

Tng Eng Chye alias Tng Eng Chye, Robert v Chia Kim Chua and Another
[2000] SGHC 11

Case Number : Suit 512/1999, SIC Entered No 7568 of 1999
Decision Date : 18 January 2000
Tribunal/Court : High Court
Coram : Amarjeet Singh JC
Counsel Name(s) : K Jayabalan (Cooma Lau & Loh) for the plaintiff; Leung Wing Wah (B T Tan & Company) for the defendants
Parties : Tng Eng Chye alias Tng Eng Chye, Robert — Chia Kim Chua; Kong Kai Cheong

JUDGMENT:

GROUNDS OF JUDGMENT

1. Under Summons for Directions dated 15th December 1999, Counsel for the Defendants, Leung Wing Wah of B T Tan & Co ('the Defendants' Counsel') prayed for a number of orders, amongst them being that the trial scheduled for 22nd and 23rd December 1999 be vacated.

2. The application supported by an Affidavit of the Defendants' Counsel on the Defendants' behalf, came up for hearing before me two days before the trial i.e. on the 20th of December 1999. Only the prayer for vacating the dates fixed for trial were dealt with by the Defendants' Counsel. The other prayers contained in the Summons for Directions were not submitted on before me.

3. The action was initially fixed for trial for the 11th and 12th November 1999. At the eleventh hour i.e. on 10th November 1999, the Defendants discharged their solicitors Ms S T Chew & Partners from further acting for them.

3.1 On the 11th of November 1999 the Defendants appeared in person before the trial judge and applied for the trial dates to be vacated on the ground that they had serious differences with their solicitors and they needed to engage new solicitors. The trial dates were vacated by the trial judge. The Defendants were penalised in costs occasioned by the adjournment though.

3.2 The Registrar then held a Pre-Trial Conference ('PTC') on 22nd November 1999 and fixed new dates for the trial i.e. 22nd and 23rd December 1999.

4. Defendants' Counsel informed me that he was appointed and instructed as Counsel on 4th December 1999. He stated he had also received the legal papers from the previous solicitors earlier on 25th November 1999. Yet I noted from the Registrar's notes that the firm of B T Tan & Co had appeared (through a different Counsel) at the PTC to take the hearing dates which Defendants' Counsel now wished to vacate. As Defendants' Counsel's firm was already acting for the Defendants on 22nd November 1999 since it took dates for hearing, I was perplexed by Defendants' Counsel's intimation to me that he was *appointed* to act in the matter only on 4th December 1999.

5. The Defendants' Counsel in his application before me to vacate the new dates, submitted that he needed time to file an Amended Defence and Counterclaim as stated in his Affidavit in support of the application. In his Affidavit, he had stated that the Defendants wanted to call two solicitors and the

Plaintiff's wife as witnesses.

6. The Suit disclosed that the Plaintiff, had claimed for an account and an inquiry in respect of monies held in trust conjointly by the Defendants and the Plaintiff but certain monies were withdrawn by the Defendants without the Plaintiff's knowledge and consent. The monies were held on trust for the *Hoon San Tai Tein Buddhist Temple*. According to the Defendants' solicitor's Affidavit, the Defendants wanted to file an amended defence to state that it was not necessary for them to inform the Plaintiff when they withdrew the trust funds as any two signatures were required for withdrawal of monies and the Defendants as co-signatories had satisfied the trust requirements and further they also wished to counterclaim against the Plaintiff for monies which they alleged he had collected for the *Temple* but which instead went into the Plaintiff's wife's and daughter's joint account in a bank.

7. The Plaintiff's Counsel strongly opposed the application submitting that the trial had been set down on 1st November 1999 and the trial dates had already been vacated once and the Defendants' present Counsel had not when attending the PTC to take new dates, told the Registrar specifically of the Defendants' need to have an adjournment of some specific length of time to enable them to finalise their case before presentation in Court.

8. Having considered all the facts and circumstances, I was satisfied that the Defendants had sufficient time after the trial dates were fixed for 22nd and 23rd December 1999 to take further instructions and to file an Amended Defence and Counterclaim and subpoena witnesses and prepare their case. Dates having already been vacated once, it was the Defendants' Counsel's duty after new dates were taken, to hasten the process of filing any Amended Defence or add a Counterclaim and serve such papers on the Plaintiffs for them to respond. The amendments to the Defence and any Counterclaim to be filed showed the issues to be very simple. The Defendants' solicitor had also ample time to subpoena the witnesses they intended to call and prepare their case. The subpoenas should have been served at the beginning of December to give ample notice to the two solicitors and the Plaintiff's wife as stated in the Defendants' solicitor's Affidavit so that these potential witnesses would be put on notice and their Affidavits of Examination-in-Chief drawn up soon afterwards. No suggestion was made by Defendants' solicitor in his Affidavit dated 5th December 1999 that the witnesses were reluctant to testify or could not be available on the new dates of hearing. Again the Defendants through their solicitors made their application for vacating the hearing dates only some days before the trial. It appeared to me that the Defendants and their Counsel were intent on dictating the pace at which their case should be heard. For instance, the Defendants received the legal papers from the previous solicitors on 25th November 1999. Yet if I were to accept the Defendants' Counsel's version of events, it took the Defendants another 9 days i.e. on 4th December 1999 to *appoint* and instruct him. The speedy hearing of cases including dispensation of justice to the conscientious party would be seriously compromised should dilatory practices by a party to a Suit or their Counsel be allowed to prevail.

9. In the circumstances, I dismissed the Defendants' application to vacate the dates and ordered the Defendants to pay \$500/- costs to the Plaintiff in respect of the same. No orders were sought and none were made concerning the other prayers. The Defendants remained free though to call any additional witnesses at the trial with the leave of the trial judge on the hearing dates.

10. Further, and importantly, I would like to point out that the trial dates 22nd and 23rd December 1999 were, in any case, vacated by the Registry on 21st December 1999 by letter from the Registry as the Registry was unable to find a Judge to preside over the trial in view of the Court vacation.

11. Therefore, as the hearing did not proceed on the 22nd and 23rd December 1999 as stated above, I am unable to understand the appeal by the Defendants' solicitors on behalf of the Defendants filed on the 4th of January 2000 against the 'whole' of my decision well after the above hearing dates were vacated by the Registry and the parties notified of the same.

Dated this 18th day of January 2000

AMARJEET SINGH

JUDICIAL COMMISSIONER

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