IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 204

Suit No 724 of 2014
(Registrar's Appeal No 154 of 2016)

Between

(1) Tong Seak Kan
(2) Kensington Park Holdings Ltd

… *Plaintiffs*

And

Jaya Sudhir a/l Jayaram

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure] — [Pleadings] — [Striking out]

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Tong Seak Kan and another
v
Jaya Sudhir a/l Jayaram

[2016] SGHC 204

High Court — Suit No 724 of 2014 (Registrar's Appeal No 154 of 2016)
Hoo Sheau Peng JC
16, 27 May, 30 June 2016; 30 June 2016

27 September 2016

Hoo Sheau Peng JC:

1 This was an appeal by the defendant, Mr Jaya Sudhir a/l Jayaram ("the defendant"), against the decision of Assistant Registrar Nicholas Poon ("the AR") to strike out certain portions of the Defence under O 18 r 19(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"). These portions concerned allegations that the plaintiffs, Mr Tong Seak Kan ("the first plaintiff") and Kensington Park Holdings Limited ("the second plaintiff"), had committed or procured acts of harassment against the defendant ("the alleged harassment"). The appeal centred on the relevance of the alleged harassment. After considering the parties' arguments, I concluded that the AR was right to strike out these portions, and dismissed the appeal. The defendant has appealed against my decision. I now provide my reasons.

Background

Parties

2 The first plaintiff is a Macau businessman, while the second plaintiff is a company incorporated in the British Virgin Islands. Collectively, I shall continue to refer to them as "the plaintiffs". While the first plaintiff claimed that he controlled the second plaintiff at all material times, this fact was not admitted by the defendant. A Malaysian businessman, the defendant controlled the following three companies: Firstfield Limited ("Firstfield"), Al-Rafidian Holdings Pte Ltd ("Al-Rafidian") and Petunia Venture Corp ("Petunia").

Statement of Claim

3 In the Statement of Claim (Amendment No 1) ("Statement of Claim"), the plaintiffs claimed against the defendant various sums of money. 18 sums of money were listed in Annex A of the Statement of Claim. I shall refer to each of these payments as "Payment (1)", "Payment (2)", and so on. The plaintiffs also claimed for two other sums of money which the defendant was allegedly responsible for. For the purposes of this appeal, I shall elaborate on Payments (1) to (18), and the documents which the defendant purportedly signed to acknowledge indebtedness to the plaintiffs.

4 For Payments (1) to (5), the plaintiffs pleaded that they had contracted with Firstfield for services relating to a planned project for the supply of liquefied natural gas from Indonesia. In the course of the performance of this agreement, at the defendant's request, the plaintiffs transferred Payments (1) and (2) to Hesselink Investments Limited and Payments (3) to (5) to Al-Rafidian.

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5 Additionally, the plaintiffs asserted that between 2009 and 2010, the plaintiffs had extended a number of personal loans to the defendant. These were Payments (6) to (18). Although Payment (17) was an advance of US$250,000 to a person known as Rianto, who was a business associate of the defendant, the defendant agreed to be responsible for the amount advanced.

6 In connection with Payment (16), the defendant signed a loan agreement dated 5 February 2010 ("5 February 2010 Loan Agreement"). In respect of Payments (1) to (16), the defendant signed a document dated 5 February 2010 titled "List of Loans to Mr. Jaya Sudhir", acknowledging his indebtedness ("5 February 2010 Acknowledgement"). Subsequently, the defendant signed another document, dated 3 March 2010, titled "List of Loans to Mr. Jaya Sudhir" wherein he acknowledged his indebtedness for Payments (1) to (18) ("3 March 2010 Acknowledgement"). This superseded the 5 February 2010 Acknowledgement. Subsequently, on 30 December 2010, the plaintiffs entered into an agreement by deed ("30 December 2010 Deed") under which Al-Rafidian and Petunia would be liable to repay sums owed under Payments (6), (9) and (10), and the defendant would personally guarantee the repayment obligations of Al-Rafidian and Petunia.

