ismail Khan J in *Govindasamy Pillay* that an administrator has not clothed himself with that status until he has extracted the grant.** It seemed clear to me that what was stated by Whitton J in *Chia Foon Sian* was just *obiter*, as the real issue in that case concerned the validation of payments made to an *executor de son tort* who later was appointed administrator. In my opinion, the views of Whitton J in *Chia Foon Sian* would run counter to the definition of the terms "letters of administration" in the Probate and Administration Act (Cap 251), which is, '*a grant under the seal* of the court issuing the same authorising the person or persons … to administer an intestate's estate …'
>
> [original emphasis in italics; emphasis added in bold]

41 *Singapore Gems* was subsequently affirmed by Judith Prakash J (as she then was) in *Wong Moy (administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy* [1995] 3 SLR(R) 822 at [8]–[9].

42 It follows from the cases above that the proposition that the extraction of the grant of letters of administration is the dispositive act to confer authority and title upon an administrator, as a matter of Singapore law, has clear pedigree (see also *Singapore Civil Procedure* at para 15/6A/6 and *Non-Contentious Probate Practice in Singapore* at [5.33]. And as an Assistant Registrar, I remain bound by decisions of a High Court Judge as a matter of *stare decisis* (see *Actis Excalibur Ltd v KS Distribution Pte Ltd* [2016] SGHCR 11 at [16]–[18] and *Peter Low LLC v Higgins, Danial Patrick* [2017] SGHCR 18 at [26]–[31]). I turn then to the present facts.

The defendant did not extract the grant of letters of administration

43 It is not in dispute that the defendant did not extract the grant of letters of administration. This posed an insuperable difficulty for the plaintiffs' claim in the Suit against the defendant in her personal capacity. Without the sealed grant of letters of administration having been extracted, the defendant was not, in law, the administratrix of the Deceased's estate and had no authority to act on behalf of the Deceased's estate. The claim in the Suit concerned the beneficial ownership of the Property, which at present, formed part of the Deceased's estate. No cause of action could accrue as against the defendant in her personal capacity.

44 Next, I also agreed with the defendant's submission that having regard to the reliefs sought in the Suit, and in particular the order for the deceased's share in the Property to be transferred to the first and second plaintiffs (see [13(b)] above), that she would simply have no legal capacity to comply with such an order. The defendant was not the administratrix of the Deceased's estate and would not have any authority to effect such a transfer as prayed for by the

plaintiffs, even if it were determined that the Deceased held his share of the Property on trust for the first and second plaintiffs.

45 Finally, the Caveat filed by the first plaintiff (see [9] above) posed too an impediment to any extraction of the grant of letters of administration. Rules 239(3) and (5) of the FJ Rules state respectively that a caveat shall remain in force 6 months from the date on which it is entered, and the Registrar must not make any grant of letters of administration if he has the knowledge of an effective caveat in respect of the grant. It is undisputed that at the time the Suit was commenced on 28 January 2022, the Caveat remained operative. This barred any attempt on the part of the defendant should she have tried to extract the grant of letters of administration.

46 As such, I concluded that insofar as the plaintiffs' Statement of Claim was concerned, it disclosed no reasonable cause of action as against the defendant in her personal capacity. From the inception of the Suit, the defendant neither had the title nor the authority to act as the administratrix of the Deceased's estate because the defendant had yet to extract grant of letters of administration. She therefore had no legal standing to defend the claim in the Suit. I struck out the Statement of Claim and consequently dismissed the Suit.

The plaintiffs should not be allowed to amend the Writ of Summons and Statement of Claim

47 It bears mentioning that in a letter addressed to the Supreme Court Registry dated 2 May 2023, filed sometime after the commencement of the present application, counsel for the plaintiffs indicated that the defendant "is the administrator of the estate of Chan Chong Leong, deceased". Under a header "Application to amend the defendant's capacity", counsel for the plaintiffs

stated that it would rely on O 4 rr 4(1), 4(2)(*a*)(ii) and 4(2)(*b*) of the Rules of Court 2021 "in support of the application to amend the capacity of the defendant in this action". The letter attached a proposed draft of the amended Writ of Summons and Statement of Claim, reflecting the defendant as being sued "as the Administrator of the estate of Chan Chong Leong, deceased".[8] That letter must at least serve as the plaintiffs' implicit acknowledgment that the defendant had been sued in her personal capacity.

48 The Supreme Court Registry responded to inform counsel for the plaintiffs that as no agreement had been obtained from the defendant in respect of the proposed amendments, that it would be incumbent on the plaintiffs to file a formal application should it decide to amend its Writ of Summons and Statement of Claim. It would be procedurally improper to seek permission for an amendment by way of correspondence to court.

49 It would appear that the plaintiffs had ultimately abandoned their request because by the time this application was heard, no formal application had yet been taken out. This was sufficient for me to dispose of this point.

50 In any event, as this was canvassed at some length in the defendant's written submissions, I considered this issue briefly. In short, I agreed with the defendant that permission to amend should in any case be denied. This was not an appropriate mechanism for the plaintiffs to attempt to overcome the defects in their commencement of the Suit. In my judgment, this was so for three reasons.

