Tan Yow Kon v Tan Swat Ping and Others
[2006] SGHC 123

Case Number : Suit 102/2006, RA 159/2006

Decision Date : 19 July 2006

Tribunal/Court : High Court

Coram : Sundaresh Menon JC

Counsel Name(s) : C R Rajah SC and Han Kee Fong (Tan Rajah & Cheah) and Seethapathy s/o Mannapuri Padmanabham (S Nabham) for the plaintiff; Molly Lim SC and Shannon Ong (Wong Tan & Molly Lim LLC) and Wee Hong Lin (H L Wee & Co) for the defendants

Parties : Tan Yow Kon — Tan Swat Ping; Tan Suat Ting; Tan Wee Keong Darren; Tan Sut Lai (sued as Executor and Trustee of the Estate of Tan Wee Bin, Deceased); Tan Suat Hui Sophie; Chop Joo Wan (sued as a firm)

Civil Procedure – Parties – Misjoinder – Whether defendants necessary or proper parties to plaintiff's action – Scope of court's discretion to remove improper or unnecessary parties to action – Order 15 r 6(2)(a) Rules of Court (Cap 322, R 5, 2006 Rev Ed)

Civil Procedure – Pleadings – Striking out – Application to strike out action against certain defendants on ground that plaintiff's statement of claim disclosing no reasonable cause of action against such defendants – Applicable principles – Order 18 r 19 Rules of Court (Cap 322, R 5, 2006 Rev Ed)

Land – Caveats – Withdrawal – Plaintiff arguing court should not exercise discretion to order removal of caveat on property having regard to balance of convenience test alone as plaintiff having interest in such property – Principles for exercise of court's discretion to order removal of caveat – Section 127(1) Land Titles Act (Cap 157, 2004 Rev Ed)

19 July 2006 *Judgment reserved.*

Sundaresh Menon JC:

Background

1 The sixth defendant in these proceedings is a partnership through which a substantial family business had been conducted. The plaintiff and all the other defendants are siblings. There were ten children in the family: six sons and four daughters. The sixth defendant was initially formed as a sole proprietorship in 1953 by Mr Tan Kheng Siong, the father of the other six parties in these proceedings. Subsequently, in 1967, it was registered as a partnership when Mr Tan Kheng Siong admitted his wife Mdm Yap Soh Choon and their second son, Mr Tan Peng Nam as partners.

2 Mr Tan Kheng Siong passed away in 1984 and his wife passed away in 1993. Over the years, the constitution of the partnership changed. Initially, the third and fifth sons and the third daughter (who is the first defendant in these proceedings) were admitted to the partnership. Later, as each parent passed away, other children were admitted. The plaintiff, who is the eldest son, was admitted as a partner in 1988. According to the plaintiff, one of his brothers, the third son, left the partnership at this time and was allowed to take over a part of the firm's business representing his share in the partnership assets.

3 In or around 1994, the partnership was substantially re-organised following the mother's death. The mother's share in the firm passed to the daughters. At this time, the three other

daughters (in addition to the first defendant who was already a partner) first became partners and the first defendant became the manager of the firm. Two of the sons left the partnership also at this time, and a year later, another son left the partnership. Thereafter, the plaintiff and one other son Mr Tan Wee Bin were the only sons still in the firm. Mr Tan Wee Bin later passed away and his estate is joined as the third defendant acting by its executor (who is the youngest son), Mr Tan Wee Keong Darren ("Mr Darren Tan").

4 The plaintiff claimed that the three sons (leaving aside Mr Tan Wee Bin) who had withdrawn from the partnership in 1994 and 1995 had each been paid the equivalent of $800,000 in cash representing their share of the partnership assets. The plaintiff further claimed that he had been promised by the first and second defendants as well as by one of his brothers on behalf of the other defendants that his share of the partnership would similarly be valued at $800,000 and would be paid to him when he withdrew or retired from the firm.

5 The plaintiff contended that the family business was to be run for the benefit of all the family members equally and that partnership assets had been entrusted with the first and second defendants on the same basis. He also maintained that over the years, partnership funds had been used to purchase and develop properties including the two properties against which he has now lodged caveats.

6 The plaintiff's complaint is that following his mother's death, he has been kept out of the family business and the partnership assets. He no longer receives the salary he had previously been drawing as a partner. Further, he claims, the first defendant, on behalf of all the other parties, has now denied that the plaintiff is entitled to any share in the partnership assets or to payment of the sum of $800,000 which had earlier been promised. Further, the sixth defendant's business has now ceased though he only became aware of this after the fact.

7 The plaintiff accordingly commenced this action. The action was brought against those who were still registered as partners in the sixth defendant at the time it ceased business. These were the plaintiff's four sisters and his youngest brother in his capacity as the executor of the estate of Mr Tan Wee Bin.

8 In the action, the plaintiff sought a declaration of his entitlement to payment of the sum of $800,000 or to a share of the partnership assets; a declaration that the two properties mentioned in [5] above form part of the partnership assets; an account of all partnership dealings and assets; an order that the defendants indemnify him in respect of the amounts found to be due to him; and various reliefs relating to the winding up of the affairs of the sixth defendant.

9 The defendants responded to the suit with an application for the claim against the second to the fifth defendants ("the Remaining Defendants") to be struck out under O 18 r 19 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules"). The defendants contended:

(a) that the principal relief was sought against the first defendant. Moreover, she had been the manager of the partnership at the material times and she alone, it was submitted, was in a position to respond to the plaintiff's allegations since the others were passive partners who in the main had acquired their interests upon their mother's death;

(b) that no allegation was levelled by the plaintiff against the Remaining Defendants. There were, so it was said, some passing references to the second defendant but as to the others, beyond reciting the circumstances in which they had become partners, they were not mentioned again save in the context of the reliefs sought; and

(c) in the alternative, that the first defendant had in any event undertaken to meet any claim that the plaintiff might succeed in and therefore the Remaining Defendants were neither necessary nor proper parties. It was therefore contended that pursuant to O 15 r 6(2)(*a*) the Remaining Defendants should cease to be parties to these proceedings.

10 The defendants also applied for the removal of caveats that had been lodged against the two properties. One of these was held in the first defendant's name. The other had been held in Mr Tan Wee Bin's name and is now registered in Mr Darren Tan's name. The defendants were largely successful before the learned assistant registrar who heard the application at first instance. The claim was struck out against the Remaining Defendants under O 18 r 19. It was also declared that the first defendant "is the proper and necessary party to defend against the Plaintiff's claims … and has consented to be the main Defendant in this action in place of the Remaining Defendants". As a consequence of the action against the third defendant being struck off, the caveat against the property now registered in Mr Darren Tan's name was ordered to be removed. Certain ancillary orders were also made.

The appeal

11 The present appeal was brought by the plaintiff against the learned assistant registrar's order. The plaintiff instructed Mr Chelva Rajah SC for the appeal. Ms Molly Lim SC was instructed and appeared on behalf of the defendants before the learned assistant registrar and before me.

