

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2023] SGHC 230

Suit No 833 of 2020
Summonses Nos 2331 and 2424 of 2023

Between

- (1) Arokiasamy Steven Joseph
Administrator of Estate of Salvin Foster Steven,
the deceased
- (2) Tan Kin Tee

... Plaintiffs

And

- (1) Lee Boon Chuan Nelson
- (2) Gomathinayagam Kandasami
- (3) Institute of Mental Health

... Defendants

JUDGMENT

[Civil Procedure – Payments into and out of court – Solicitor’s fees must be equitable before settlement moneys are ordered to be paid into court]
[Civil Procedure – Parties – Joinder]

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**Arokiasamy Steven Joseph (administrator of the estate of
Salvin Foster Steven, deceased) and another**

v

Lee Boon Chuan Nelson and others and other matters

[2023] SGHC 230

General Division of the High Court — Suit No 833 of 2023 and Summonses
Nos 2331 and 2424 of 2023

Choo Han Teck J

12 January, 7 and 14 August 2023

25 August 2023

Judgment reserved.

Choo Han Teck J:

1 Salvin Foster Steven (“SFS”) committed suicide on 7 September 2017 at the age of 31. He is the older of two sons of Joseph (the “Father”) and Tan (the “Mother”), the plaintiffs in this action. SFS had a history of mental illness and had first attempted suicide in 2008. He was admitted to the Institute of Mental Health (“IMH”), the 3rd defendant in 2010. From the affidavits of the Father and the Mother, it appears that SFS had been troubled by mental illness since he was 22 years old. The Father is now 68 years old and retired from the Ministry of Defence in 2020. The Mother worked as a counsellor in a primary school from 2011 to 2019 when she then worked as a healthcare worker for a year. After being unemployed for most of 2021, the Mother started work again as a part-time teacher from November 2021. She is 67 years old.

2 In the Writ, the Father is suing in his personal capacity, and as the administrator of his son, SFS's estate. The Mother appears to be suing in her personal capacity. Mr Vijay Rai ("Mr Rai") appears for the Father, and Mr Anil Balchandani ("Mr Balchandani") appears for the Mother. Mr Rai and Mr Balchandani are from different law firms. According to Mr Rai, Mr Balchandani commenced the action on behalf of the Father and the Mother. He later sought for Mr Rai to come on board with the case. Mr Jansen Aw appears for the 1st defendant, Lee Boon Chuan Nelson ("Dr Lee"), who was the doctor in charge of SFS's case. Ms Kuah Boon Theng SC appears for IMH, the 3rd defendant. The action against the 2nd defendant was discontinued on the application of the plaintiffs before another judge more than a year ago on 3 December 2021, with costs of more than \$48,000 to be paid by the Father and Mother.

3 The Father and Mother brought this action against Dr Lee and the IMH because they blame the defendants for the suicide of SFS. This suit was commenced in 2020, and after some delays, has been fixed for trial next month, September 2023. On 26 July (last month) the plaintiffs terminated the services of Mr Balchandani and Mr Rai's firms, and the plaintiffs had not appointed lawyers to take over their case. There is no dispute that Mr Rai and Mr Balchandani received the written notice of termination. They ought to have appeared to obtain leave to be discharged but they did not. About a week later, on 4 August, the plaintiffs came to terms with the defendants and agreed to discontinue the action.

4 Ordinarily, that would mean an uneventful end to the action. All that remained was for the settlement to be recorded and approved by the court with leave to the plaintiffs to discontinue the action. Then a peculiar thing happened — Mr Rai filed a summons on 2 August 2023 (SUM 2331) on behalf of his

firm, Arbiters Inc Law Corporation for the court to record the settlement between the plaintiffs and the defendants, with the sum of \$330,000.00 being the settlement amount to be paid into court, and for the trial to be vacated and the action discontinued. On 4 August 2023, the plaintiffs filed notices of their intention to act in person.

5 I heard the application on 7 August, and noting that no leave was sought for both counsel to be discharged from acting for the plaintiffs, I granted leave for Mr Balchandani and Mr Rai to be discharged. The plaintiffs and the defendants opposed the orders sought by Mr Rai in his application. I then adjourned SUM 2331 to 14 August to consider the application, and more importantly, for the plaintiffs and the defendants to record a settlement if one had been reached. In the interim, Mr Rai filed another summons (SUM 2424) on 11 August. In this summons, Mr Rai asked for his firm Arbiters Law to be joined as a plaintiff or claimant.

