Hoo Su Hen *v* Sim Mao Sheng Desmond and another
[2019] SGHC 189

Case Number	: Suit No 193 of 2019 (Registrar's Appeal No 178 of 2019)
Decision Date	: 16 August 2019
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Ong Kai Min Kelvin and Jaspreet Kaur (Tito Isaac & Co LLP) for the plaintiff; Choo Zheng Xi and Chia Wen Qi Priscilla (Peter Low & Choo LLC) for the first defendant; The second defendant absent and unrepresented.
Parties	: Hoo Su Hen @ Ho Su Hen — Sim Mao Sheng Desmond — Infinity Treasures Pte Ltd

Civil Procedure – Pleadings – Striking out

16 August 2019

Choo Han Teck J:

1 Order 18 rule 19(1)(*a*) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) permits the court to strike out any pleading and the endorsement of any writ on the ground that it discloses no reasonable cause of action or defence. In this suit, the plaintiff is suing the first defendant for negligence and misrepresentation. He claims that the first defendant misled him to invest in crude oil as well as in residential housing by representing that the former would realise a 12% return in profit and the latter, 15%. The plaintiff's claim against the second defendant is based on the doctrine of vicarious liability because the first defendant was an employee of the second defendant.

2 The first defendant applied to strike out the plaintiff's action on the ground that it disclosed no reasonable cause of action. Mr Choo Zheng Xi, counsel for the first defendant, submitted that the statement of claim did not plead that the first defendant was a financial adviser, and there are no facts to support a claim in negligence.

3 Mr Choo argued that there was no basis to conclude, even if there were misrepresentations, that the misrepresentations gave rise to a cause of action in the tort of negligence. He submitted that there is nothing in the pleadings to show that the plaintiff was uneducated or not financially savvy. Finally, he submitted that it would be impossible for the plaintiff to have relied on any claim that the capital and returns on the investments could be guaranteed. Counsel argued that no facts were pleaded as to what duties the first defendant owed to the plaintiff in so far as advice on the investments were concerned.

4 The application to strike out the plaintiff's claim was dismissed by AR Zeslene Mao, and the first defendant appealed against that dismissal in this appeal before me.

5 This is a straightforward matter, and I would have dismissed it without writing grounds but for the fact that applications under O 18 r 19(1)(*a*) have become more prevalent, indicating to me that many lawyers do not fully appreciate the nature and scope of the rule.

6 The plaintiff made O 18 r 19(1)(*a*) more alluring to the first defendant in this case by some poor

pleading on his part. A statement of claim should be tight and compact and have no more than the facts upon which the plaintiff states his cause of action and makes his claim for relief. The plaintiff's statement of claim in this case is disorganised and filled with irrelevant statements that serve no useful information. I need only set out paragraph 5 of the statement of claim to illustrate the irrelevancy of some of the passages in this claim –

> 5. On 14 Feb 2013, the Plaintiff's wife was admitted to Mount Elizabeth Hospital for haemorrhagic stroke. She was in a coma and was warded in the hospital's intensive care unit. The Plaintiff's wife was not insured due to her pre-existing medical conditions and the Plaintiff was deeply concerned about the exorbitant and indefinite medical fees. However, out of his deep love for his wife he refused to give up despite the doctor's dismal prognosis of her not ever regaining her consciousness. The Plaintiff insisted that she be given the best medical treatment possible. The Plaintiff continued to give his best financially and visited his wife daily talking to her whilst in her comatose stage, praying that she would regain her consciousness.

7 The above passage and several others are evidence and belong only in the affidavits of evidence-in-chief. Counsel for the plaintiff explained that he included these passages to explain why the plaintiff was vulnerable to the misrepresentation. A claim under misrepresentation or in negligence does not require evidence to be pleaded. In the former, all that is required is pleading that a representation was made; what that representation was; when, where, to whom and by whom it was made; that it was false; and that the plaintiff suffered loss relying on it.

8 When lawyers infuse evidence into the statement of claim, they invariably do not provide a complete account of their evidence, and that serves only to invite defence lawyers to make unnecessary applications for further evidence in the misguided belief that they are seeking further and better particulars.

9 The first defendant seized upon the plaintiff's pleadings, and his counsel, Mr Choo, argued that the statement of claim disclosed no cause of action. It seems clear that underneath the rambling statement of claim, one can glean that the plaintiff is claiming damages for a cause of action in misrepresentation, with the first defendant falsely representing that should the plaintiff invest in the two investments referred to in the representation, the first defendant will not only have his capital protected but go on to reap a 12% or 15% profit. The plaintiff did so, and lost his money.

10 What Mr Choo had done, as with many counsel in similar circumstances in recent years, was that he sought to strike out a claim for inadequate evidence, thus falling into the same misunderstanding of pleadings as counsel for the plaintiff.

11 The litigation process provides three principal ways (apart from a striking out based on non-compliance with an "unless order") to have the plaintiff's claim struck out or dismissed. The first is under O 18 r 19(1)(*a*); the second is through a submission of no case to answer, made at the close of the plaintiff's case at trial; and the third is to contest the claim on the merits and succeed at the close of its case at trial.

12 Striking out a plaintiff's claim under O 18 r 19(1)(*a*) is reserved for the rare and obvious cases where the pleadings, without affidavit support, disclose no cause of action. An example, at least for the present, may be a claim for maintenance by a plaintiff against his or her homosexual partner. If a cause of action is palpable on the face of the pleadings, the plaintiff is entitled to his claim being heard by the court, however weak his evidence may be. That is for the trial judge to decide.

13 The defendant may make good his claim that the plaintiff has no case by making that

submission at the close of the plaintiff's case. The rule here is that should the court disagree with the defendant's counsel's submission, the defendant will not be permitted to proceed with his case, and the court will have to assess whether there are any other reasons to dismiss the plaintiff's claim in the absence of evidence from the defence. Of course in such circumstances, final judgment will likely be in the plaintiff's favour.

14 The consequences of a submission of no case to answer thus makes good the defendant's claim that there is no case to meet. It also serves as a test for the defendant should he be contemplating making an application under O 18 r 19(1)(*a*), for if he is not confident of making a submission of no case to meet, then, all the more he ought not to consider an application to strike out under O 18 r 19(1)(*a*). It must also be remembered that this very rule also permits amendments to the claim. Hence, any defect in the pleadings can be countered with an amendment, as in fact occurred in the present case after the AR's decision and before this appeal. The question a seasoned counsel for the defence would ask himself is, why would he wish to help the opponent strengthen his case?

15 It is usually not difficult to see whether a claim raises a cause of action, and a statement of claim will not be struck out under O 18 r 19(1)(*a*) unless no cause of action is disclosed on the face of it. Hopeful but unmeritorious applications only increase the costs of litigation and impedes the smooth and speedy passage to trial. Although I dismissed this appeal and reserved the question of costs to the trial judge, I may impose costs in future against interlocutory applications that could and should have been avoided.