12 Mr Rajah argued that the plaintiff's claim centred on his entitlement to be paid the sum of $800,000 or a sum to be assessed representing the value of his share in the firm's assets. Mr Rajah argued that the plaintiff was seeking no more than what had been promised him by the first and second defendants and by one of the brothers on behalf of the other parties in 1994. This was precisely what had been done in the case of all the other brothers when they had left the partnership, save that in relation to Mr Tan Wee Bin who passed away in 2002, Mr Rajah said his client was not aware of the terms upon which his share had been settled. Mr Rajah argued however that as Mr Tan Wee Bin had been a partner of the firm at the time of his death, he must have had some interest in the firm's assets and as the plaintiff was seeking an account of the dealings of the partnership he was entitled to join his estate.

13 Mr Rajah also referred to various provisions of the Partnership Act (Cap 391, 1994 Rev Ed) in support of his contention that the plaintiff's claim against the Remaining Defendants was not out of bounds. In response to a query from me, Mr Rajah stated that the plaintiff's claim for an account of the partnership dealings was in the alternative to his primary claim which was for the sum of $800,000 to be paid to him.

14 With respect to the caveats, Mr Rajah pointed out that there were two properties. The learned assistant registrar had only dealt with one of the properties, namely 82 Lorong K, Telok Kurau, Singapore 425713 ("No 82") which had once been held in Mr Tan Wee Bin's name and is now registered in Mr Darren Tan's name. The learned assistant registrar had made an order for the removal of the caveat against No 82 on the basis that the order for removal was consequential to the striking-out of the claim against the third defendant. As to the other property, 63 Lorong K, Telok Kurau, Singapore 425763 ("No 63"), the learned assistant registrar had adjourned the application to be heard before a judge. As it had not been dealt with below, it was not the subject of the appeal and hence was not before me.

15 In so far as the properties were concerned, Mr Rajah argued that his client's case was that these had been acquired with partnership assets and, pursuant to s 21 of the Partnership Act, his

client was entitled to stake a claim to these. Mr Rajah submitted in effect that No 82 had been held by Mr Tan Wee Bin on trust for the partnership. He maintained that Mr Darren Tan, as the executor of the estate, is impressed with the same trust. However, Mr Rajah also made it clear that his client's interest was a monetary one in the sense that it was to ensure he got proper value for his interest in the assets of the partnership and it was not to protect any emotional or other attachment to this particular property.

16 Ms Lim, in response, stated at the outset that she was not maintaining that there was no substantive claim to be adjudicated in this action. Rather, she explained, the statement of claim made no allegations against the Remaining Defendants. There was an assertion that they were partners of the sixth defendant and then various reliefs were sought, including against them. According to Ms Lim, there was no link in the body of the pleading to show that the Remaining Defendants had any part to play in the subject matter of the claims. They had been registered as partners in 1994 only because they inherited their mother's interest in the firm. They had not dealt with or managed the partnership assets at any time.

17 Ms Lim accepted that if the pleadings did show a sufficient nexus between the Remaining Defendants and the reliefs sought, then a claim could notionally be maintained against them. However, she argued that even if this were the case the appeal should nonetheless be dismissed because the Remaining Defendants were not necessary or proper parties. Ms Lim based this on the fact that the first defendant had stated that she would personally bear the liability for and on behalf of all the defendants in respect of any claim in which the plaintiff was successful. She maintained that as there was no suggestion that the first defendant was not good for any such liability, the plaintiff would not suffer any prejudice if the Remaining Defendants were left out of these proceedings. Ms Lim relied on O 15 rr 4 and 6 in support of her position.

18 Ms Lim also argued that allowing the action to continue against the Remaining Defendants would inevitably be inconvenient because it would increase the cost of the litigation if more parties were involved. The plaintiff had stated that he was in dire financial straits (see for example para 12 of his first affidavit) and would therefore not be in a position to meet an order for costs if he were unsuccessful in the litigation. Moreover, these defendants would unnecessarily be visited with the stress of litigation and this was to be avoided if possible.

19 In essence, Ms Lim submitted that there could be no injustice to the plaintiff if the action were conducted without the Remaining Defendants.

20 As to the caveat against No 82, Ms Lim argued that a caveat is to be seen as being analogous to an interim injunction and that the balance of convenience was simply not in the plaintiff's favour. His real claim was one for money and not against the property. To that extent, damages were a more-than-adequate remedy given that there was no question as to the first defendant's means. As against this, the plaintiff's financial difficulties meant that he would most likely not be in a position to meet a claim for damages should it eventually transpire that there was no basis for the caveat.

21 In response, Mr Rajah made a few more points. He argued that even on the pleadings as they stood, a sufficient nexus had been pleaded showing the basis of the claim against all the defendants. He drew attention to the promises made by the first and second defendants and by one of the brothers on behalf of the Remaining Defendants in respect of the very relief his client was seeking. He maintained that a plaintiff was entitled to choose the parties against whom relief was sought. Moreover, he submitted, a plaintiff was not obliged to accept the professed creditworthiness of one partner where a claim was brought against the defendants *qua* partners, and that under the

Partnership Act his client was entitled to proceed against all the partners.

22 As to O 15 r 4(3), Mr Rajah submitted that this did not prevent his client from choosing to proceed against all the defendants if he wished to do so. That rule if at all only gave the plaintiff the option not to proceed against all his partners.

23 As to the caveat, Mr Rajah submitted that his client was claiming a proprietary interest in the property and that it was not material in such circumstances to inquire whether he could meet any claim for damages that may eventually be brought.

The application to strike out the proceedings against the Remaining Defendants

24 I begin with the first part of the relief sought by the Remaining Defendants. The analysis begins with a consideration of whether the plaintiff's statement of claim shows a sustainable claim. Ms Lim referred me to the decision of the Court of Appeal in *Gabriel Peter & Partners v Wee Chong Jin* [1998] 1 SLR 374 where it was held at [21] that:

> The guiding principle in determining what a 'reasonable cause of action' is under O 18 r 19(1)(a) was succinctly pronounced by Lord Pearson in *Drummond-Jackson v British Medical Association* [1970] 1 All ER 1094. *A reasonable cause of action, according to his lordship, connotes a cause of action which has some chance of success when only the allegations in the pleading are considered.* As long as the statement of claim discloses some cause of action, or raises some question fit to be decided at the trial, the mere fact that the case is weak and is not likely to succeed is no ground for striking it out. [emphasis added]

25 This is a well-established proposition and it is not necessary for present purposes for me to examine the many other cases that have touched on this issue. As I have noted above, Ms Lim accepted that if a nexus between the status of the Remaining Defendants as partners and the reliefs sought against them had been pleaded, there would be no basis to strike out the claim under O 18 r 19.