7 Al-Rafidian, Petunia and the defendant failed to make the repayments as agreed in the various documents. Based on the 30 December 2010 Deed, the plaintiffs claimed against the defendant for Payments (6), (9) and (10). Based on the 3 March 2010 Acknowledgement, the plaintiffs claimed against the defendant for the remaining 15 payments.

Defence

8 In his Defence, the defendant denied liability in any way to the plaintiffs. The defendant contended that the various sums of money were paid

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in connection with business ventures among the parties for which he was not liable. There were no personal loans to him.

9 Among many other disputes, the defendant contested the enforceability of the documents mentioned at [6] above. Two main grounds were raised. First, the defendant alleged that the documents were part of a sham in that the defendant had been tricked into entering into them by the first plaintiff's representations that the documents were meant to assure the plaintiffs' creditors and the Macau court as to the first plaintiff's ability to pay his debts. The documents were not meant to create legally binding obligations, and were not meant to be enforced against the defendant. Second, the documents were created to defraud the first plaintiff's creditors and the Macau court, and were void for illegality.

10 In addition to the documents mentioned at [6] above, the defendant pleaded that at the first plaintiff's request, the defendant entered into two more agreements with the second plaintiff on 28 February 2011 ("February 2011 Agreements"). These have not been pleaded in the Statement of Claim. The February 2011 Agreements stated that Al-Rafidian and Petunia had obtained a series of loans from the second plaintiff between 2008 to 2010 and that the defendant agreed to guarantee the repayment of those loans. Again, the defendant alleged that prior to signing the February 2011 Agreements, the first plaintiff had represented that the sole aim was to deceive the first plaintiff's creditors and the Macau court as to the first plaintiff's ability to pay his debts, and that the February 2011 Agreements would not be used for any other purpose. Again, these agreements were said to be unenforceable, and void for illegality.

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11 Contrary to these representations, well before any legal proceedings were brought, the plaintiffs engaged in a campaign of harassment against the defendant and Al-Rafidian so as to coerce the defendant into performing the obligations under the February 2011 Agreements. As I mentioned at the outset, the relevance of the alleged harassment was at the heart of the appeal. I set out more details of the allegations at [17] below.

The proceedings below

12 Before the AR, the plaintiffs applied to strike out two aspects of the Defence. The first aspect concerned portions relating to the February 2011 Agreements. The second aspect concerned the alleged harassment, as set out from the last sentence of para 49 to the end of para 52 of the Defence. The AR conducted two hearings. For clarity, I will summarise each hearing separately as the application was complicated by the introduction, after the first hearing, of certain proposed amendments to the Defence.

The first hearing

13 At the first hearing, counsel for the plaintiffs pointed out that the plaintiffs were not relying on the February 2011 Agreements, and that these were not relevant to the dispute. As for the alleged harassment, it was not even probative of whether the February 2011 Agreements formed a sham or not. What was material was whether the defendant was tricked into signing the February 2011 Agreements, and not the mode of attempted enforcement chosen by the plaintiffs afterwards. The alleged harassment was irrelevant, and therefore scandalous. It also unnecessarily expanded the scope of the evidence required for the trial.

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14 Counsel for the defendant replied that the February 2011 Agreements were connected to the documents which the plaintiffs were seeking to enforce. It was submitted that the alleged harassment was relevant to the legality of the whole transaction because the plaintiffs would not have had any reason to resort to harassment if the transaction had been legal. Counsel for the defendant added that he intended to amend the Defence. The amendments would make the relevance of the alleged harassment more apparent.

15 The AR indicated that he considered the February 2011 Agreements to be relevant because they overlapped with the prior documents. Therefore, the trial judge would have to consider which documents were binding. Further, the AR considered that the February 2011 Agreements formed part of the necessary context of the transactions. As for the alleged harassment, he adjourned the application to allow the defendant to propose the necessary amendments so as to assess the relevance of the alleged harassment in light of any clarifications to the Defence.

