

## SHC: *Ling Mang Khong Stanley v Teo Chee Siong & Ors (Yeo Boon Hwa, third party)* [2013] SGHC 58\*

### Can a Witness be Sued?

#### INTRODUCTION

---

The Singapore High Court in *Ling Mang Khong Stanley v Teo Chee Siong & Ors (Yeo Boon Hwa, third party)* [2013] SGHC 58 struck out third party proceedings brought by the Defendants against the key witness (Third Party) while the main Suit was still ongoing. The totality of the circumstances suggested that the third party proceedings were brought for the purpose of dissuading the key witness from testifying for the Plaintiff, and were an abuse of process. The effect of this decision is that defendants may not bring third party proceedings against a witness, for alleged conspiracy with the plaintiff to commence a frivolous lawsuit, at least not until after the present proceedings have been concluded. \*Characterist LLC's Dominic Chan successfully acted for the Third Party in this case.

#### FACTS

---

- (1) Ling Mang Khong Stanley ("the Plaintiff"), the first and second Defendants, and Yeo Boon Hwa ("the Third Party") were shareholders in Anewtech Systems Pte Ltd ("the Third Defendant"). The crux of the dispute between the Plaintiff and the three Defendants centered on a meeting on 7 April 2007 ("the Meeting") at which the first and second Defendants allegedly misled the Plaintiff into selling his shares in the Third Defendant for a low price without disclosing that there were Taiwanese investors scheduled to invest in the Third Defendant, which would have more than tripled the Third Defendant's share price. The Third Party, who was present and had remained silent at the Meeting, was the Plaintiff's key witness.
- (2) The Plaintiff commenced action against the Defendants in High Suit No. 752 of 2007. He also obtained an Anton Piller Order against the first and second Defendants. Subsequently, his claim against the Third Defendant was dropped and his claim against the first and second Defendants was narrowed down, by way of amendment of pleadings ("2011 Amendments"), to one of misrepresentation.
- (3) The Defendants commenced third party proceedings against the Third Party alleging that the Third Party had conspired with the Plaintiff to bring a frivolous claim against them, as well as to bring an Anton Piller Order for a collateral purpose. The three Defendants claimed for damages from the Third Party. The first and second Defendants also claimed for an indemnity and/or contribution from the Third Party on the basis that he was allegedly a concurrent tortfeasor.
- (4) Less than two months before trial, the Third Party applied to strike out the third party proceedings. This application was allowed by the Assistant Registrar. The Defendants appealed to the Singapore High Court.

## ISSUES

---

Some of the main issues on appeal were as follows:

- (1) Whether the striking out application should not have been allowed because of the Third Party's alleged delay in filing the application;
- (2) Whether the striking out application should not have been allowed because the Third Party had consented to the amendments to the Defendants' Statement of Claim against him;
- (3) Whether the Defendants' conspiracy claim should remain struck out;
- (4) Whether the Defendants' claim that the Third Party was a concurrent tortfeasor should remain struck out.

## HOLDING OF THE SINGAPORE HIGH COURT

---

The Singapore High Court rejected all of the Defendants' arguments and held as follows:

- (1) **Not Late:** The striking out application was not made too late. First, there were significant changes in the Plaintiff's cause of action (by way of the 2011 Amendments). The positions of both the Plaintiff and the Defendants had to be known before the Third Party knew what claims he had to meet and whether to apply for a striking out of those claims. Second, the striking out application, while it was filed less than two months before trial, was actually filed less than two months after the close of pleadings (in the third party proceedings, where the Defendants and the Third Party made consequential amendments following the Plaintiff's 2011 Amendments).
- (2) **No Res Judicata / Issue Estoppel:** This was not a case of *res judicata* as there was no previous similar striking out application. Neither was this a case of issue estoppel because the issue of whether the Defendants' claim should be struck out was not decided when the Defendants' Statement of Claim against the Third Party was amended (by consent).
- (3) **Conspiracy:** The Defendants' claim that the Third Party had conspired with the Plaintiff to commence a frivolous claim against them and to obtain an Anton Piller Order was not a recognized ground for bringing third party proceedings against the Third Party under O.16, r.1 of the Rules of Court. In this regard:
  - (a) Any conspiracy does not give the Defendants a right to contribution or indemnity against the Third Party. This claim, insofar as based on O.16, r.1(1)(a) of the Rules, was legally unsustainable;
  - (b) The Defendants' claim did not come under O.16, r.1(1)(c) of the Rules either. This rule required that the issues in the third party proceedings must already be issues in the main action between the Plaintiff and the Defendants. In the present case, the Defendants did not seek to counterclaim against the Plaintiff in an action for conspiracy.
  - (c) The Defendants' claim was also an abuse of process as there was a pending District Court Suit where some of the issues (relating to alleged poaching of the Third Defendant's business, suppliers and clients) overlapped.

