

Chen Weng Khiong

..... Plaintiff

AND

Chen Kim Siong

..... Defendant

**High Court of Brunei Darussalam
Civil Suit No. 83 of 2017**

**Pg DP Hjh Rostaina bte Pg Hj Duraman, J
30th January 2019**

Civil Procedure --- American Cynamid principles --- Ex-parte interim injunction granted to the plaintiff --- Defendant applied to set aside interim injunction

Mr David Teo Kian Khong, m/s Ibrahim, Chee, Teo & Company for Plaintiff.

Mr Lt.Col (R) Hj Harif bin Hj Ibrahim, m/s Lt Col (R) Harif Ibrahim for Defendant.

RULING

Pg DP Hjh Rostaina, J

1. This is an application by the defendant to set aside and discharge the exparte Interim Injunction issued by the court on 30th November 2017, restraining the defendant, his servants, or agents or otherwise from:-
 - a) evicting the plaintiff and his family from the house and the property described as Lot 344, Jalan Sultan Hashim, Seria, Brunei Darussalam;
 - b) carrying out or causing to carry acts of cutting off supplies of water, electricity and gas to the property, or in any manner directly or indirectly;
 - c) carrying out such acts as would be detrimental to the quiet enjoyment of the property by the plaintiff and his family;
 - d) that there be liberty of apply to discharge or vary this Orders on fourteen (14) days' notice in the meantime; and
 - e) until after the trial or further orders from the court.

Background

2. The plaintiff and the defendant are brothers. The relationship has deteriorated and the plaintiff is no longer in good terms with the defendant. He commenced action against defendant on 30th November 2017. On the same day before the then Chief Justice, DSP Hj Kifrawi bin DP Hj Kifli, he applied for an order for an interim injunction which was then perfected on 12th December 2017.

3. Briefly stated, the property in question is a residential house built on a piece of Temporary Occupation Licence (TOL) land at Lot 344 (LTS 1233), Jalan Sultan Hashim, Seria, Brunei Darussalam. In this case the original licence holder for the TOL was their late father **Chen Sak Fatt**. The nature of the TOL land is that it is renewable annually, otherwise the right to stay there would lapse. The sometime in 1992, their father was bedridden and paralysed. Therefore, as far back as 5th August 1992, when their late father had relinquished his rights to the TOL land (exhibit CSK-6), he applied to the Kuala Belait Land office and succeeded their father as the licenced holder of the TOL land (exhibit documents, CSK-6, 7). In 1996, the father died. In 2010 the mother died. He stated that sometime between 2002 to 2004, when the plaintiff's restaurant closed down and his business went bankrupt, he had asked the defendant to stay at the said house temporarily until he could find place for himself and his family. The defendant stated what started as a mere invitation from him to the plaintiff and his family was only meant to be temporary (between 2 weeks to 3 months) but they had overstayed until today.
4. By Summons-in-Chambers No.357 of 2017, he applied for the interim injunction to be set aside on the grounds that:-
 - i. The property in questioned is a TOL property. The plaintiff has no legal and equitable rights on the said property and accordingly, has no cause of action;
 - ii. The permission for occupation of the TOL is granted by the government authority to the defendant and his family. The plaintiff and his family is staying at the said property at the mere invitation of the defendant;
 - iii. The plaintiff and his family is required to vacate and leave the said property as it is no longer safe for living and the defendant had obtained approval from the government authorities for the house to be demolished and reconstructed;
 - iv. The Injunction Order needs to be set aside as it put on halt the demolition and reconstruction of the house.

Defendant's case

5. Mr Hj Harif bin Hj Ibrahim, counsel for the defendant submitted that the plaintiff's application should have been an interparte application and not by way of an exparte as there are material facts and issues in contention that were not informed to the court in deciding if the injunction should be granted or not.
6. He further submitted on the **terms and conditions of the TOL property**. That the usage of the TOL land is granted and approved by the government for the defendant and his family and governed by the terms and conditions (CKS-10) pertaining to a TOL, which the defendant had signed on 10th July 1993 (CKS-9).
7. These terms and conditions are reiterated at para 13 defendant's 1st Affidavit and more importantly at:-

Clause 3.7: Non-compliance with the terms and condition will lead to the revocation of the TOL land with or without notice from the government.

Clause 4.5: The defendant is prevented from doing any business or any activities that is against the granting of the TOL land.