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[8] Shenton Law Practice LLC's letter to the Supreme Court Registry dated 2 May 2023

51 First, the plaintiffs' purported reliance on O 4 rr 4(1), 4(2) of the Rules of Court 2021 as the basis for an amendment application is entirely misplaced. The Suit was commenced on 28 January 2022. The Rules of Court 2021 came into effect only on 1 April 2022. The Rules of Court 2021 therefore had no applicability whatsoever to the present Suit.

52 Second, and more fundamentally, as is apparent from the analysis above, the plaintiffs' assertion that the defendant is the administratrix of the Deceased's estate was without merit. The grant of letters of administration had not been extracted by the defendant. The defendant, in law, is *not* the administratrix of the Deceased's estate. The defect with the Writ of Summons and the Statement of Claim is therefore not just a *formal* one, in that the defendant had not been identified as an administratrix but also a *factual* one, in that the defendant was quite clearly not an administatrix of the Deceased's estate. This should have been abundantly clear to the plaintiffs. It would be patently wrong for the plaintiffs therefore to propose an amendment purporting to sue the defendant in her capacity as administratrix of the Deceased's estate when she is not in fact so. Indeed, whether the defendant *could have* extracted the grant of letters of representation was quite apart from the point; the fact remained that she *did not* do so. As has been observed, "the obtaining of proper letters of administration is not a mere formality or technicality but a rule conveying substantive rights and as such should not be easily overridden" (*Teo Gim Tiong v Krishnasamy Pushpavathi (legal representative of the estate of Maran s/o Kannakasabai, deceased)* [2014] 4 SLR 15 at [31]). As such, this was a situation which could not be remedied by a mere amendment.

53 Third, at the hearing before me, and notwithstanding the indication that the plaintiffs would take no position on the present application, counsel for the

plaintiffs further sought to suggest an amendment could be made to reflect the defendant's capacity as personal representative of the Deceased's estate by virtue of order the grant of letters of administration having been made. This was too, regrettably, without merit. Counsel for the plaintiffs provided no authority for his argument. There is nothing to suggest that the term "personal representative" in law is more than an umbrella term used to refer to executors and administrators (see [34] above). And because the grant of letters of administration under seal had not been extracted, the defendant was not the administratrix of the Deceased's estate or even personal representative of the Deceased's estate. This argument hence did not take the plaintiffs any further.

54 Had it been necessary for my decision, therefore, I would not have answered this question in the plaintiffs' favour.

The plaintiffs are not left without recourse

55 For completeness, I should add that the fact that the defendant had opted, for reasons best known to herself, not to extract grant of letters of administration does not place the plaintiffs in a *zugzwang*. They are not without recourse. The law anticipates that an action may be brought in the absence of any grant of letters of representation having been made. Specifically, O 15 r 6A(1) of the Rules provides that where any person against whom an action would have lain has died but the cause of action survives, the action may, *if no grant of probate or administration has been made*, be brought against the estate of the deceased. Moreover, O 15 r 6A(4)(*a*) of the Rules requires the plaintiff to apply to the court for an order appointing a person to represent the estate for the purpose of the proceedings and for an order that the proceedings be carried on against that person.

56 This provision was considered in detail by the court in *Maybank Singapore Limited v Personal representatives of the estate of Khoo Gek Hwa Christina, deceased* [2022] SGHCR 7. As the learned Assistant Registrar Randeep Singh Koonar summarised at [98(c)] and which I respectfully agree with:

> Where a grant of probate or administration *has not* been made at the time the action is to be commenced, the action should be brought against the estate. The plaintiff must then, during the period of validity of the originating process, apply to the Court for an order appointing a person to represent the estate for purpose of the proceedings.
>
> [emphasis in original]

It should therefore have been apparent to the plaintiffs how an action ought to be commenced in the absence of the grant of letters of administration having been made.

Conclusion

57 For the reasons above, I allowed the defendant's application to strike out the plaintiffs' Statement of Claim in its entirety and consequentially dismissed the Suit. I ordered the plaintiffs to pay to the plaintiff costs of and incidental to the application fixed at $5,000, inclusive of disbursements, as well as costs of the Suit fixed at $4,000, inclusive of disbursements, bearing in mind that the Suit was at a stage of relative incipiency.

58 I point out that counsel for the plaintiffs submitted should the Suit be dismissed, the court should grant liberty to the plaintiffs to file a fresh action against the defendant. I declined to make such an order, which would in my view, be superfluous. In allowing the present application, I made no factual or legal findings on the substantive merits of the Suit. Only a judgment on those

issues can render its subject matter *res judicata* (*Founder Group (Hong Kong) Ltd (in liquidation) v Singapore JHC Co Pte Ltd* [2023] SGHC 159 at [98]). Hence, no issue of *res judicata* arises, as counsel for the defendant quite readily accepted.

59 I take this opportunity to record my gratitude to counsel for the defendant, Mr Terence Wah, for his clear and comprehensive submissions, which were of considerable assistance to this court.

Wong Hee Jinn
Assistant Registrar

Decruz Martin Francis (Shenton Law Practice LLC) for the plaintiffs;
Wah Hsien-Wen Terence (Dentons Rodyk & Davidson LLP) for the defendant.