26 On this basis, having examined the pleadings, I accept Mr Rajah's submission that a sufficient nexus has been pleaded. I note in this regard that the statement of claim included the following express averments:

> (a) at para 23: "…. After the death of [the mother] the 1st and 2nd Defendants took full charge of all [the sixth defendant's] affairs and assets including but not limited to real properties, fixed deposits and bank accounts, held jointly or otherwise in the name(s) of one or more of them i.e. the Defendants and/or [the mother]";
>
> (b) at para 27: "The [sixth defendant's] funds and assets … were also used to purchase, construct and renovate properties …. [including those] at Schedule B annexed hereto to [*sic*] which caveats have been lodged against";
>
> (c) at para 32: "All siblings were repeatedly assured and informed by their parents that all family members will be treated equally regarding [the sixth defendant] and its assets (which included assets purchased from partnership funds as those mentioned above …)";
>
> (d) at para 33: "The 1st and 2nd Defendants were eventually mainly entrusted … with the family business and partnership assets and agreed to treat all siblings including themselves equally …";

(e) at para 34: "After the death of [the father] … the 1st and 2nd Defendants (mainly the 1st Defendant) began to advise and guide [the mother] on the family business and partnership assets and what to do therewith to enable and ensure all siblings were treated equally";

(f) at para 40: "The Plaintiff on or around 1994 was promised by the 1st and 2nd Defendants and [the third son] on behalf of all the other parties then alive that the Plaintiff's share in [the sixth defendant] was $800,000";

(g) at para 47: "The 1st Defendant on behalf of all parties concerned has also denied that the Plaintiff is entitled to any share in the partnership assets or the sum of $800,000 …";

(h) at para 51: "The Plaintiff … has been provided with an alleged 'Trading and Profit & Loss Account As At December 31st 2004' of the 6th Defendant which the Plaintiff has rejected as 'being true and accurate of the partnership assets and liabilities'"; and

(i) at para 54: "The Plaintiff admits that he holds on trust as requested by [the mother] when she was alive a property in mainland China … which the Plaintiff has been willing to surrender but his siblings have ignored his requests …"

27 Without commenting on the sufficiency or otherwise of the particularity with which these matters have been pleaded, they do show in my view a sufficient nexus between the position of the Remaining Defendants, as siblings and as partners of the sixth defendant, and the reliefs that the plaintiff is seeking. I therefore do not think this is an appropriate case for striking out the plaintiff's action against the Remaining Defendants under O 18 r 19. It is perhaps not surprising in the circumstances that this was not pressed forcefully before me.

28 The real nub of Ms Lim's arguments in the appeal was that the Remaining Defendants were no longer necessary or proper parties.

29 A brief reference was made by Ms Lim to O 15 r 4(3) which provides:

> Where relief is claimed in an action against a defendant who is jointly liable with some other person and also severally liable, that other person need not be made a defendant to the action; but where persons are jointly, but not severally, liable under a contract and relief is claimed against some but not all of those persons in an action in respect of that contract, the Court may, on the application of any defendant to the action, by order stay proceedings in the action until the other persons so liable are added as defendants.

30 I do not think this advances Ms Lim's case because it provides a discretion to a plaintiff to choose whether to sue one or more out of a group of parties who are said to be jointly and severally liable. The provision does not limit a plaintiff's discretion in such a case.

31 Ms Lim's argument in fact substantially rested on O 15 r 6(2)(*a*). Order 15 r 6(2) as a whole provides as follows:

> Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter, the Court may, on such terms as it thinks just and either of its own motion or on application —
>
> (*a*) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;

(*b*) order any or the following persons to be added as a party, namely:

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon; or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

32 In my view, the opening words of O 15 r 6(2) confer upon the court a wide discretion, while sub-limbs (*a*) and (*b*) set out the sort of orders that can be made in the exercise of that discretion and the class of persons who can be made subject to such orders.

33 I deal first with the approach to the exercise of the discretion that is vested in the courts. I think it is useful here to recall the primary object of O 15 r 6. The following passage from *Singapore Civil Procedure 2003* (Sweet & Maxwell Asia, 2003) (omitting the case citations for convenience) at para 15/6/2, p 192 is instructive:

> This rule stands in relation to parties as O.20 stands in relation to the amendment of pleadings and other documents and as O.2 stands in relation to non-compliance. These are all provisions designed to save rather than to destroy, to cure that which is capable of cure … The rule is of general application, and similar provisions under other rules are to be read with it …
>
> This rule prevents an action being defeated by the misjoinder or nonjoinder of parties, and it provides for any necessary amendment in respect of the parties to an action being made at any stage of the proceedings … *This rule should be construed so as to bring all parties to the dispute relating to one subject-matter before the court at the same time so that the disputes may be determined without the delay, inconvenience and expense of separate actions and trials ... Under it the court has power to secure the determination of all disputes relating to the same subject matter, without the delay and the expense of separate actions …*
>
> The rule consisting of paras (1)–(3), deals generally with the position of parties, with their misjoinder or nonjoinder, with the power of the court to strike out, add or substitute parties, and with the power of intervention by persons not parties.
>
> [emphasis added]

34 To this may be added certain observations of the Malaysian Supreme Court in *Tajjul Ariffin bin Mustafa v Heng Cheng Hong* [1993] 2 MLJ 143 ("*Tajjul Ariffin*"). That was a case where two motorcycles had collided. The plaintiff was riding pillion on one and he sued the rider of the other. The defendant sought to have the rider of the first motorcycle and his employer joined as defendants. The issue before the court was framed thus (at 146) by Edgar Joseph Jr SCJ who delivered the judgment of the court:

> Broadly stated, the issue which arises for decision in this appeal is: what is the ambit of the court's power under … O 15 r 6(2)(b) of the Rules of the High Court 1980 … upon the application of the defendant in a running down case to compel the plaintiff to add a second defendant against whom the plaintiff does not wish to proceed?

35 The court examined a number of authorities before suggesting (at 151) the following general principles that could be distilled from the rules and the authorities:

> (1) The principle of overriding importance is that all necessary and proper parties, but no others, should be before the court at the same time to enable the effectual and complete determination and adjudication to be made by the court of all questions and issues between the parties which arise for decision. (See O 15 rr 4 and 6 of the RHC.)
>
> (2) To this end, no action will be defeated by reason of mere mis-joinder or non-joinder of any party which is capable of being remedied and is no defence. (See *Abonloff v Oppenheimer.*)
>
> …
>
> (3) Additionally, the court has extensive discretionary powers – to add, substitute or strike out parties who are not proper or necessary, and for these purposes the court may even act of its own motion. (See O 15 r 6 of RHC.)
>
> (4) Generally, in common law and chancery matters, a plaintiff who considers that he has a cause of action against a defendant is entitled to pursue his remedy against that defendant alone and he cannot be forced to pursue his remedy against other persons who he has no wish to sue. (See Per Wynn-Parry J in *Dollfus Mieg et Compagnie SA v Bank of England*.)
>
> (5) Nevertheless, a person who is not a party may be added as a defendant over the objections of the plaintiff on his own intervention or upon the application of the defendant or in some cases by the court of its own motion. (See 1 *Supreme Court Practice* (1991) at p 193 para 15/6/71.)
>
> (6) But, a defendant against whom no relief is sought by the plaintiff will generally not be added against the wishes of the latter. (See *Hood-Bars v Frampton & Co.*) A third party notice is in such a case usually the proper procedure to adopt though such a defendant can be added in a proper case. (See *Dollfus Mieg et Compagnie SA v Bank of England*.)