8. The names of those allowed to stay on the TOL land are listed in CKS-8 and only include the defendant, his wife, his four children and his late parents. It does not include the names of the plaintiff and his family.
9. He submitted the plaintiff and his wife also carries out a business which involves a lot of cooking. This could be a potential fire hazard and he referred to some photos exhibit to show that the present kitchen is not designed for heavy cooking.
10. He further submitted that the defendant feared his licence could be revoked due to non-compliance with the terms and conditions of the TOL especially if it came to be known that a business is carried out at the premises and that there are undeclared members or persons living at the said house.
11. As to the house being **not safe and not fit for occupancy**, he submitted that the residential house is an old wooden house that is in need of repair. That it is no longer safe and not fit for occupation. The said house is in need of urgent reconstruction. The defendant referred to para 17 of his first Affidavit affirmed on 28th December 2017 and to exhibits CKS-11 to 16.
12. He also referred to photos exhibit CKS-5(1-22) to show the present condition of the house and made references to the rotting wooden structures and exposed electrical wiring amongst others.
13. That demolition and reconstruction had been approved and granted by the government authorities since 18th September 2014 as stated in CKS-11.
14. (Refer to Para 18 of defendant's first Affidavit) The defendant informed the plaintiff of the government's findings and the hazards of continuing to stay at the house. That there is a need to demolish and reconstruct the house but the plaintiff refused to move out and instead the plaintiff obtained an interim injunction order against the defendant, restraining him from evicting the plaintiff and his family from the said house and cutting-off the water, electricity and gas supplies. (The plaintiff denied he was informed by the defendant about this.)
15. Mr Hj Harif submitted that requesting for the utilities supply to be cut off is part of the process to demolish and reconstruct the said house.
16. The defendant and his family had never had to move out from the house before but as the residential home is no longer safe for occupancy and to make way for the demolition and reconstruction works, instead they were the ones that moved out and are now living at rented accommodation since November 2017 at \$600 monthly.
17. As a result of the plaintiff's refusal to vacate the house, there has been a delay in the demolition and reconstruction of the House. This resulted in the defendant requiring a series of renewal of the approval from the BACI (Building Control and Construction

Industry) (refer to defendant's 2nd affidavit para 16-CKS-6) for a further extension of time to demolish and reconstruct the House. To date the defendant has been granted another year from **30th March 2018 to 29th March 2019**. This has caused unnecessary delay and a financial burden to the defendant.

18. In reply to Mr David Teo asking for an expert opinion on the safety of the house, Mr Hj Harif submitted that they are relying on the approval from the government authorities granting for the house to be demolished and reconstructed. He further stated that the plaintiff himself did not produce any evidence to say the house is currently fit and safe for occupancy.

Plaintiff's case

19. Mr David Teo, counsel for the plaintiff objected to the interim injunction being set aside. He argued this is a fit and proper case for the court to allow the injunction until the case goes to trial. To allow the injunction to be set aside would be:- i) inconvenient for the plaintiff as he has a business to maintain; and ii) damages would be difficult to quantify and is not an adequate remedy.
20. He submitted that the plaintiff and his family did not overstay. That they have a right to stay at the house as the plaintiff lives at the said House since birth and grew up there even though there were occasions in the 1990s and 2000s, that he went to Australia because his children are there but he never gave up his Brunei residence and continued his residence at the said house.
21. He submitted the defendant did not take any action against the plaintiff until 2010 (para 18 of plaintiff's submission). From the time the property was purportedly transferred to the defendant in 1992 up to his departure from the house in 2017, the defendant never took action to evict the plaintiff or otherwise denied the plaintiff his right of quiet enjoyment of the property. He submitted this shows that the defendant recognised the right of the plaintiff within that period and the issue is why he did not continue to do so afterwards.
22. He submitted that the said **property is held on trust** (para 5 page 6 plaintiff's counsel submitted). That even if the property was validly transferred, it was only held on trust by the defendant for the rest of the family members living there. That first it was their late father who was the trustee of the property for the other family members. Now it is the defendant who is the trustee (para 4 plaintiff affidavit no.4; para 2 and 6 of the plaintiff affidavit no.6)
23. As to the plaintiff's business, he submitted the plaintiff operates a stall at the Seria market and does not carry out any business at the house except to prepare the food. The defendant knew that the plaintiff and his wife has a stall and would need water and electricity to prepare the food at the house. That the defendant action through PWD department to cut off these supplies gave rise to an urgent situation which left the plaintiff with no choice but to apply for an interim injunction restraining the defendant from carrying out certain actions. That by cutting off these supplies, it would also destroy the plaintiff's quiet enjoyment of the property.

24. He submitted (para 19) and at para 8 of the plaintiff's affidavit affirmed on 13th November 2018, that if indeed the house is in a dangerous state of disrepair and has to be demolished why was there no expert opinion produced on the condition of the house and why did the government not come to survey the property. This issue has been addressed above.

Conclusion

25. In this case, it is clear from the documentary exhibits (CKS-6-10), affidavits and other supporting documents produced by the defendant that he is the licence holder of the TOL land since 1992 and that his staying on the TOL land is subjected to being in compliance with the terms and conditions of the TOL property.
26. It is also clear from the documents produced that the plaintiff and his family are not amongst those listed to live on the TOL land.
27. It is clear from the photos exhibit CKS-5 and other supporting documents that the house on the TOL land is not safe and not fit for occupancy and need to be demolished and reconstructed.
28. That the plaintiff and his family is to vacate the said house by 1st March 2019 so that the demolition and the reconstruction work of the said house can take effect and be fit for occupancy by the defendant (as the licence holder of the TOL land) and his family (as listed in CKS-8). Therefore, the ex parte interim injunction on 30th November 2017 is now set aside.
29. Costs to be awarded to the defendant.

PG PD HJH ROSTAINA BTE PG HJ DURAMAN
Judge, High Court
30th January 2019