6 On 14 August, the plaintiffs and counsel for the defendants confirmed that the matter between the parties had been settled and asked that the court record the settlement, the terms of which (apart from the settlement fee stated above) are to remain confidential. They also asked for leave to be given to the plaintiffs to discontinue the action in accordance with the terms of the settlement. Mr Rai pressed on with his two summonses. Mr Balchandani took medical leave and was not present. I reserved judgment because this action that was floating towards a serene conclusion had careened off course due to the impact of Mr Rai's two summonses.

7 What Mr Rai wants by these summonses is for his firm be made a plaintiff so that, in his words, he has the capacity to continue the demands he makes regarding the settlement. His position is that as of present date, his fees

rendered thus far have come to \$372,022.43, and a separate sum estimated by Mr Rai to be \$12,818.69 in additional disbursements is likely to be incurred. These amounts (\$372,022.43 and \$12,818.69) do not include a sum of \$56,065.60 (\$36,000.00 for fees and \$20,065.60 for disbursements) that has already been paid by the plaintiffs. It also does not include the sum of \$32,000.00 in costs ordered to be paid to the 2nd defendant, and a further \$8,000.00 in costs each to the 2nd defendant and IMH respectively that Jeyaretnam J ordered against the plaintiffs for the discontinuation of their action against the 2nd defendant in 2021. Mr Balchandani had not drawn up his bill of costs when he last appeared before me on 7 August. On 17 August he wrote to say that he will be seeking costs of \$141,061.55 (inclusive of disbursements), but does not include the sum of \$10,588.20 which has already been paid by the plaintiffs. In the letter he also expresses support for the two summonses brought by Mr Rai.

8 Mr Rai filed those summonses because he is anxious to have the \$330,000.00 paid into court because he thinks that the plaintiffs, especially the Father, may ‘run off’ with the settlement money. At the hearing on 7 August, a distraught Mother says that Mr Rai had served a statutory demand on her (and, presumably on the Father too). Mr Rai objected to her bringing up the statutory demand at the hearing or to seek the court’s advice on it. I told the Mother that the statutory demand was noted, but I would consider it as part of the overall case. It is clear that Mr Rai wants to secure his fees by first claiming an equitable lien, and by serving a statutory demand. The statutory demand is normally a prelude to bankruptcy proceedings.

9 The orders that I have to make are straightforward, and they are as follows. I will set them out and then explain why I made them, for the incontrovertible facts before me show how the present circumstances were

developed from one chaotic situation to another. There are some aspects which, in the absence of evidence or trial, no findings can be made, and I thus will not make those findings. First, the orders:

- (a) By consent, the plaintiffs be given leave to discontinue this suit in accordance with the terms of settlement reached between them and the 1st and 3rd defendants.
- (b) Summons 2331 is dismissed with costs to be paid by Arbiters Law Inc Corporation to the plaintiffs and the 1st and 3rd defendants.
- (c) Summons 2424 is dismissed with costs to paid by Arbiters Law Inc Corporation to the plaintiffs and the 1st and 3rd defendants.
- (d) I will determine the costs at a later date if parties are unable to agree.

10 To understand why I dismissed Mr Rai's summonses, it is necessary to return to the beginning. When parents, like the plaintiffs, seek legal advice over the death of their son, they would, of course, have been advised on the facts and the law to help them decide whether to pursue litigation. I do not know how much work had been done by the solicitors, but some issues arose which compels me to estimate the work involved. Mr Rai is claiming an equitable lien on the settlement money because of his unpaid fees. I must therefore be satisfied that equity leans in his favour. Otherwise, Mr Rai has to claim his fees in the usual way, by a letter of demand, and if that is challenged, he and the clients have to sort that out in court because the facts and evidence must be ventilated at trial.

11 For the moment, I need only consider what factors, if any, weigh against Mr Rai's applications. First, the Father sued in his personal capacity and as the administrator of SFS, and the Mother sued in her own right. The pleadings are meandering but they do not tell me what was the cause of action that the Father and Mother rely on. The statement of claim repeatedly claims that the defendants were in breach as against SFS and the plaintiffs. It appears that the complaint is that SFS was diagnosed as suffering from depression and not schizophrenia. Furthermore, SFS was prescribed the wrong medication, and was not properly attended to. All these would be fair issues at trial.

12 The problem is that these are claims that would have to be made on SFS's behalf. That may be done by the Father suing as the administrator of SFS's estate. It does not explain why the Father (personally) and the Mother were suing as plaintiffs. In their respective affidavits, they claim that their son's death drove them to depression and they could not therefore work. That consequently led to them to being dismissed from their jobs. However, the pleadings do not set out what their cause of action is. They failed to specify the duty owed to them (if any), or how that duty was breached. The indirect allusion that they lost their jobs because they could not work on account of their grieving over SFS's death is not a cause of action. It is just casting blame in a non-legal sense.