36 In my view, the first three principles are consistent with the passage from *Singapore Civil Procedure 2003* which I have cited above and can be accepted without difficulty. The latter three principles however need some explanation and I return to this a little later. The key point one should keep in mind is that these rules are there to save rather than to destroy, to enable rather than to disable and to ensure that the right parties are before the court so as to minimise the delay, inconvenience and expense of multiple actions. The rules in question are to be construed with these purposes in mind.

37 The court is vested with a wide discretion in order to secure these objectives and it would be counter-productive to approach its exercise with fixed notions or ideas that might curb the court's ability to achieve the precisely appropriate solution in any given case. This is a danger alluded to in several cases and I mention just two. The first is the decision of the Privy Council on appeal from the Federal Court of Malaysia in *Pegang Mining Co Ltd v Choong Sam* [1969] 2 MLJ 52 ("*Pegang Mining*") where Lord Diplock, delivering the judgment of the Board, remarked (at 55):

> To come within the words of the rule the party to be added must be one "who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter". These words have been the subject of voluminous judicial exegesis and *Amon* v.

Raphael Tuck & Sons Ltd. [1956] 1 QB 357] contains a useful collection of citations to Devlin J. of many of the authorities prior to 1956. Devlin J.'s analysis of those authorities led him to reject the view expressed by Lord Esher M.R. in *Byrne* v. *Brown* [(1889) 22 QBD 657] that the rule ought to be given a wide interpretation so as "to secure that, when a court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that under the forms of law other action may be brought in respect of that transaction, the court shall have power to bring all the parties before it, and determine the rights of all in one proceeding". Devlin J. himself accordingly propounded in *Amon's* case a much narrower interpretation of the rule which it is unnecessary to repeat here for it was over-ruled, in their Lordships' view rightly, by the Court of Appeal in *Gurtner* v. *Circuit* [1968] 2 QB 587] a case decided after the date of the judgment of the Federal Court of Malaysia in the present case.

The cases illustrate the great variety of circumstances in which it may be sought to join an additional party to an existing action. In their Lordships' view one of the principal objects of the rule is to enable the court to prevent injustice being done to a person whose rights will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity of being heard. *To achieve this object calls for a flexibility of approach which makes it undesirable in the present case, in which the facts are unique, to attempt to lay down any general proposition which could be applicable to all cases.*

[emphasis added]

38 The same point was reiterated in *Tajjul Ariffin*. This is key given the virtually endless variety of circumstances which may face a court. Rather than laying down any rules as to how the discretion is to be exercised, it tends to be more useful in my view to have regard to the sort of considerations that might weigh upon the court.

39 It is appropriate at this stage for me to return to the latter three principles that I had quoted from the judgment of Edgar Joseph Jr SCJ in *Tajjul Ariffin*. It will be recalled that that was a case where the defendant sought an order compelling the plaintiff to add defendants against whom the plaintiff did not wish to proceed. On the facts of that case, the Malaysian Supreme Court refused the order and yielded to the plaintiff's selection of the appropriate defendants.

40 However, this should not be taken too far. The plaintiff being the party that has brought the matter for adjudication *prima facie* has the choice of who he wishes to proceed against. But his is by no means the overriding choice. Once the court has been seised of the matter, although it will have due regard to the plaintiff's choice, it has the overriding discretion as to who should be before it in order to ensure that the issues raised are properly and fairly disposed of and that all those having a legitimate interest in the subject matter of the proceedings have had the opportunity to be heard.

41 This is not inconsistent with the decision in *Tajjul Ariffin* where the Malaysian Supreme Court, though it deferred to the plaintiff's choice, specifically warned against extrapolating any general rule from the outcome in a given case. In its conclusion, the court answered the answer posed in very carefully circumscribed terms (at 154):

To sum up, therefore, we would answer the question posed at the outset of this judgment by saying that a plaintiff cannot be forced, upon the application of the defendant, to have a second defendant added, against whom he does not wish to proceed *for the reason that the negligence of the intended second defendant is not an issue involved in the claim he has made … and so he should be allowed to proceed against the defendant of his choice*. [emphasis added]

42 Thus in *Abidin bin Umar v Doraisamy* [1994] 1 MLJ 617 ("*Abidin*") where the facts were slightly different, the High Court of Malaysia (Abdul Malek JC) considered *Tajjul Ariffin* and noted that it did not fetter the discretionary power of the court to add a co-defendant upon the application of the defendant and over the objections of the plaintiff. In *Abidin*, the plaintiff was a passenger fast asleep in a lorry which collided into the rear of a stationary lorry driven by the first defendant and owned by the second defendant. The defendants applied to have the driver of the first lorry (in which the plaintiff had been sleeping) joined as a defendant. The plaintiff did not wish to do so. Abdul Malek JC allowed the application and noted that the plaintiff, having been in a state of deep rest at the material time, could not possibly have known how the collision occurred or in what way the defendants had been negligent. The only party who could have shed light on this was the driver whose joinder was the subject matter of the application. On those facts, the court was satisfied that he should be joined notwithstanding the plaintiff's objections.

43 A similar result was reached by the High Court of England in *Dollfus Mieg et Compagnie SA v Bank of England* [1951] Ch 33. That was a case concerning rights to a large quantity of gold that had been seized towards the end of the Second World War and was held by the Bank of England for safe custody pending their disposal. The gold had been seized from a French bank which had held it on behalf of the plaintiffs and was then lodged with the Bank of England by the governments of the United Kingdom, the United States and France. The plaintiffs sued the bank which resisted the claim successfully at first instance. This was reversed on appeal when further evidence was adduced showing that some of the gold had been sold by the mistake of one of the bank's officials. An appeal was brought to the House of Lords and two of the interested parties, the governments of the United States and of France, wished to be added so that they could present their case independently of the Bank of England. The Bank supported this since it faced embarrassment conducting an appeal where it had to protect also the interests of the applicants to whom the Bank might be liable. The application was allowed so as to ensure that those having an interest in the subject matter of the action were before the court.

