



**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN
[NO GUAMAN: BA-22NCVC-484-09/2018]**

Antara

JANG KIM LUANG @ YEO KIM LUNG (f)

(sebagai pentadbir Harta Pusaka Tai Swee Kian) ...**Plaintif**

Dan

1. TERENCE TAN SUAN GUAN

(No K/P: 920304-10-5007)

(sebagai pentadbir Harta Pusaka Teh Yew Yaw)

2. Wakil peribadi Harta Pusaka

Dato' TAI E KING, Si Mati

3. Wakil peribadi Harta Pusaka

TAY BOO THIAH @ TAI BOO TING, Si Mati

4. WOOD GREEN INTEGRATED SDN BHD

(No. Syarikat: 1158824-W)

5. DATIN NG PIK LIAN

(No. K/P: 320718-05-5012)

6. DATO SRI TAI HEAN LENG @ TEK HEAN LENG

(No. K/P: 640325-10-6117)

7. DIONG SUK HWA

(No. K/P: 650920-08-6332)

**... DEFENDAN-
DEFENDAN**

Abstract: An administratrix of a deceased bankrupt can act and commence legal action to exercise the personal right of the deceased bankrupt without obtaining the sanction of the Director General of Insolvency.

CIVIL PROCEDURE: Striking out - Action - Locus standi - Action brought by administratrix of deceased bankrupt - Action brought without obtaining sanction of Director General of Insolvency - Action to challenge validity of letters of administration - Whether plaintiff was merely exercising personal right of deceased bankrupt - Whether plaintiff was competent to bring action as an administratrix of estate of deceased bankrupt - Whether sanction required for administratrix to act in estate of deceased bankrupt

[First, 3rd, 4th and 5th defendants' applications dismissed with costs.]

Case(s) referred to:

Akira Sales & Services (M) Sdn Bhd v. Nadiah Zee Abdullah & Another Appeal [2018] 2 CLJ 513 FC (refd)

Shahdidan Safie v. Atlan Holdings Bhd & Anor & Other Appeals [2005] 3 CLJ 793 CA (refd)

Legislation referred to:

Industrial Court Act 1967, ss. 2, 8(1)(b), 20(3), 38(1)(a)

Rules of Court 2012, O. 18 r. 19(1)(a), (b), (c), (d)

DECISION

(Enclosures 40, 41 and 43)

Introduction

[1] The 1st defendant, 3rd defendant and 4th to 7th defendants (hereafter 'the defendants') filed enclosures 40, 41 and 43



respectively (hereafter ‘the enclosures’). All the enclosures were filed pursuant to Order 18 rule 19 (a), (b), (c) and/or (d) of the Rules of Court 2012 (‘RoC’).

[2] Essentially, the defendants (except the 2nd defendant who did not file any striking out application) relied on the following grounds to move this court to strike out the plaintiff’s writ and statement of claim, namely, (i) the plaintiff does not have *locus standi* to file this action, (ii) the plaintiff’s action does not disclose any cause of action and (iii) the plaintiff has yet to suffer any damages or losses or no damages has yet to accrue.

[3] On 12.12.2019, this Court dismissed all the enclosures and directed the parties to proceed to the fixing of trial dates. The reasons for the decision are set out as below.

Salient Background Facts

[4] In essence, the plaintiff’s action revolves around the estate of a deceased named Teh Yew Yaw (hereafter ‘TYY’).

[5] TY Y passed away on 22.8.1950; he died intestate. At that material time, the deceased left behind his wife and five children. In September 2018, when this action was filed, TY Y’s wife and all five children had passed away.

[6] The plaintiff is the administratrix of the estate of one of TY Y’s deceased children, i.e. Tai Swee Kian (hereafter ‘Tai SK’). The plaintiff’s complaint is in relation to the Grant of Letter of Administration obtained on 14.4.2016 for the estate of TY Y (hereafter ‘the impugned LA’). The plaintiff questions the validity of the impugned LA.



[7] First, the plaintiff avers that there was no full and frank disclosure of all the assets that belonged to TYY when the application for the impugned LA was made before the High Court.

