HC/S 413/2021

IN THE GENERAL DIVISION OF THE HIGH COURT

OF THE REPUBLIC OF SINGAPORE

Case No: HC/S 413/2021 (Pre-Trial Conference: 29 July 2021)

SubCase No: HC/SUM 2650/2021 (Date of hearing: 14 July 2021)

Between

MOHAMED MUSTAFA MAHMOUD HELMY

(FIN No. G3363781R)

...Plaintiff

And

NANYANG TECHNOLOGICAL UNIVERSITY

(Singapore UEN No. 200604393R)

...Defendant

Monday 28 June 2021

AFFIDAVIT

Supporting Affidavit by Mohamed Mustafa Mahmoud Helmy, Litigant-in-person, in the matter of Case No.: HC/S 413/2021 and other matters

I, Mohamed Mustafa Mahmoud Helmy (FIN. No. G3363781R), residing at 10 Jurong Lake Link, #15-39, Singapore 648131, do solemnly and sincerely affirm and say as follows:

1 I am Plaintiff and Litigant-in-person in Case No. HC/S 413/2021.

2 The Defendant in Case No. HC/S 413/2021 is Nanyang Technological University, (Singapore UEN No. 200604393R), a Company Limited by Guarantee, registered address at 50 Nanyang Avenue, Singapore 639798. Nanyang Technological University are represented by Timothy Ang Wei Kiat (henceforth 'Mr. Timothy Ang') and Zhu Ming-Ren Wilson at Rajah & Tann Singapore LLP (henceforth, 'Rajah & Tann'), registered address at 9 Straits View #06-07 Marina One West Tower Singapore 018937.

3 This here Supporting Affidavit contains only facts I have personal knowledge of, facts in documents purporting to be filed in or issued out of the Supreme Court, documents attached here, or statements of information or belief supported by the sources and grounds thereof.

Timeline of events and Supreme Court documents

4 In the Supreme Court, on Wednesday 5 May 2021 I filed [WSOS] WRIT OF SUMMONS, Submission Reference Number FESGID20210505_151122kRaNBqeK, Case Number HC/S 413/2021 (henceforth, my 'Writ').

5 On Friday 7 May 2021 my Writ of Summons was served unto NTU, and on Wednesday 12 May 2021 I filed [WOSMOS6] MEMORANDUM OF SERVICE, Submission Reference Number FESGID20210512_135713YDSOC9eQ.

6 On Friday 14 May 2021 I received MEMORANDUM OF APPEARANCE - FE20210514_100120eWkj6fvz from Mr. Timothy Ang.

7 On Tuesday 25 May 2021 I filed [WOSSOC] STATEMENT OF CLAIM, Submission Reference Number FESGID20210525_075435OvfWPZte (henceforth, my 'Statement of the Claim')

8 On Tuesday 8 June 2021 I received 2 (two) emails from Mr. Timothy Ang shown in exhibit ANG-1, with 2 (two) documents attached which purport to constitute an application filed in the Supreme Court (here in the Affidavit these two documents collectively are henceforth, 'HC/SUM 2650/2021):

(a) SUMMONS UNDER O 18 R 19 shown in exhibit ANG-2, Sub Case No. HC/SUM 2650/2021 (henceforth, 'SUMMONS UNDER O 18 R 19').

(b) The following affidavit: Plaintiff: Goh Ke Min Kevin: 1st: 07.06.2021 (henceforth, 'the Affidavit by Goh').

9 On Wednesday June 16 2021 I filed [WOSDEF] DEFENCE, Submission Reference Number FESGID20210616_095234YtS5ebHi and [WOSMPC13] MEMORANDUM OF APPEARANCE TO COUNTERCLAIM, Submission Reference Number FESGID20210616_094213Lhpnczw.

10 The following documents were exchanged between the Court, Mr. Timothy Ang, and myself between Wednesday 16 and Friday 18 June 2021:

(a) From the Court to myself an email on Wednesday 16 June 2021 at 1:17 PM with attached VIDEO CONFERENCING NOTICE signed by Ms. Sherelyn Khoo (henceforth, 'Registrar's Conferencing Notice dated 16 June').