The second hearing

16 The defendant did not comply with the timeline imposed for providing a draft amended Defence. It was only on the day of the second hearing that a draft was provided, with proposed amendments to paras 51 and 52 ("the first draft amended Defence"). Nonetheless, in making his decision, the AR considered the first draft amended Defence.

17 Before going to the proposed amendments, I set out in more detail the alleged harassment as pleaded in paras 49 to 50 of the Defence. At para 49, it was alleged that the defendant and Al-Rafidian (at its offices) received "harassing telephone calls for repayment of alleged debts owed by the Defendant, [Al-Rafidian] and [Petunia]" (at para 49(a)), as well as "malicious

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fliers, notices and purported Chinese newspaper articles", some of which "featured the photographs of the Defendant and his wife", alleging non-payment of those debts (at para 49(b)). The fliers were said to have been pasted and distributed around the vicinity of the premises of the defendant and Al-Rafidian. The Defence also alleged unspecified acts of harassment by "debt collectors and unsavoury characters" and that a letter had been sent to one employee's spouse threatening to send embarrassing fliers and brochures to the spouse's workplace (at para 50).

18 At para 51 of the Defence, it was alleged that the defendant communicated with the first plaintiff regarding the harassment. An email response dated 1 May 2011 sent by the first plaintiff was referred to. In the first draft amended Defence, the defendant proposed removal of the reference to the email response dated 1 May 2011. Instead, the proposed amendments added details regarding the defendant's reaction to the alleged harassment. In particular, it was stated that by an email of 3 April 2011 ("April 2011 Email") from the defendant to the first plaintiff, the defendant asserted that "he had been tricked by the [first plaintiff] into signing sham documents of loans to [himself], [Al-Rafidian] and [Petunia]."

19 At para 52, the Defence stated that the plaintiffs' actions, including the alleged harassment, showed that they had "every intention to enforce [the February 2011 Agreements] in breach of the representations" they had made, and that:

> … The Defendant, [Al-Rafidian] and [Petunia] did not receive any letter of demand from any firm of solicitors acting for the 2nd Plaintiff seeking recovery of the alleged loans under [the February 2011 Agreements], despite the letters/email of [a series of dates from 24 May 2011 to 8 December 2011] of the solicitors acting for the Defendant, [Al-Rafidian] and [Petunia] to [the plaintiffs] denying the alleged debt and calling upon [the plaintiffs] to stop the harassment and appoint solicitors to

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> liaise directly with the solicitors for the Defendant, [Al-Rafidian] and [Petunia]…

The paragraph concluded by stating that the plaintiffs had then initiated Suit No 842 of 2012 ("S 842/2012") and Suit No 844 of 2012 ("S 844/2012") in a further attempt to enforce the February 2011 Agreements. It was not disputed that these proceedings have been discontinued.

20 In the first draft amended Defence, the defendant proposed to replace the references in para 52 to "the 28 February 2011 Agreements" (see [18] above) with references to "the Impugned Documents", a term defined in para 53 of the Defence as consisting of "the 5 February 2010 Loan Agreement, 5 February 2010 Acknowledgement, 3 March 2010 Acknowledgement, 30 December 2010 Deed and 28 February 2011 Agreements". In effect, this widened the ambit of para 52, by claiming that by the alleged harassment, the plaintiffs evinced intention to enforce the Impugned Documents rather than just the February 2011 Agreements.

21 Although counsel for the plaintiffs did not have prior notice of the proposed amendments in the first draft amended Defence, he submitted that the alleged harassment after the signing of the February 2011 Agreements had no bearing on the defence that the Impugned Documents constituted a sham at the time they were entered into. Counsel for the defendant replied that the alleged harassment was conducted or procured in order to coerce the defendant into treating the Impugned Documents as binding, and that this showed that the Impugned Documents were indeed part of a sham and that the plaintiffs were fully aware of that fact. When counsel for the defendant was asked by the AR to explain his reasoning, he stated that the harassment began after the signing of the Impugned Documents and asserted that this demonstrated the plaintiffs' knowledge that the Impugned Documents formed

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a sham. Otherwise, he claimed, the plaintiffs would have attempted to enforce their rights through the court process immediately.