44 In my view, it is possible to extract from these (and other) cases an understanding of some of the key considerations a court should have in mind when considering the exercise of its discretion in an application such as the present. While the court will give some deference to the plaintiff's selection of defendants, it will not feel constrained to override that selection where it considers it appropriate to do so having regard to such factors as the following:

(a) What are the respective interests of the party whose presence is sought and of the party who is resisting this and how do those interests stand to be affected by the order that the court is asked to make in relation to the subject matter of the action?

(b) Is it appropriate to have the party in question included in the action so as to ensure that interested parties have had the opportunity to be heard and the subject matter of the action can be disposed of without the delay and expense of multiple actions?

(c) How may other provisions of the Rules bear on the particular concerns of the parties?

45 This is an indicative rather than an exhaustive list of the sort of considerations that a court would take into account in determining what is just in the circumstances. These are largely self-explanatory. However, I would note in relation to (a) above that this is suggested by the decision of the Privy Council in *Pegang Mining* ([37] *supra*) where Lord Diplock said (at 56) that:

A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may

be made in the action?

46 As to (c) above, it may be possible for instance, to secure the appropriate outcome by allowing the plaintiff the freedom to choose his defendant and leaving the latter to bring third party proceedings under O 16, or to address concerns as to escalating costs by staying proceedings against some of the defendants who are willing to be bound by rulings against some other defendant without being heard, or by recourse to O 23 to the extent security for costs is permitted by that order.

47 Against that backdrop, I consider Ms Lim's submissions in relation to the construction of the rest of O 15 r 6(2) and in particular of the sub-limbs of that rule which govern the sort of orders that the court may make and the classes of persons who may be made subject to such orders.

48 Ms Lim correctly noted that r 6(2)(*a*) deals with the court's power to remove a party to the action whilst r 6(2)(*b*) deals with its power to add a party. She went on to submit that in an application under r 6(2)(*a*) (as is the present) the court's discretion to order that a person cease to be a party arises in relation to a person who has *either* improperly *or* unnecessarily been joined or who has ceased to be *either* a proper party *or* a necessary party. I do not think this is correct for the reasons that follow.

49 In my view, having regard to the objects of O 15 r 6, r 6(2)(*a*):

(a) should be construed in the light of r 6(2)(*b*) especially since the terms "proper" and "necessary" are not defined and the two provisions stand metaphorically on either side of the one door in the sense that one governs entry into the proceedings, while the other governs exit; and

(b) should not be construed in a way that treats the words "proper" and "necessary" as two disjunctive concepts.

50 Elaborating on the first point, the terms "proper" and "necessary" are not defined. However, the overall scheme of O 15 r 6 is to enable the court in its discretion to make such order as would ensure that parties who are necessary or proper (presumably even if they are not strictly necessary) are before it. Rule 6(2)(*b*) identifies parties who could be ordered to be added as parties and it seems reasonable to infer that such parties at least would fall within the ambit of those considered necessary or proper to be parties to the action. I note that r 6(2)(*b*) is itself broken into two limbs. The first limb repeats the terms of the former r 6(2)(*b*) but the second limb, *ie*, r 6(2)(*b*)(ii) has been held in *Tetra Molectric Limited v Japan Imports Limited* [1976] RPC 541 at 544 to have widened the court's discretion to join parties to an action "to a great extent".

51 It would seem logical in my view to hold that a party who could be joined including under the wider r 6(2)(*b*)(ii), should be considered a "necessary" or "proper" party to the action and hence not liable to an order of cessation under r 6(2)(*a*). A broad correspondence between the scope and ambit of r 6(2)(*a*) on the one hand and r 6(2)(*b*) on the other is to be expected since otherwise, one could encounter a situation of an unwilling party being joined under the latter rule and then applying to be released under the former. The notion that the Rule should be construed in a way that conjures the image of a revolving door spinning somewhat out of control is not one to which I am drawn.

52 This brings me to the second point. I begin with the observation that a party who was "improperly or unnecessarily made a party" or who "ceased to be a proper or necessary party" in its context can be construed in at least the following ways:

(a) to refer to a party who is not a "proper" party even though he is a "necessary" party and conversely a party who is not a "necessary" party even though he is a "proper" party; or

(b) to refer to a party who is neither a "proper" nor a "necessary" party.

53 Ms Lim advances the former construction and I find it unattractive for the same reasons that I have taken the view that r 6(2)(*a*) is to be understood in the light of r 6(2)(*b*). It is plain that an applicant seeking to have a party joined needs only to come within any one of the categories identified in r 6(2)(*b*) to warrant invoking the court's consideration. It would be illogical to hold for instance that a party joined as a proper party could apply to be released on the ground that he was not a necessary party for some reason. I therefore prefer the latter construction.

54 I now turn briefly to examine the breadth of the court's reach in terms of whom it may consider "proper" or "necessary" parties.

55 In *People's Parkway Development Pte Ltd v Ramanathan Yogendran* [1990] SLR 991, the defendant, a solicitor, had given an undertaking to the plaintiffs to pay a maximum sum of $100,000 on account of rent and service charges which may be ordered against the defendant's clients who were the plaintiff's tenants on final adjudication of a rental dispute. The tenants had difficulty paying the charges. In due course they surrendered the premises and were later wound up. The liquidator consented to judgment being entered against the tenants and the plaintiff thereafter sought to enforce the undertaking against the defendant solicitor. L P Thean J (as he then was) held that the undertaking was not enforceable on the facts as the defendant was a party who could and ought to have been joined in the proceedings taken against the tenants.

56 In *TSB Private Bank International SA v Chabra* [1992] 1 WLR 231, the plaintiff bank issued a writ against the first defendant for failure to honour a guarantee given in respect of advances by the plaintiff to a British Virgin Islands company. The plaintiff obtained a Mareva injunction and then brought an application to join the second defendant, a company in which the first defendant was the majority shareholder. The second defendant applied to have the writ struck out against it as no cause of action was disclosed. The High Court in England held that the presence of the second defendant was necessary to ensure that all matters in dispute were effectively dealt with. The court held that this was by virtue of the broad provisions of the English equivalent of our O 15 r 6(2)(*b*)(ii) and that the second defendant was a proper party and would not be removed as a party even though there was no cause of action against it. Mummery J went on to extend the Mareva injunction against the second defendant and had this to say (at 242):

> It does not follow that, because the court has no jurisdiction to grant a *Mareva* injunction against the company, if it were the sole defendant, the court has no jurisdiction to grant an injunction against the company as ancillary to, or incidental, to the cause of action against Mr. Chabra: see for example, *Vereker v. Choi* [1985] 4 N.S.W.L.R. 277, 283. I agree that such a course is an exceptional one, but I do not accept that it is one that the court has no jurisdiction to take.
>
> The company is a party to this action. It is properly a party to this action under R.S.C., Ord. 15, r. 6. There is a cause of action against Mr. Chabra. Although there is no cause of action against the company, there is credible evidence, not contradicted by evidence from Mr. Chabra, that assets apparently the property of the company may, in fact, be assets of Mr. Chabra and therefore available to satisfy a judgment obtained against him. In these circumstances, if an injunction against Mr. Chabra is inadequate to protect the plaintiff from the risk that assets vested in the company may become unavailable to satisfy the judgment obtained against

Mr. Chabra, an injunction should be made against the company to prevent it from dissipating assets.