(b) From Mr. Timothy Ang to myself an email on Wednesday 16 June 2021 at 6:15 PM to which I replied on Thursday 17 June 2021 at 11:33AM.

(c) From Mr. Timothy Ang to myself an email on Thursday 17 June 2021 at 10.39 PM with attached a letter he had sent to the Court, Sender's Ref WZR/TWK/292401/65.

(d) From the Court to myself an email on Friday 18 June 2021 at 8:24 AM with attached REGISTRAR'S NOTICE – HEARING DATE REFIXED signed by Ms. Irene Ng (henceforth, the 'Registrar's Notice dated 18 June').

(e) From Mr. Timothy Ang to myself an email on Friday 18 June 2021 at 11:47 AM with the Registrar's Notice dated 18 June attached.

11 On Tuesday 22nd June 2021 I filed the affidavit Plaintiff in HC/S 413/2021; Mohamed Mustafa Mahmoud Helmy; 1st; 21.06.2021, LAWNET SERVICE BUREAU (SUPREME COURT) slip number P4899 (I have yet to collect, my apologies; henceforth, the '1st Affidavit by myself').

Concern regarding HC/SUM 2650/2021

12 In the 1st Affidavit by myself, may it please the Court, I argue why an action to strike out my Statement of the Claim is not sustainable. In the 1st Affidavit by myself, led (or misled) by reference to O. 18. r. 19 in HC/SUM 2650/2021, I consistently thought of and discussed the Affidavit by Goh as a 'pleading', and the SUMMONS UNDER O 18 R 19 as an 'originating summons'. At the same time, I was confused by the urgent correspondence from Mr. Timothy Ang over Wednesday 16 and Friday 18 June, as well as content in the Affidavit by Goh. It appeared to me that what was happening was a 're-

focusing of the underlying issues', a trial of something undisclosed, as I discuss in the 1st Affidavit by myself. I wondered if a substantive right was claimed by NTU and Rajah & Tann to adduce evidence in the supporting affidavit (as a pleading), and if Mr. Timothy Ang might have been assuming HC/SUM 2650/2021 would proceed as though commenced by writ (as an originating summons).

13 At the time of writing the 1st Affidavit by myself, I wondered: Why am I deprived of the right to pleadings from NTU, defence or defence and counterclaim as the case might have been, within the time period stated in Court Rules? Does an application from NTU, issued by Rajah & Tann, to 'hold the timelines for NTU to file its Defence in abeyance' act as a Court Order?

14 The fact that I felt confused and oppressed is shown in that I submitted to the Court a 'Defence' and 'Memorandum of Appearance to Counterclaim'. As I outline above, this was followed by a flurry of correspondence, with unusual urgency. Most of all I wanted to know: how does Mr. Timothy Ang intend to solicit a trial *of an application*, namely HC/SUM 2650/2021? Summons or not, it is a process *in* a trial, namely HC/S 413/2021, is it not?

Apparent irregularity of type of hearing for HC/SUM 2650/2021

15 In the Registrar's Notice dated 18 June, under *Type of Hearing*, it states: "...OS & Summons - O18/O33 r 2". In SUMMONS UNDER O 18 R 19, under *Hearing Type*, it is stated: "OS & Summons – General". In Registrar's Conferencing Notice dated 16 June, a type of Hearing is not otherwise specified.

16 Why does the Registrar's Notice dated 18 June *not* state the Rules of Court for the Hearing under Order 18, but *does* state Rules of Court for the Hearing under Order 33, despite the fact that SUMMONS UNDER O 18 R 19 specifies O. 18, r. 19, and makes no mention of any Rules of Court under O. 33? SUMMONS UNDER O 18 R 19 makes no mention of O. 33, r. 22, nor does the Affidavit by Goh.

The undisclosed and oppressive nature of HC/SUM 2650/2021

17 I am making the present application to the court for default judgement now and not earlier because I had to 'reverse engineer' what may have happened since I filed my Writ of Summons, HC/S 413/2021. That said, I knew at the time of writing of the 1st Affidavit by myself that there appeared to be an attempt to deny my access to justice, as I stated therein, I just did not know how this denial was being attempted by the Defendant.