- (d) However, the Singapore High Court held that, in relation to the claim to bring a frivolous law suit, the proper course would be for the Defendants to commence an action against the Plaintiff and the Third Party for conspiracy by lawful means after the present proceedings have concluded (where it will be clearer whether the Plaintiff had launched a frivolous claim, depending on whether his claim in the present action had failed).
- (e) Concurrent Tortfeasor: The Defendants' novel claim that the Third Party was a concurrent tortfeasor was not pleaded, and there was also a lack of particulars which could support such a claim. Furthermore, the Defendants could not have pleaded that the Third Party participated in the misrepresentations by the Defendants to the Plaintiff because the Defendants' defence was that there was *no* such misrepresentations as alleged by the Plaintiff.
- (f) The Singapore High Court held that the totality of the circumstances suggested that the Defendants' purpose in launching third party proceedings against the Third Party was not to seek a contribution or an indemnity from him, but to dissuade him from testifying for the Plaintiff, knowing that the Third Party was a key witness to what transpired at the Meeting where the alleged misrepresentations took place. The commencement of third party proceedings for a collateral purpose other than the legitimate pursuit of a remedy was an abuse of process. The third party proceedings remained struck out.
- (g) However, the Court granted liberty to the Defendants to commence proceedings afresh against the Third Party to claim a contribution or indemnity should the trial of the main action reveal facts which could support such a legitimate claim.

## CONCLUSION

---

Can a witness be sued when the main action has yet to be heard and determined? The answer, as provided in this case, is a clear "No".

However, this case seems to suggest that once the main action has been heard, a witness may potentially be sued by way of conspiracy by lawful means, especially if the main action, in which the witness had testified in, fails. While a pre-dominant purpose to injure, which is a critical element of lawful conspiracy, is difficult to prove, the current position nevertheless remains unsatisfactory, for at least two reasons:

- (1) First, as a matter of principle, a witness should be immune, whether *during* or *after* the main suit is heard, from all lawsuits from disgruntled litigants, for the sake of public policy, i.e. the higher interest of the advancement of public justice. To even expose witnesses to the *possibility* of being sued will likely deter witnesses from testifying;
- (2) Second, any defendant who alleges that a claim is frivolous has remedies provided for under the current procedural rules, including applying to strike out the alleged frivolous claim, or to seek an appropriate cost order from the plaintiff (or even non-parties) if the Suit is determined in the defendant's favour. Allowing a third party claim or a subsequent claim against a witness to be framed in the language of lawful means conspiracy would mean the bypassing or ignoring of such existing remedies. This could easily lead to an abuse of process.

In summary, the scope of lawful means conspiracy *need* not and *should* not be extended to become a potential cause of action against witnesses.

[Note: The Defendants' appeal to the Court of Appeal vide CA No. 59 of 2012/Q was withdrawn after parties reached an out-of-Court settlement. As such, there was no opportunity to hear the Third Party's arguments on the public policy of witness immunity, as well as the restriction of the scope of lawful means conspiracy.]

## CONTACT

---



### DOMINIC CHAN

---

Senior Associate Director  
[dominic@characterist.com](mailto:dominic@characterist.com)  
T: 6222 5562 F: 6222 5561

---

**Characterist LLC** is a multi-disciplinary full-service Singapore law firm for businesses and individuals, and offers comprehensive, competent and cost-effective legal solutions, with expertise in specialized areas of practice. These include litigation and dispute resolution, corporate and commercial law, property and real estate, insurance and personal injury, criminal litigation and advocacy, family and matrimonial law, trust, estate planning, probate and administration, construction and intellectual property.

Characterist LLC's roots were established in 1978 by Mr Lie Kee Pong, who founded Lie Kee Pong Partnership. In 2007, Lie Kee Pong Partnership merged with another growing law firm, Characterist LLC. Characterist LLC has steadily grown from a sole-proprietorship to a multi-disciplinary full-service law firm. Since 2011, Characterist LLC has added several new directors, previously from various established law firms in Singapore, as well as new associates and staff, to the team, in a deliberate and concerted effort to extend and deepen the firm's capabilities.