# Ng Joo Soon (alias Nga Ju Soon) v Dovechem Holdings Pte Ltd
# [2009] SGHC 238

**Case Number** : Suit 59/2009, RA 331/2009

**Decision Date** : 23 October 2009

**Tribunal/Court** : High Court

**Coram** : Tan Lee Meng J

**Counsel Name(s)** : Chandra Mohan s/o K Nair (Tan Rajah & Cheah) for the appellant/defendant; Blossom Hing Shan Shan and Sheryl Wei Kejia (Drew & Napier LLC) for the respondent/plaintiff

**Parties** : Ng Joo Soon (alias Nga Ju Soon) — Dovechem Holdings Pte Ltd

*Civil Procedure – Striking out*

23 October 2009

**Tan Lee Meng J:**

1 The appellant, Dovechem Holdings Pte Ltd ("the company") appealed against the decision of Assistant Registrar Denise Wong ("AR Wong"), who refused to strike out the claim made against it by the respondent, Mr Ng Joo Soon @ Nga Ju Soon ("NJS"). After hearing the parties, I dismissed the appeal and now give the reasons for my decision.

**Background**

2 The present proceedings concern a family dispute between NJS and his brothers and nephews. NJS holds 24% of the shares in the company, which was incorporated in Singapore on 26 March 1993. His younger brothers, Mr Ng Ju Aik and Mr Ng Ju Lak, each holds 17% of the shares in the company while his nephews, Mr Ng Iet Pew and Mr Anta Ng, hold 25% and 17% of the shares in the company respectively. At all material times, all these five shareholders were directors of the company.

3 On 11 June 2008, NJS sought to exercise his right as a director under s 199 of the Companies Act (Cap 50, 2006 Rev Ed) ("the Act") to inspect the accounting and other records of the company ("the records"). As he received no response from the company, he filed Originating Summons 841 of 2008/H ("OS 841") on 24 June 2008 and sought, *inter alia*, an order that the records be made open for inspection and, if necessary, for copies of the said records to be furnished to a public accountant appointed by him.

4 When NJS also sought to rely on his right as a director to inspect the accounting and other records of Malaysian companies within the family group of companies, he was swiftly rebuffed. On 19 June 2008, the other directors of Dovechem Holdings (M) Sdn Bhd, a Malaysian company, informed him by letter that his actions "will be the beginning of internal strife and infighting among members of the Ng Family". The letter added that this was something the Dovechem group of companies and the Ng family had to avoid and with this in mind, his fellow directors, who are his brothers and nephews, had decided to remove him as a director of two of the Ng family's Malaysian companies, namely Thiam Joo (M) Sdn Bhd and Dovechem Terminals Sdn Bhd, with immediate effect.

5 On 15 July 2008, the company notified the Accounting and Corporate Regulatory Authority of Singapore ("ACRA") that NJS had ceased to be a director of the company as from 5 March 2008, the

date on which NJS reached the age of 70. NJS took the view that he had been wrongfully removed as a director of the company as no board resolution to remove him as a director had been passed.

6 By a letter dated 4 August 2008, NJS's solicitors, Drew & Napier LLC, informed ACRA that the notification by the company that NJS had ceased to be a director of the company was inaccurate and that NJS remained a director of the company.

7 OS 841 was heard by Choo Han Teck J on 20 January 2009. Choo J ordered that OS 841 continue as if the action had begun by writ. In the Statement of Claim filed by NJS on 16 February 2009, the following relief was sought:

(i) a declaration that the purported removal of NJS as a director of the company is invalid and void;

(ii) a declaration that the filing of the cessation of office of NJS as a director of the company with effect from 5 March 2008 is invalid and void;

(iii) an order that within 5 days of the court's order, the company is to file all necessary documents with ACRA to reflect that NJS remains a director of the company; and

(iv) an order that NJS be entitled under s 199 of the Act to inspect the company's records.

8 On 5 August 2009, the company applied to strike out NJS's claim around two and a half weeks before the exchange of affidavits of evidence-in-chief.

**Whether the action should be struck out**

9 The striking out of an action is provided for under O 18 r 19 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), which provides as follows:

> (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that —
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> (*a*) it discloses no reasonable cause of action or defence, as the case may be;
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> (*b*) it is scandalous, frivolous or vexatious;
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> (*c*) it may prejudice, embarrass or delay the fair trial of the action; or
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> (*d*) it is otherwise an abuse of the process of the Court,
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> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

10 The company sought to strike out the claim on the basis that it is scandalous and/or frivolous and/or vexatious or may prejudice, embarrass or delay the fair trial of the action or is otherwise an abuse of process of the court. It claimed that this is so because there was a family agreement that directors would retire when they reached the age of 70. As NJS was 70 years old on 5 March 2008,

he ceased to be a director on that date and has no *locus standi* to rely on s 199 of the Act.

11 It has often been stated that the court's draconian power to strike out an action should not be exercised too readily unless the plaintiff's case is wholly devoid of merit. In *Gabriel Peter & Partners v Wee Chong Jin* [1998] 1 SLR 374 ("*Gabriel Peter*"), the Court of Appeal reiterated at [18]:

> In general, it is only in plain and obvious cases that the power of striking out should be invoked. … It should not be exercised by a minute and protracted examination of the documents and facts of the case in order to see if the plaintiff really has a cause of action. The practice of the courts has been that, where an application for striking out involves a lengthy and serious argument, the court should decline to proceed with the argument unless, not only does it have doubts as to the soundness of the pleading but, in addition, it is satisfied that striking out will obviate the necessity for a trial or reduce the burden of preparing for a trial.

12 On the other hand, where a case is hopelessly doomed to fail, it may be struck out. In *Bandung Shipping Pte Ltd v Keppel TatLee Bank Ltd* [2003] 1 SLR 295, where the Court of Appeal struck out a claim that was hopeless, Chao Hick Tin JA noted at [34] that to allow the case to go further for trial would be to compel the defendants to expend time and money in defending a case which obviously had no merit whatsoever.

13 What is scandalous, frivolous or vexatious is clear enough. In *The Osprey* [2000] 1 SLR 281, LP Thean JA stated at [8] that the words "frivolous and vexatious" relate to actions which are "obviously unsustainable" or "wrong" and added that this expression also connotes "a lack of purpose or seriousness in the party's conduct of the proceedings". In regard to what is an "abuse of process", in *Gabriel Peter* (supra, [11]), the Court of Appeal explained at [22] as follows:

> The term, "abuse of process of the Court", in O 18 r 19(1)(d) has been given a wide interpretation by the courts. It includes considerations of public policy and the interests of justice. This term signifies that the process of the court must be used bona fide and properly and must not be abused. The court will prevent the improper use of its machinery. It will prevent the judicial process from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and will depend on all the relevant circumstances of the case.

14 In the present case, while the other directors of the company alleged that NJS ceased to be a director of the company after he reached the age of 70 by virtue of a family agreement, NJS denied that there was any such binding agreement as claimed by the other directors. He pointed out that nothing in the Articles of Association provided for the retirement of directors who reach the age of 70 and he claimed that he continued to attend board meetings after 5 May 2008 without any objection from his fellow directors. He asserted that he could not read English and that he had not been told when he signed the so-called family agreement that directors were to retire at the age of 70.

15 It may be recalled that Choo J had ordered that OS 841 be converted to a writ because the issues raised by the parties ought to be ventilated in court. Evidently, the court is in no position to say at this juncture on the basis of affidavit evidence that NJS has a hopeless case against the company. There is no doubt that the matters raised by NJS ought to be considered at a trial. As such, the question of striking out NJS's claim does not arise and the company's appeal was dismissed with costs.