13 The Father, suing as the administrator of SFS, appears to be claiming loss of income on behalf of SFS. He had been working in various food and beverage outlets intermittently, such as Aerin's, O Coffee Club, Cuba Libre, BJ Food Pte Ltd, Eighteen Chefs, and Cold storage. All in all, his monthly salary ranged from \$75.00 to \$1,388.00.

14 At a previous pretrial conference, it dawned on Mr Rai that his case for SFS hinges on proof that Concerta, one of the drugs prescribed to SFS was inappropriate, and he needed an expert opinion to prove it. Trial dates had by that time been given, so Mr Rai sought leave to engage Professor Eleni from London as that expert. In the event, Mr Rai informed me on 14 August that he was unable to communicate with Prof Eleni because she had cancer and was undergoing ‘intensive chemotherapy’.

15 These are complicated legal matters for the lawyers to advise their clients. They must be satisfied that they have the evidence to lay a claim. They must also advise that in medical cases, opinions may differ and that they have at least arguably strong expert evidence to back the claim. The plaintiffs are laypersons. How would they know this unless these things have been explained to them? This is especially so in the field of psychiatry where even the most objective evidence available is still a tussle between opposing experts. Hence, it is always important that litigants are advised what they may have to pay by way of costs should they lose (and even when they win).

16 In uncertain cases, mediation and an early settlement may be the best route. I have no information whether such advice was given. But the plaintiffs’ case, gleaned from the pleadings, affidavits, and the expert reports, appear to be a difficult one, and an early settlement in this case would have spared the plaintiffs much anger and grief, not just on account of the loss of their son, but now fuelled and furthered by festering animosity with their own lawyers and a looming sense of dread over the fees.

17 I am satisfied that the settlement that was reached, without admission of liability, was in itself right and fair. I therefore approved the settlement. But I am not satisfied that the fees incurred are justifiable. In the warrant to act

between Arbiters Inc Law Corporation and the plaintiffs (dated 25 November 2020), the estimated fee, inclusive of trial, was about \$150,000.00 — with this estimation being expected to be “correspondingly lower” if the matter is “settled before trial”, which happened in the present case. Despite having settled the suit before trial, Mr Rai is now claiming a sum of at least \$372,022.43, with an unknown amount yet to be claimed in further bills. Mr Rai claims his right to an equitable lien. I am not the taxing master over his fees, but from the circumstances now known to me through the documents, as far as Mr Rai’s fees are concerned, I am not satisfied that they entitle him to an equitable lien over the whole settlement sum because his fees may exceed the equity required to give Mr Rai an equitable lien over the entire settlement sum. Other factors must be considered if an order for a payment into court is to be made. In the circumstances of the present case, counsel’s fees should be taxed to determine what is justifiably due to counsel before such an order is made in this case. Therefore, I dismissed both of Mr Rai’s summonses.

18 As for Mr Balchandani’s fees of \$141,061.55, although this sum is smaller than the one Mr Rai is seeking, Mr Balchandani’s fees are not insubstantial as well. In this connection, Mr Balchandani’s support of both summonses is misplaced. The overall sum which the Father and Mother have already paid and the sums the lawyers are now claiming against them amount to around \$600,000.00, almost twice the settlement sum received by them before trial.

19 The clients are entitled to have counsel’s fees taxed to determine the actual amount payable. Until that is done, I need not comment further — save to say that it is for Mr Balchandani and Mr Rai to justify why the plaintiffs should incur the costs of hiring two sets of counsel to act for them in the matter of the death of their son. In this connection, the affidavits of evidence-in-chief

of both the Husband and the Wife are substantially similar — and the overlaps in work done by Mr Balchandani and Mr Rai should be taken into consideration when rendering the final bill to the client. Having perused the bills of Mr Balchandani and Mr Rai, it also appears to me that they have spent time working together (and billing together) on this case — that too must be taken into consideration and justified.

20 It is not too late for parties to salvage something from this situation. If Mr Balchandani and Mr Rai can come to a settlement on costs with their clients and leave them with a sum sufficient as a balm for their grief, then everyone concerned may move on, as they say, sadder but wiser.

- Sgd -
Choo Han Teck J
Judge of the High Court

First Plaintiff in-person
Second Plaintiff in-person
Jansen Aw, Samuel Lim Jie Bin and Thanjit Kaur Sekhon
(Donaldson & Burkinshaw LLP) for First Defendant
Kuah Boon Theng SC, Felicia Chain and Shenna Tjoa (Legal
Clinic LLC) for Third Defendant
Vijay Kumar Rai, Joavan Christopher Pereira and Jasleen Kaur
(Arbiters Inc Law Corporation) formerly for First Plaintiff
Anil Narain Balchandani (Red Lion Circle) formerly for
Second Plaintiff.