The Assistant Registrar's decision

22 The AR took the view that even with the proposed amendments, the alleged harassment was irrelevant. He agreed with the plaintiffs that the alleged harassment had no relevance to the legality of the Impugned Documents. The defendant's position that the Impugned Documents were part of a sham could be proved without reference to the alleged harassment; a party could attempt to enforce a legal agreement through improper means and *vice versa*. Therefore, the AR ordered that the last sentence of para 49 to the end of para 52 of the Defence be struck out. This aspect of the decision was the subject of the appeal which was before me. The AR declined, however, to strike out the portions relating to the February 2011 Agreements for the reasons he indicated at the first hearing (see [15] above). The plaintiffs did not cross-appeal against that part of the decision.

The arguments on appeal

23 It should be noted that at first instance, counsel for the defendant's arguments regarding the alleged harassment rested on the point that proving the alleged harassment would tend to show that the Impugned Documents were part of a sham. At the appeal, counsel for the defendant argued that the alleged harassment was relevant for two new and distinct reasons:

(a) It formed the context leading up to the April 2011 Email in which the defendant asserted that he had been tricked into signing the Impugned Documents.

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(b) In relation to a defence of promissory estoppel, it evidenced the plaintiffs' intention to resile from their representation that they would not try to enforce the Impugned Documents and, further, constituted the required element of detriment.

24 With regard to the second reason, counsel for the defendant also proposed a new para 52A to the first draft amended Defence. At the hearing, he tendered this new version ("the second draft amended Defence") which stated, in relevant part:

> 52A. Accordingly, the Plaintiffs are estopped from denying or resiling from their representations that the Impugned Documents would not be used or enforced against the Defendant, [Al-Rafidian] and [Petunia].

Although reliance on the plaintiffs' representations had been pleaded elsewhere in the Defence (specifically, at para 48), this was the first time estoppel had been mentioned in the course of the proceedings.

25 In response, counsel for the plaintiffs reiterated that with regard to the defence based on the sham or illegal nature of the Impugned Documents, what was relevant was whether there was trickery and/or illegal intent, not whether harassment was subsequently used to exert pressure on the defendant. As for the defence of promissory estoppel, he submitted that if the defendant wished to raise such a defence, the more appropriate detriment for him to rely on would be the signing of the Impugned Documents and the apparent incurring of liability as a result, not the alleged harassment which took place afterwards.

26 I noted that the defence of promissory estoppel had been introduced in a newly-proposed amendment which counsel for the defendant had failed to communicate to the plaintiffs in advance. Therefore, I granted leave to the plaintiffs to file further submissions on this point if they saw fit. In the further

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submissions which were duly filed, counsel for the plaintiffs maintained and further developed the position. It was contended that detriment for the purpose of promissory estoppel must be either a harm already suffered as a result of reliance on a representation, or a harm which would be suffered if the promisor were allowed to resile from the representation. The Court of Appeal decision of *Lam Chi Kin David v Deutsche Bank AG* [2011] 1 SLR 800 ("*Lam Chi Kin*") and the High Court decision of *Abdul Jalil bin Ahmad bin Talib and others v A Formation Construction Pte Ltd* [2006] 4 SLR(R) 778 ("*Abdul Jalil* (HC)") (affirmed, but without consideration of this point, by the Court of Appeal in *Abdul Jalil bin Ahmad bin Talib and others v A Formation Construction Pte Ltd* [2007] 3 SLR(R) 592) were cited in support of this position. The alleged harassment did not fall within either recognised category as it was not suffered by virtue of the defendant's reliance on the plaintiffs' representations. Thus, the allegations remained irrelevant, even with the addition of the promissory estoppel defence.

My decision

27 Having considered the parties' arguments, my view was that the alleged harassment was irrelevant and should remain struck out. The arguments presented to me on appeal did not change that.