[8] Secondly, the plaintiff also avers that the supporting affidavits which were affirmed by two of TYY’s children, i.e. Tai E King (hereafter ‘Tai EK’, deceased) and Tay Boo Thiah (hereafter ‘Tay BH’, deceased) in support of the application for the impugned LA had excluded other siblings as the lawful beneficiaries of the estate of TYY. They (Tai EK and Tay BH) named only themselves as the lawful beneficiaries of the estate of TYY.

[9] TYY had 3 other children besides Tai EK and Tay BH, and they were entitled to benefit from the estate of TYY. The other 3 children of TYY were Tai Chet Siang (hereafter ‘Tai CS’, deceased), Tai Ho Seng (hereafter ‘Tai HS’, deceased) and Tai SK, the plaintiff asserts.

[10] The above are the two main complaints of the plaintiff’s case.

[11] In view that the main persons, i.e. the children of TYY, in this action have passed away, this action is brought by the administratrix of the estate of Tai SK, as the plaintiff, against the administrators of the estates of Tai EK (as the 2nd defendant) and Tay BT (as the 3rd defendant) respectively.

[12] The plaintiff has also sued the sole administrator of the estate of TYY, Terence Tan Suan Guan, as the 1st defendant in this action.

[13] For ease of clarity, the table below depicts the parties who are related to TYY in this action.

| | | |
|--|-------------------|---|
| | <i>TYY’s Wife</i> | <i>The children of TYY (as averred by the plaintiff’s case)</i> |
|--|-------------------|---|

| | | |
|---|--------------------------|--|
| <p><i>TYY</i></p> <p><i>1st defendant - the administrator of the estate of TYY</i></p> | <p><i>Ng Woo Tee</i></p> | <i>Tai CS</i> |
| | | <i>Tai EK – 2nd defendant</i> |
| | | <i>Tai HS</i> |
| | | <i>Tai SK–Plaintiff</i> |
| | | <i>Tay BT – 3rd defendant</i> |

Table A

[14] The plaintiff has also sued four other defendants, namely the 4th, 5th, 6th and 7th defendants, in the action.

[15] The plaintiff’s narrative is that when Tai EK (2nd defendant) and Tay BT (3rd defendant) were still alive, they had executed a Deed/Mutual Agreement with the 4th defendant company, Wood Green Integrated Sdn Bhd. In the Deed/Mutual Agreement, they had agreed to transfer their beneficial rights in the estate of TYY to the 4th defendant company. Subsequent to that, a distribution order was granted by the High Court on 23.5.2016 to transfer two parcels of land from the estate of TYY to the 4th defendant company. However, the transfer of the said lands has been put on hold amid the challenge against the validity of the impugned LA.

[16] The plaintiff sued the 5th, 6th and 7th defendants on the basis that they were and/or are the shareholders/members of the 4th defendant company. The association between the parties are that (i) the 5th defendant is the wife of Tai EK (2nd defendant), (ii) the 6th defendant is the son of Tai EK (2nd defendant), and (iii) the 7th defendant is the mother of Terence Tan Suan Guan.

[17] Before this action was filed by the plaintiff in September 2018, and as early as in November 2017, the administrator of the estate of Tai CS (Tai CS was one of TYY's children – see table A above) brought a civil action via suit BA-22NCVC-689-11/2017 (hereafter 'suit 689') against the sole administrator of the estate of TYY, i.e. Terence Tan Suan Guan (the 1st defendant in the present suit). The main remedy sought in suit 689 was the revocation of the impugned LA on the basis that it had omitted other lawful beneficiaries in the estate of TYY.

[18] Pursuant to a court order dated 22.3.2019, the present suit and suit 689 were ordered to be consolidated and be heard together. Before the two actions could proceed for trial, the defendants (except the 2nd defendant) had filed enclosures 40, 41 and 43 respectively to strike out the plaintiff's action.

Reasons for the decision

First ground: The plaintiff does not have the locus standi to file this action

[19] The defendants asserted that the plaintiff did not possess the *locus standi* to initiate the action, and therefore, the action ought to be struck out *in limine*. The defendants relied on the Court of Appeal decision in *Shahdidan Bin Safie v. Atlan Holdings Bhd and anor* [2005] MLJU 279 for the legal proposition that if a plaintiff is found to lack standing to sue, then his action fails *in limine*. The defendants' submission on the plaintiff lacks of *locus standi* is as below.