57 This was followed locally in *Lee Kuan Yew v Tang Liang Hong* [1997] 2 SLR 819 where defamation suits had been brought by the plaintiff against the first defendant. The plaintiff later sought to add the first defendant's wife as the second defendant under O 15 r 6(2)(*b*)(ii) *even though no claim was brought against her*. She was ordered to be joined on the basis of a property registered in her name, in which the first defendant was thought to have an interest and hence to be subject to the Mareva injunction which the plaintiff had also sought.

58 It follows from the foregoing that the court's power under O 15 r 6(2) *to bring and keep* the appropriate parties before it is broad indeed and may be exercised even where no cause of action is asserted against a particular defendant. There is no doubt in my mind, having regard to the sort of reliefs being sought against them, that the Remaining Defendants would in principle be necessary or proper parties to the action.

59 I turn then to consider how I should exercise my discretion upon the application of the Remaining Defendants in the circumstances of the present case. I have in mind the sort of considerations I have outlined at [44] above. I have recounted above the nexus alleged in the pleadings. The plaintiff's claim arose out of a partnership in which the Remaining Defendants too were partners and related to a promise alleged to have been made on their behalf.

60 The fact that the first defendant has offered to bear the liability for all the Defendants is not in my view a relevant consideration. I accept Mr Rajah's submission that his client is not obliged to accept the professed creditworthiness of one partner where a claim has been brought against the others *qua* partners.

61 The plaintiff's interest in keeping the Remaining Defendants in the action relates directly to his desire to be able to establish his rights against them and to proceed to enforcement against each of them if he succeeds, without the need to commence fresh proceedings. The Remaining Defendants however appear to have been driven primarily by considerations of convenience. They do not wish to be troubled by the stress and expense of a law suit to which they believe they can contribute nothing. In my view, even if one assumed that the Remaining Defendants' concerns are legally relevant, they are not weighty. No one wishes to be troubled by a law suit but if that is necessary to settle the rights and liabilities between disputing parties then it is inevitable. The Remaining Defendants are not accepting the plaintiff's claim. Rather, they are saying he should look only to the one willing defendant. A willing defendant is one of a rare breed and one's willingness to be subjected to litigation cannot be a condition to a plaintiff's right to proceed against him. In my judgment, the availability of such a defendant cannot limit the plaintiff's right to proceed against the unwilling defendants in this case. There is also the possibility that if the plaintiff succeeded against the first defendant and she was not able to meet his claim for any reason he would then have to recommence proceedings against the Remaining Defendants and that would be intolerable in my view.

62 In relation to the third defendant there is the additional issue relating to the plaintiff's asserted interest to a share in No 82 which had allegedly been purchased with partnership funds.

63 In these circumstances, I am satisfied on the facts before me that the Remaining Defendants are indeed necessary or proper parties to the suit and ought not to have been ordered to be removed.

64 Before leaving this issue, I should make one observation. It seems to me, at least

provisionally, that the real solution to the problem here lies not in removing the Remaining Defendants from the action but rather, upon their undertaking to be bound by any judgment, order or finding made against the first defendant without their needing to be separately heard, perhaps to stay the proceedings against the Remaining Defendants under O 33 r 3 until after the adjudication of the suit against the first and sixth defendants or further order. While preparing this judgment in draft, I invited Ms Lim and Mr Rajah to consider this. Ms Lim embraced the idea rather more warmly than Mr Rajah did and in the absence of agreement, I have left it to either or both of them to make the appropriate application if they wish to do so.

The application to remove the caveat

65 The application in respect of No 82 was brought by the third defendant requiring that the plaintiff show cause why the caveat should not be removed. In the course of the arguments before the learned assistant registrar, it was contended that since the action against the third defendant had been struck out, the caveat in respect of No 82 should consequentially be removed. The assistant registrar apparently accepted this argument for she noted as follows in her minute at the conclusion of the proceedings:

> I agree with counsel for the Defendants that this is essentially a monetary claim by the Plaintiff and the 1st Defendant is able to defend the action without enjoining the remaining Defendants … The caveat in respect of [No 82] will be lifted only as a consequence of the above orders. As for the caveat in respect of [No 63] the Defendants are to make the proper application …

66 To the extent that I have reversed the first part of the learned assistant registrar's order ([63] *supra*), it would seem to follow that the other part of the order below removing the caveat should also be reversed. However, I don't think that is correct. I would first note that the fact that it was thought that the monetary claim could be pursued against the first defendant alone did not necessarily mean that the plaintiff had no claim to an interest in No 82. I therefore do not follow why the caveat was ordered to be removed purely as a consequence of the order removing the Remaining Defendants. The position might have been different if the decision below was that there was no merit at all in the plaintiff's asserted claim to an interest in the land but I do not understand that to have been the position. I note that reference has been made to the decision of G P Selvam JC (as he then was) in *Tan Soo Leng David v Wee, Satku & Kumar Pte Ltd* [1993] 3 SLR 569 ("*Tan Soo Leng David*"). That case is distinguishable from the present for precisely the reason that the court there had already concluded that the plaintiff had no equitable interest in the property and that the action was therefore "plainly and obviously unsustainable" (at 572, [7]) and it was by reason of that holding that the caveat was not allowed to stand (at p 576, [24]).

67 Before me, Ms Lim did not take issue with whether the plaintiff had a caveatable interest. Rather her argument was that:

(a) a caveat is to be equated with a statutory injunction: *Ow Chor Seng v Tjinta Pte Ltd* [1995] 1 SLR 48 ("*Ow Chor Seng*") following *Eng Mee Yong v V Letchumanan* [1979] 2 MLJ 212 ("*Eng Mee Yong*");

(b) the principles concerning the grant or removal of an interlocutory injunction as articulated in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 ("*American Cyanamid*") are applicable in this context;

(c) in particular, this requires consideration of what was referred to by Lord Diplock in *American Cyanamid* as the "balance of convenience"; and

(d) in this regard, it is appropriate to consider the financial means of the respective parties and their ability to meet a claim for damages either way should it transpire that the order extending or removing the caveat (as the case might be) was made wrongly: *Good Property Land Development Pte Ltd v Societe Generale* [1989] SLR 229 ("*Good Property*"); *Ow Chor Seng*; *Kumpulan Sua Betong Sdn Bhd v Dataran Segar Sdn Bhd* [1992] 1 MLJ 263.

68 Ms Lim submitted that on the evidence before me, there was nothing to suggest that the first defendant would not be able to meet any claim for damages that the plaintiff might be able to bring whereas the plaintiff was, on his own admission, in dire financial straits.