The law on striking out

28 I start with the law applicable to a striking out application, which the parties did not dispute. It is trite that pleadings may be struck out on the grounds stated within any of the four limbs of O 18 r 19(1) of the ROC. While all the four limbs were cited by counsel for the plaintiffs, primarily, reliance was placed on O 18 r 19(1)(*b*) of the ROC, that the pleading was scandalous, frivolous, or vexatious. In my view, O 18 r 19(1)(*c*) was also material, in that a

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pleading which may prejudice, embarrass or delay the fair trial of the action may be struck out. I shall expand briefly on these two limbs below.

29 Under O 18 r 19(1)(*b*) of the ROC, pleadings will be scandalous "[i]f any unnecessary matter in a pleading contains any imputation on the opponent, or makes any charge of misconduct or bad faith against him or anyone else": *Singapore Civil Procedure 2016* vol 1 (Foo Chee Hock JC gen ed) (Sweet & Maxwell, 2016) ("SCP 2016") at para 18/19/11. Thus, the Court of Appeal held that once it was shown that a pleading contained an imputation on an opponent or a charge of misconduct or bad faith, "the sole question was whether or not the matter alleged to be scandalous *had a tendency to show the truth of any allegation material to the relief sought*" (emphasis added): *Lai Swee Lin Linda v Attorney-General* [2006] 2 SLR(R) 565 at [67], citing *Christie v Christie* (1872–1873) LR 8 Ch App 499 at 503 (*per* Lord Selborne LC).

30 Turning to O 18 r 19(1)(*c*), while the rule is that the court is not to dictate to parties how they should frame their case, "if a party introduces a pleading which is unnecessary, and it tends to prejudice, embarrass and delay the trial of the action, it then becomes a pleading beyond his right" (*per* Bowen LJ in *Knowles v Roberts* (1888) 38 Ch D 263 at 270, and cited at SCP 2016 at para 18/19/13). A statement will not be struck out only because it is unnecessary, "so long as it is otherwise harmless". However, "if wholly immaterial matter be set out in such a way that the applicant must plead to it, and so raise irrelevant issues which may involve expense, trouble and delay, then the irrelevant matter will be struck out, as it will prejudice the fair trial of the action" (SCP 2016 at para 18/19/13).

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31 In the present appeal, it was obvious that the alleged harassment contained an imputation on the plaintiffs and a charge of misconduct or bad faith. For a striking out under O 18 r 19(1)(*b*), I only needed to ask whether the alleged harassment had a tendency to show the truth of any allegation relevant to any defence raised by the defendant. For O 18 r 19(1)(*c*) to be invoked, I had to determine whether the alleged harassment was relevant or necessary, and if not, whether it tended to prejudice, embarrass and delay the trial of the action.

Whether the alleged harassment was relevant as part of the context for the April 2011 Email

32 Having set out the general principles, I turn to the argument that the alleged harassment was relevant because it provided the context for the April 2011 Email. As I observed at [23], this appeared to be a new argument, distinct from the point raised below that the alleged harassment would tend to show that the Impugned Documents were part of a sham.

33 That being said, it was not entirely clear to me that counsel for the defendant had abandoned the point raised below. For completeness, I considered the merit of that submission. In this regard, the AR failed to see the logic in the submission, as did I. If proven, the harassment would show only that the plaintiffs had wished to exert pressure on the defendant to perform his purported obligations. Such a conclusion was equally consistent with the Impugned Documents being legal. The alleged harassment was irrelevant to the defendant's position that the Impugned Documents formed a sham.

34 Returning to the new argument, the question was whether the alleged harassment formed part of the context necessary for the court to appreciate the significance of the April 2011 Email. In my view, the only significance of the

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April 2011 Email was that it showed that at a fairly early stage, the defendant had stated his position that the Impugned Documents were part of a sham, and that he had been tricked into signing them. This would have some bearing on the likelihood of his present account being true. In order to appreciate this significance, the necessary context was simply the alleged understanding between the parties that the Impugned Agreements should not be enforced. This was already apparent from the matters pleaded elsewhere in the Defence. As far as I could see, the alleged harassment added nothing useful by way of context.