[20] Tai SK passed away on 20.9.2013. Before his demise, Tai SK was adjudged a bankrupt on 22.3.2011. The status of Tai SK remains as an undischarged bankrupt until today.

[21] The defendants submitted that s. 38(1)(a) of the Insolvency Act 1967 (Revised 1988) (hereafter the ‘Act’) requires the plaintiff to obtain sanction from the Director General of Insolvency (hereafter ‘DGI’) to maintain this action. Section 38 of the Act states as follows:

“(1) Where a bankrupt has not obtained his discharge –

(a) the bankrupt shall be incompetent to maintain any action (other than an action for damages in respect of an injury to his person) without the previous sanction of the Director General of Insolvency”

[22] The defendants also submitted that s. 8(1)(b) of the Act states that ‘all property of the bankrupt shall become divisible among his creditors and shall *vest* in the DGI and the DGI shall be the receiver, manager, administrator and trustee of all properties of the bankrupt.’ The section stating that ‘*all property of the bankrupt shall vest to the DGI*’ proffers that only the DGI has the legal capacity to act on behalf of the bankrupt, or alternatively, the bankrupt or representative of the bankrupt is required to obtain sanction from the DGI to maintain an action as stipulated in s. 38(1)(a) of the Act.

[23] In the present case, the plaintiff, the administratrix of the estate of the deceased bankrupt, failed to obtain sanction from the DGI to maintain the action. Therefore, the plaintiff is incompetent to bring this action as an administratrix of the estate of the deceased bankrupt.

[24] The defendants relied on the Federal Court decision in *Akira Sales & Services (M) Sdn Bhd v. Nadiah Zee bt Abdullah and another appeal* [2018] 2 MLJ 537 to support that a previous sanction is required to maintain this action by the plaintiff.

[25] In *Akira Sales & Services (M) Sdn Bhd* the Federal Court made clear the following legal propositions: First, any proceeding initiated



under s. 20(3) of the Industrial Court Act 1967 is a personal claim of a bankrupt and no sanction is required from the DGI. Any subsequent appeal against the decision made is a continuation of the proceeding which does not require sanction from the DGI as well.

[26] Secondly, the apex court held that no sanction is required ‘to a proceeding or appeal challenging an order in bankruptcy, and that the word ‘action’ (referring to s. 38(1)(a) of the Act) refers to a new action and not the action upon which bankruptcy was secured (see para 19 of the judgment).’ The apex court went on to state that an undischarged bankrupt must obtain the previous sanction of the DGI to institute a claim, file a counterclaim, defend an action, maintain the action and continue with the case and file an appeal (see para 20 of the judgment).

[27] Thirdly, when a cause of action is personal to the bankrupt where no property is to be vested to the DGI, such as unexecuted contracts for purely personal service and future services, a bankrupt can sue for his remuneration under the contract without having to obtain sanction from the DGI. However, the DGI reserves the right to intervene and could claim the fruits of the litigation (see para 22 of the judgment).

[28] This is neither a case involving a personal injury claim (as excluded by the section) nor one involving an industrial relation claim. It is also not a personal claim for services rendered or for future services of the deceased bankrupt. Hence, the exclusion of sanction from the DGI does not apply, the defendants submitted.

[29] In the present case, it must be noted that the administratrix of the estate of the bankrupt is not seeking an immediate beneficial right over the property(ies) of the estate of TYY. The administratrix is merely exercising the personal right of the deceased Tai Swee Kian

(deceased bankrupt) to challenge the impugned LA that was wrongfully obtained.

[30] There is a distinction between challenging the impugned LA and claiming the beneficial ownership in the estate of TYY. The former involves the personal right of the deceased bankrupt to take part in the administration of the estate of TYY; whereas the latter involves making a formal claim over the estate of TYY. The plaintiff must first set aside the impugned LA before making a claim over the estate of TYY.

[31] This action involves the deceased bankrupt's personal right in the administration of the estate of TYY. The cause of action is a personal right of the deceased bankrupt, and not right to property.

