

**Hua Chan Nam.....Plaintiff  
(by his Guardian Ad litem Hua Lan Fern)**

**AND**

**Koh Han Kiong.....Defendant**

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**(High Court of Brunei Darussalam)  
(Civil Suit No. 89 of 2012)**

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**Steven Chong, J.  
14 September 2013**

Civil law and procedure – Application to strike out plaintiff’s claim – Relevant principles.

Ms Veronica K Rajakanu (M/S Zuls Partners Law Office) for the Plaintiff.  
Mr Suneth A Nadesan (M/S Ridzlan Lim) for the Defendant.

**Cases cited:**

*Blue Town Investments v Higgs & Hill* [1990]1 WLR696.  
*Drummond-Jackson v British Medical Association* [1970]1 All ER 1094.  
*Gabriel Peter & Partners v Wee Chong Jin* [1998] 1 SLR 374.  
*Goh Koon Suan v Heng Gek Kiau* [1990]SLR 1251.  
*Hubbuck & Sons v Wilkinson, Heywood and Clark* [1899]1 QB86.

**Steven Chong, J.:**

**Background**

On 8 July 2013 the Senior Registrar Dk Hajah Norismayanti bte Pg Haji Ismail dismissed the defendant’s application to strike out the plaintiff’s claim.

This is an appeal by the defendant against that decision.

The application was made by the defendant under three out of the four limbs of RSC O.18 r.18:

- 1) it discloses no reasonable cause of action;
- 2) it is scandalous, frivolous or vexatious; or
- 3) it is otherwise an abuse of the process of the court.

## **Pleadings**

The Statement of Claim of the plaintiff claims that three properties (*“the properties”*) registered in the name of the defendant are held in trust for the benefit of the plaintiff. The plaintiff says that the properties had been purchased and paid for by the plaintiff but were registered in the name of the defendant because the plaintiff being a green identity card holder could not register the properties in his name.

In an Amended Defence the defendant says that the plaintiff registered or *“caused to register”* the properties in the defendant’s name in 1989; the defendant had entrusted the plaintiff with a sum of RM\$270,000 for an investment in 1987/1988; the parties subsequently agreed that this sum of RM\$270,000 was to be treated as a debt to the defendant to be paid within 3 years failing which the properties would belong to the defendant absolutely; the plaintiff did not pay the defendant within the requisite period; the defendant is therefore the beneficial owner of the properties; and the plaintiff’s claim is time barred under section 21 of the Limitation Act.

The plaintiff in an Amended Reply denies any agreement relating to the sum of RM\$270,000 and avers that limitation does not arise and relies on section 27(1)(b) of the Limitation Act.

## **Relevant principles**

In general it is only in plain and obvious cases that the power of striking out should be invoked: see *Hubbuck & Sons v Wilkinson, Heywood and Clark* [1899]1 QB 86. The court will let the plaintiff proceed with the action unless his case is wholly and clearly unarguable: see *Blue Town Investments v Higgs & Hill* [1990]1 WLR 696.

A *“reasonable cause of action”* has been defined as a cause of action which has some chance of success when only the allegations in the pleading are considered: see *Drummond-Jackson v British Medical Association* [1970]1 All ER 1094.

A proceeding is said to be *“vexatious”* when the party bringing it is not acting bona fide and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result: see *Goh Koon Suan v Heng Gek Kiau* [1990]SLR 1251.

*“Abuse of process of the court”* is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive: see *Gabriel Peter & Partners v Wee Chong Jin* [1998] 1 SLR 374. If an action was not brought bona fide

for the purpose of obtaining relief but for some other ulterior or collateral purpose, it might be struck out as an abuse of the process of the court: see *Lonrho v Fayed* (No 5) [1993] 1 WLR 1489.

### **Applying the principles**

Looking at the pleadings I need only say this. I have no hesitation in coming to the conclusion that this is not a case where the plaintiff's claim is wholly and clearly unarguable. The plaintiff may have an uphill task in proving the claim but that is no ground for striking it out.

Turning to the affidavits counsel on behalf of the defendant raised a host of issues such as the absence of evidence of payment of the purchase price of the properties by the plaintiff; the contradictory evidence as to whether the plaintiff had possession of the titles to the properties; and payment of land tax was made by the defendant and not the plaintiff.

The short answer to the defendant's arguments is that these issues will obviously and appropriately be fully ventilated in a trial where oral evidence can be given and tested by cross-examination. It would not be a proper exercise of the jurisdiction of the court to strike out by having a trial of the case in chambers on the affidavits with a protracted examination of the documents and the facts.

### **Conclusion**

In my judgment none of the grounds relied upon by the defendant to strike out the plaintiff's claim has been established. The Senior Registrar's refusal to strike out is unassailable.

The appeal is therefore dismissed with costs here and below to be paid by the defendant to the plaintiff to be taxed if not agreed.

**DATO PADUKA STEVEN CHONG**  
Judge, High Court