69 In response to this, Mr Rajah's main argument was that his client had an interest in the property and therefore he argued that it was not sufficient to look at whether his client would be able to make good a claim for damages. Mr Rajah also took two procedural objections to the application for removal of the caveat.

70 Mr Rajah's first objection was that the application is in substance one brought under s 127(1) of the Land Titles Act (Cap 157, 2004 Rev Ed) for the plaintiff to show cause why the caveat should not be removed. He submitted that by virtue of O 5 r 3, such an application had to be brought by way of an originating summons and not by a summons in chambers as was the present application.

71 Ms Lim's response was that O 5 r 3 would apply in cases where the assault on the caveat is brought as a matter standing on its own as a result of which an originating process is needed. However, where there is already a substantative set of proceedings afoot there is no reason why the application cannot be brought by a summons in chambers in the proceedings. This was in fact done in *Tan Soo Leng David* ([66] *supra*) and would avoid a needless multiplicity of actions.

72 In my view, this objection is without substance for precisely the reasons advanced by Ms Lim. Furthermore, in the present case the validity of the claimed interest supporting the caveat is dependent upon the resolution of the main dispute and it seems utterly pointless to require that the application to remove the caveat be brought by a separate action only for it to be consolidated eventually with this action. I therefore do not accept Mr Rajah's submission on this.

73 The plaintiff's second objection is that Mr Darren Tan, who is the executor of the estate of the Mr Tan Wee Bin and is sued as such, has no *locus standi* to seek this relief. Mr Rajah contends that the application must be brought by the registered proprietor. Mr Darren Tan is now the registered proprietor in his personal capacity as the beneficiary of Mr Tan Wee Bin's estate. However, it is argued, he is party to this action *qua* executor. An application to join Mr Darren Tan in his personal capacity is pending and his intention appears to be to resist that application. Mr Rajah contends that until Mr Darren Tan is joined, he cannot maintain this application.

74 Ms Lim's response to this is that Mr Darren Tan has sufficient interest *qua* executor of the estate. She points out that this indeed is one of the bases upon which Mr Rajah maintains his client's right to proceed against the third defendant (see [15] above). Indeed, Mr Rajah's basis for maintaining the caveat as well as the action against the third defendant is the same in this respect: that the property was held on trust for the partnership by Mr Tan Wee Bin as it was purchased out of partnership assets and that Mr Darren Tan's title *qua* executor is subject to the same trust. Ms Lim argues that on this basis the executor has a direct interest in resisting this and in establishing that the property was available to the estate free of any trust and therefore to seek removal of the caveat. Again, I accept Ms Lim's submission on this point.

75 It is not disputed that Mr Darren Tan is currently the registered proprietor of No 82 and

therefore has standing to bring an application under s 127(1) of the Land Titles Act. In any such application, the nature of his objections to the caveat being maintained would depend on the caveator's grounds of claim. It is apparent on the face of the caveat in question here that the plaintiff's grounds are derived almost entirely from the very same matters upon which he relies in the present action, namely that No 82 was purchased with assets belonging to the sixth defendant of which the plaintiff was a partner at the material times. Indeed it may be noted that part of the relief that the plaintiff seeks in this action is a declaration to similar effect.

76 It is apparent from the Certificate of Title as well as on the caveat itself that No 82 was transmitted to Mr Darren Tan upon the death of Mr Tan Wee Bin. It is thus the case that Mr Darren Tan's interest in the property is no better than Mr Tan Wee Bin's was. The outcome of this dispute will therefore ultimately depend upon the very issues raised by the plaintiff against the third defendant in this action. In the circumstances, I can see no force at all in this objection.

77 I now return to Mr Rajah's principal argument in resisting the application and the short answer to it is contained in a passage from *Eng Mee Yong* ([67] *supra*) where Lord Diplock said as follows (at 215):

> Their Lordships have already noted the analogy between the effect of a caveat and that of an interlocutory injunction obtained by the plaintiff in an action for specific performance of a contract for the sale of land restraining the vendor in whom the legal title is vested from entering into any disposition of the land pending the trial of the action. The court's power to grant an interlocutory injunction in such an action is discretionary. It may be granted in all cases in which it appears to the court to be just and convenient to do so. Similarly in section 327 it is provided that "the court … may make such order on the application as it may think just". The guiding principle in granting an interlocutory injunction is the balance of convenience; there is no requirement that before an interlocutory injunction is granted the plaintiff should satisfy the court that there is a "probability", a "*prima facie* case" or a "strong *prima facie* case" that if the action goes to trial he will succeed; but before any question of balance of convenience can arise the party seeking the injunction must satisfy the court that his claim is neither frivolous nor vexatious; in other words that the evidence before the court discloses that there is a serious question to be tried. *American Cyanamid* v. *Ethicon Ltd*.
>
> … [H]e must first satisfy the court that on the evidence presented to it *his claim to an interest in the property does raise a serious question to be tried; and, having done so, he must go on to show that on the balance of convenience it would be better to maintain the* status quo *until the trial of the action, by preventing the caveatee from disposing of his land to some third party*.
>
> [emphasis added]

78 In my view, this makes it plain as day that the need to evaluate the balance of convenience is not displaced by virtue of the fact that the caveator is claiming an interest in the land. Indeed, if he were not, there would be no caveatable interest to begin with.

79 I would also note that s 124(*a*) of the Land Titles Act provides that in any proceedings in respect of a caveat, the court may order *inter alia* that the caveator "give an undertaking or security that the court considers sufficient to indemnify every person against any damage that may be sustained by reason of any disposition of the property being delayed".

80 I have also found assistance in the cases cited by Ms Lim on this point and I mention just two. I refer first to *Good Property* ([67] *supra*), which was a case where a mortgagor had applied for

an injunction to restrain the mortgagees from exercising their power of sale. Chan Sek Keong J (as he then was) dismissed the application. There are two aspects of the judgment that are relevant to the case before me. Chan J said as follows (at 242–243, [25]–[26]):

> It is not disputed that if damages were an adequate remedy to the plaintiffs, the defendants, being a large international commercial bank, would be able to meet any damages that result from any breach of duty by them. However, it is settled principle that damages would not be an adequate remedy to a party who has been or will be deprived of his enjoyment of or interest in and. The same principle is applicable to the converse case of a claim for specific performance of a contract of sale of land. Damages are inadequate because no two parcels of land can be identical and a piece of land may have a peculiar and special value in the eyes of the purchaser. Therefore, it might be said that damages would not be an adequate remedy for the plaintiffs here if the injunction were refused and if they were to ultimately succeed … This is an important point. I have, however, in my oral judgment, said that in this case damages would probably be an adequate remedy to the plaintiffs. It is necessary to explain what I meant.
>
> *Land may be owned for personal enjoyment (eg for dwelling or as gardens etc) or they may be owned as investment, ie for profit. In circumstances where the main object of owning land is not the personal enjoyment thereof but the profit derivable therefrom, it would be unrealistic to believe that damages would not be an adequate remedy to the owner for the loss of the mortgaged property.*
>
> [emphasis added]

81 This passage is directed to one aspect of weighing the balance of convenience. Where the caveator's real interest in the property is a purely economic one, then in weighing the balance of convenience it is legitimate to proceed on the basis that in principle, damages *would likely* be an adequate remedy. This is precisely the case before me (see [15] above).