[32] Section 2 of the Act defines 'property' as follows:

*“‘property’ includes money, goods, things in action, land and every description of property, whether real or personal and whether situate in Malaysia or elsewhere; also obligations, easements and every description of estate, interest and profit, **present or future**, vested or contingent, arising out of or incident to property as above defined;”*

[33] 'Property' as defined above shall include *present* and *future* property. Therefore, in the event the plaintiff succeeds in this action, and the plaintiff pursues a claim over the estate of the TYY, then the sanction of DGI may be required for such claim for 'property' that will be vested in the DGI in the future.

[34] In this particular action, the plaintiff did not seek any reliefs for property, whether present or future property.

[35] In his letter dated 2.8.2018, the DGI had stated clearly that at this juncture no sanction is required for the administratrix to act in the estate of the deceased bankrupt, Tai SK. The DGI stated as follows:

“...dan pelantikan beliau sebagai pentadbir kepada harta pusaka bankrap (simati) pada 20.3.2014 tiada kaitan dengan kes kebankrapan ini....”

(see Affidavit Jawapan Plaintiff affirmed on 26.6.2019, exhibit ‘JKL-17’).

[36] To surmise, this Court is of the opinion that at this juncture, the sanction from the DGI is not necessary because the administratrix is exercising a right personal to the deceased bankrupt.

[37] After the plaintiff has successfully set aside the impugned LA, the plaintiff may require to obtain a sanction from the DGI to bring a suit to make a claim over the estate of TYY.

[38] Based on the above analysis, this Court is of the considered view that sanction from the DGI under s. 38(1)(a) of the Act is not required for this action. Hence, the plaintiff, as the administratrix of Tai SK, has the *locus standi* to file this action to exercise the right which was personal to the deceased bankrupt.

Second ground: The plaintiff’s action does not disclosure any cause of action

[39] This Court is of the considered view that the plaintiff has disclosed a cause of action against the defendants. The plaintiff alleged the 2nd and 3rd defendants fraudulently misrepresented to the court or failed to disclose all the rightful beneficiaries of the estate of TYY when obtaining the impugned LA. As administratrix of a rightful beneficiary (if that is established by the plaintiff in the trial), the plaintiff would have a cause of action against the 1st, 2nd and



3rd defendants based on the alleged misrepresentation of the 2nd and 3rd defendants. In the event the impugned LA is set aside, the intended transfer of the property(ies) to the 4th defendant would be invalid, as a consequence.

[40] With regard to the 5th, 6th and 7th defendants, they could have colluded in the alleged misconduct of the 1st, 2nd and 3rd defendants.

[41] This Court agrees with the plaintiff's counsel's submission in that the primary cause of action of the plaintiff's suit is premised on fraud and/or misrepresentation on the court allegedly committed by the 1st, 2nd and 3rd defendants to obtain the impugned LA.

[42] The allegation of serious misconduct by the defendants warrants a *viva voce* to determine a finding of fact by this Court. It is trite law that it does not matter how weak the plaintiff's case is, this is irrelevant consideration for an action to be struck out *in limine* under O. 18 r. 19 of the RoC.

Third ground: The plaintiff has yet to suffer any damages or losses or no damages has yet to accrue.

[43] This Court could not accept the defendants' averment that the plaintiff has yet to suffer any damages or losses or no damages has yet to accrue. This Court is of the considered view that Tai SK would have suffered damages or losses the minute he was excluded from the list of beneficiaries in the application for the grant of letter of administration in the estate of TYY. Tai SK has been deprived of his rightful beneficial interest the moment he was excluded as a beneficiary, in the event the plaintiff manages to prove in the trial that he has beneficial interest in the estate of TYY.

Conclusion



[44] Based on the above reasons, this Court dismissed the defendants' applications and ordered the defendants to pay costs of RM2,000.00 in each application respectively to the plaintiff.

(CHOO KAH SING)

Judge

High Court Shah Alam

Dated: 14 JANUARY 2020

COUNSEL:

*For the plaintiff - Lim Kian Leong, Tan C'Heng Leong & Tobias Lim;
M/s KP Lu & Tan*

*For the 1st defendant (encl. 40) – Gopal Sreenevasan & Simrenjeet
Singh; M/s Simrenjeet, Tay & Co*

*For the 3rd defendant (encl. 41) - Simrenjeet Singh (MOB); M/s
Brendan Siva*

*For the 4th to 7th defendants (encl. 43) - Michael Chow & Wendy
Yeong; M/s Michael Chow*