35 Besides, it seemed to me that the April 2011 Email formed evidence to be adduced for the trial, rather than a material fact to be pleaded. In this regard, O 18 r 7(1) of the ROC provides that material facts, and not the evidence by which those facts are to be proved, should be pleaded. As a result of the striking out of the alleged harassment, only evidence intended solely to prove harassment would be excluded. The defendant would still be entitled to adduce the April 2011 Email or other correspondence in order to prove or disprove other facts in issue.

36 At this juncture, I should add that it was the plaintiffs' submission that despite striking out the alleged harassment, nothing prevented the defendant from adducing as evidence correspondence from the defendant's solicitors denying the alleged debt, and protesting the legality of the documents as pleaded in para 52 of the Defence (see [19] above). Similarly, this position would apply to the April 2011 Email, to the extent that it might form relevant evidence towards proving or disproving the defendant's liability and the legality of the Impugned Documents. To adduce the April 2011 Email as evidence should not, and need not, involve pleading and delving into the alleged harassment, which did not bear on the facts in issue.

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Whether the alleged harassment was relevant to a defence of promissory estoppel

37 I turn next to the argument that the alleged harassment was relevant to a defence of promissory estoppel, as contained in the proposed para 52A of the second draft amended Defence. According to *Halsbury's Laws of Singapore* vol 9(4) (LexisNexis Singapore, 2015) ("*Halsbury's* vol 9(4)") at [110.978], promissory estoppel requires:

> (1) a representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made;
>
> (2) an act or omission *resulting from the representation*, whether actual or by conduct, *by the person to whom the representation is made*; and
>
> (3) detriment to such person *as a consequence of the act or omission*.
>
> [footnotes omitted; emphasis added]

There was no dispute between the parties regarding the correctness of this statement of the law.

38 To reiterate, counsel for the defendant submitted that the alleged harassment was relevant to the defence for two reasons. First, it evidenced the plaintiffs' intention to resile from their representation that they would not try to enforce the Impugned Documents. Second, it was said to constitute detriment.

39 I deal with the first point shortly, as it was completely unmeritorious. Promissory estoppel is a legal defence to an attempt by a party to strictly enforce its rights in court. If the elements stated above at [37] were successfully proved, the defence would preclude the plaintiffs from resiling

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from their prior representations, and from legally enforcing their legal rights, if any, in these proceedings. There would be no need to prove the existence of an intention to resile before these proceedings. I failed to see how the prior attempts to enforce would be of any relevance at all to such a defence.

40 On the second point, the Court of Appeal in *Lam Chi Kin* recognised that generally, detriment is a requirement of promissory estoppel: see especially [38], in which the court analysed the facts and concluded that the respondent had shown "sufficient detrimental reliance". Thus it was clear, and the plaintiffs accepted, that any pleaded matters constituting detriment would be relevant. As to what constituted detriment, counsel for the defendant drew my attention to a footnote in *Halsbury's* vol 9(4) (fn 6 to para [110.978]) which suggested that Singapore courts might recognise as detriment not only harm which had already been suffered in reliance on the representation (*ie*, detriment in the narrow sense), but also "that which would be suffered if the strict legal rights were enforceable against the party relying on the representation" (*ie*, detriment in the broad sense). This was supported by *Abdul Jalil* (HC), as well as by certain passages in Piers Feltham, Daniel Hochberg & Tom Leech, *Spencer Bower: The Law Relating to Estoppel by Representation* (LexisNexis UK, 4th Ed, 2004) ("*Spencer Bower*").