82 However, this does not displace the need to embark on the second step in the inquiry, namely, to consider whether there is any reason for concern that any such damages as may be found to be due may not be recoverable. This was specifically noted in Lord Diplock's judgment in *American Cyanamid* ([67] *supra*) where he stated as follows (at 408):

> So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.
>
> As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy *and the defendant would be in a financial position to pay them*, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented

from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy *and the plaintiff would be in a financial position to pay them*, there would be no reason upon this ground to refuse an interlocutory injunction.

[emphasis added]

83 Thus in *Good Property*, having established that damages could be an adequate remedy, Chan J then went on to examine the potential financial implications of making the order from the point of view of the applicants and respondents respectively before concluding as follows (at 244, [29]–[31]):

The inevitable conclusion I came to was that, if the interlocutory injunction were granted, the defendants and the syndicate of banks could stand to lose an additional $32.4m or even more, and the unsecured creditors the estimated surplus of $5m realizable from the sale of HPL, whereas the plaintiffs, whatever the outcome of this action might be, would stand to lose nothing *because they have nothing to lose*.

I therefore had no doubt that the balance of convenience was overwhelmingly in favour of not granting, except on terms, an interim injunction …

The plaintiffs were unable to provide any substantial security forthwith. ...

[emphasis added]

84 There was no doubt on the facts of *Good Property* that the defendant, a bank, was in a position to meet any claim for damages which the plaintiffs might eventually have succeeded on, whereas the plaintiffs were already insolvent and in no position to provide security for the potential losses the defendants stood to suffer had the injunction been granted.

85 The opposite result was reached by Amarjeet Singh JC in *Ow Chor Seng* (at 63, [51]) where he weighed the balance of convenience as follows:

Having considered these submissions, I was of the opinion, that as there was a real dispute between the parties and it was probable that the plaintiff could sell the said property if I were to remove the caveat and dispose of the funds, the defendants would be left with a paper judgment. *There was also no evidence before me of the financial standing of the plaintiff*. In all the circumstances, it was desirable, in my opinion, that the status quo be preserved pending the disposal of the suit. [emphasis added]

86 I should here touch briefly on the decision of Kan Ting Chiu J in *Sim Kwang Mui Ivy v Goh Peng Khim* [1995] 1 SLR 186 ("*Sim Kwang Mui Ivy*"). That was a case where the defendant paid the plaintiff a sum by way of earnest money in respect of the intended purchase of the plaintiff's property. The plaintiff accepted the money with some reservations as the terms of sale had not been agreed. When the plaintiff received a copy of the draft option she informed the broker that the terms were not acceptable and attempted to return the money she had earlier received. Kan J held first that on the evidence before him, the defendant had no legitimate claim to any interest in the property. He then stated as follows (at 192, [23]–[24]):

In order to sustain this caveat, he must justify it, and in the words of Lord Diplock 'he must first satisfy the court that on the evidence presented to it his claim to an interest in the property

> does raise a serious question to be tried.' Whether a serious question arises is not [dependent] on the nature of the interest claimed, but on the evidence in support of the claim. The caveator cannot say, 'I am claiming an interest as purchaser. My claim affects the property very seriously, therefore there is a serious question to be tried.' If that is the position, the caveat in *Eng Mee Yong* would have been allowed to stand, since the caveator in that case also claimed an interest as a purchaser.
>
> The correct position is for the court to consider the evidence adduced by the contending parties, and to see if it can come to any conclusion on the caveator's claim. If it finds that the caveator's claim is without merit, the court will remove the caveat. Conversely, if it is unable to decide on the merits of the claim, then the caveat will be allowed to stand while the parties go to trial over the claim.

87 Mr Rajah relied on only the second of these two paragraphs from the judgment of Kan J, and on that basis submitted that since it could not be said that the plaintiff's claim to an interest in No 82 was "without merit" the caveat should be allowed to stand. I have no hesitation in rejecting this argument since it is clear upon reading the judgment in context that Kan J was dealing with a case where the first limb of the *American Cyanamid* test had not been cleared. In other words, there was no serious question to be tried. There was no occasion for Kan J to weigh the balance of convenience in the circumstances and he did not do so.

88 Indeed, Kan J explicitly followed *Eng Mee Yong* and there is simply no basis at all for even suggesting that he was modifying the approach laid out in that case. On the contrary, Kan J (at 189, [11]) specifically cited the passage from *Eng Mee Yong* to which I have referred at [77] above, and then stated:

> Chan Sek Keong J in *Societe Generale v Good Property Development* held that the approach laid down in *Eng Mee Yong* is applicable to an application under s 111(1) of the Land Titles Act, *a conclusion I accept and agree with*. [emphasis added]

89 The fact is that in many cases, the clear entitlement of a party to maintain a caveat (or conversely the utter lack of any basis for doing so) will be apparent to the court when hearing the application for its removal. This was the case in *Tan Soo Leng David* ([66] *supra*) and in *Sim Kwang Mui Ivy*. In such circumstances the court may not have to reach the point of having to weigh the balance of convenience. However, neither of these cases affords any basis for ignoring that element of the analysis in a proper case such as the present where the most that can be said at this stage is that the caveator's claim is "not frivolous or vexatious; in other words, that there is a serious question to be tried" (*per* Lord Diplock in *American Cyanamid* ([67] *supra* at 407)).

90 I am satisfied therefore that, as submitted by Ms Lim, it is appropriate in weighing the balance of convenience to have regard to the financial means of each of the respective parties and in particular their ability to meet a claim for damages should it later transpire that the caveat ought not to have been extended or removed as the case may be.

91 The plaintiff has admitted financial difficulties. As against this, there is nothing beyond a bare assertion of the first defendant's ability to meet a claim for damages should it eventually transpire that the caveat should not have been removed. In my judgment, the balance of convenience in this case would be best served by an order removing the caveat but only on terms that the defendants provide security in a form and amount to be agreed. Failing agreement, I will hear submissions on this.

92 In this connection, I note that s 127(1) of the Land Titles Act confers upon the court the

discretion to deal with the application to remove the caveat in such manner "as seems just". In my view, this wide discretion enables me to make such an order as I have outlined to suit the needs of this case.

93 In the circumstances, I do not propose to disturb that part of the decision of the assistant registrar made in relation to the removal of the caveat against No 82 save as I have indicated at [91] above. The caveat is to be removed within seven days of such security as may be ordered or agreed being furnished.

94 I will hear the parties on any ancillary orders they may require and on costs.