41 Having reviewed the authorities, it appeared to me that it was no longer necessary to rely only on the relatively tentative statements in *Halsbury's* vol 9(4) which, although re-issued in 2015, had not been updated to account for the Court of Appeal's decision in *Lam Chi Kin*. The case appeared to have endorsed and applied the broad definition of detriment as articulated by the learned authors of *Spencer Bower* (see especially [33], [35], [38] and [40]). Counsel for the plaintiffs did not dispute this (see [26] above). In any event, bearing in mind that this was merely an appeal from a striking

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out application, I proceeded on the basis that the broad definition of detriment should be recognised. Thus, the alleged harassment would be relevant if it came within the broad definition, which included both detriment already suffered and detriment which would be suffered if the representor were permitted to resile from the representation. Crucially, there was no suggestion in any of the authorities that the broad definition had dispensed with the need for the detriment to be a *consequence* of the representee's act or omission in reliance on the representation (see [37] above).

42 According to the defendant, the defendant suffered the alleged harassment because the plaintiffs wished to coerce him into performing the obligations purportedly owed under the Impugned Documents. Applying either the narrow or broad definition of detriment, this "harm" was not a consequence of an act or omission by the defendant in reliance on the plaintiffs' representations.

43 I elaborate. Applying the narrow definition of detriment, although the alleged harassment had occurred, it was not a form of harm suffered as a result of the defendant's reliance. Rather, it was a form of harm allegedly inflicted on the defendant by the subsequent and independent action of the plaintiffs. It seemed to me that the most that could be said in favour of the defendant's case was that the plaintiffs would not have been able to demand the performance of the Impugned Documents (whether through the alleged harassment or otherwise) if the defendant had not entered into them to begin with. However, framing the issue in this way made it clear that arguably, it was the entry into the Impugned Documents (and the acknowledgement of liability by doing so) which was the detriment, but certainly not the tactics later employed to enforce them.

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44 Further, the broad definition of detriment did not assist the defendant. The harassment was not a harm which the defendant would suffer if the plaintiffs were permitted to resile from their representation at trial; it was a harm already incurred. More importantly, as discussed in the preceding paragraph, it remained doubtful that the harm was in any way connected to the defendant's reliance on the plaintiffs' representations. The broad definition did not alter that analysis.

45 Consequently, I agreed with counsel for the plaintiffs that the alleged harassment did not fall within either category of detriment. It could not possibly constitute detriment, and was wholly irrelevant to any defence of promissory estoppel.

Conclusion

46 For these reasons, I concluded that the alleged harassment was simply irrelevant and unnecessary to the dispute. The defendant did not need to refer to the alleged harassment to prove that the Impugned Documents formed a sham, were illegal or to raise a promissory estoppel, nor would proving the alleged harassment at trial bring him any closer to raising a promissory estoppel or to proving that the Impugned Documents formed a sham or were illegal. If such acts of harassment were committed, they might conceivably form the basis of some other claim, such as the defendant's counterclaims in the tort of conspiracy in S 842/2012 and S 844/2012 which had been discontinued. They had no bearing on the issues in the present suit.

47 Should the alleged harassment remain, the irrelevant allegations would merely serve to impute misconduct on the part of the plaintiffs, and were therefore scandalous in nature. By imputing misconduct, these irrelevant allegations would also prejudice and embarrass the plaintiffs, and needlessly

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broaden the scope of evidence required at trial so as to cause delay and costs. In this regard, I noted that the allegations were wide ranging. The portions concerning the alleged harassment were rightly struck out, and I would rely specifically on O 18 r 19(1)(*b*) and (*c*) of the ROC to support this outcome.

48 Consequently, I dismissed the appeal. I also ordered the defendant to pay costs of $4,500 (inclusive of disbursements) to the plaintiffs. For the avoidance of doubt, the defendant did not formally apply to amend the Defence as reflected in the second draft amended Defence. No order was made as to the proposed amendments. The Defence remained in its original form, save for the portions which had been (and were to remain) struck out.

Hoo Sheau Peng
Judicial Commissioner

Tan Teng Muan and Loh Li Qin (Mallal & Namazie) for the appellant;
Harish Kumar, Jonathan Toh and Josephine Chee (Rajah & Tann Singapore LLP) for the respondents.

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