18 I believe the reasons why HC/SUM 2650/2021 is irregular and an abuse of Court process are notable, and 'How I worked out that HC/SUM 2640/2021 is an abuse of Court process' is in paragraphs 65 - 70 at the end of this affidavit. To begin, may it please the Court, I will state what I believe is most pertinent to my case, and later present the abuse of the forms of Court by the Defendant which I had to work out, but are, of course, immediately recognized by Justice.

19 If the Defendant had been attempting to construe that, for example, I was absent from work, that there was no bullying into research misconduct, and termination of employment had nothing to do with misconduct (*i.e.* factual sustainability of my claim), such facts should have been identified, without evidence, in a Defence.[1] If the Defendant

[1] *Williams v. Wilcox*, (1883) 8 A & E 314, 331.

had been attempting to construe that there was a contractual or other legal element on which my Statement of the Claim may be struck out (*i.e.* legal sustainability), then facts should have been set out in a Defence in such a way that would justify the same.[2] If the Defendant wished to construe arguments of mixed law and fact, those should also have been made in a Defence.[3]

20 If the Defendant had wished to determine an issue or question arising, then the Defendant should have made a Defence and, at the appropriate time, filed a summons for directions, for example pursuant to Order 14 of the Rules of Court. Similarly, other Court proceedings follow through and are based on pleadings made because the pleadings state the legal elements upon which a trial may or may not proceed.[4]

21 If the Defendant had wished to strike out my Statement of the Claim under O. 18, r. 19, then I believe there are several (perhaps debatable) avenues. If my Statement of the Claim was a ludicrous as the Defendant boisterously claimed, then it would probably have been sufficient to make pleadings as outlined above and rest at that – that there is no cause for trial would have become apparent. Alternatively, the Defendant may have made an application to strike out after pleadings are deemed closed. Instead of making any

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[2] *Seagate Technology International v. Changi International Airport Services Pte Ltd,* [1996] 3 SLR(R) 345, [28].

[3] *Banner Investments Pte Ltd v. Hoe Seng Metal Fabrication & Engineers (S) Pte Ltd,* [1996] 3 SLR (R) 244, [14]-[16].

[4] *SCT Technologies Pte Ltd v. Western Cooper Ltd,* [2015] SGHC 135, [13], citing *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International), Singapore Branch v. Motorola Electronics Pte Ltd,* [2011] 2 SLR 63, [31].

pleadings, which I now understand is the basis on which the trial will unfold, the Defendant made an *irregular* application to strike out under O. 18, r. 22 but in an abuse of Court process pretended it was under O. 18, r. 19 with some magical 'abeyance' and, begging the Court's pardon, Plaintiff go hang.

22 Without pleadings, there is no "...record of the matters to be decided by the court..." and so the Defendant is not bound "...in the interest of certainty and due process...".[5] Since there is no Defence by the Defendant, the Affidavit by Goh does not even qualify as a sham to be struck off.[6] The Defendant cannot part from their pleading because none were made. At the same time, I cannot further my case, for example through an application for discovery, because there must be a Defence before I may do so – otherwise the issues are simply undefined. The oppression I felt responding to the Affidavit by Goh is explained – it is the consequence of abuse of Court process.

23 HC/SUM 2650/2021 appears to be an application for my Statement of the Claim to be struck with no pleadings made by the Defendant pursuant to what appears to be an irregularity in proceedings. HC/SUM 2650/2021 is an attempt by the Defendant for trial by ambush.[7]

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[5] J. Pinsler, *Principles of Civil Procedure* 532-533 (Acad. Publg. 2013), citing *Thorp v. Holdsworth,* (1876) 3 Ch D 637, 639.

[6] *The Jarguh Sawit* [1997] 1 SLR(R) 213.

[7] *Sheagar s/o TM Veloo v. Belfield International (Hong Kong) Ltd,* [2014] 3 SLR 524, [90]; *V Nithia (co-administrix of the estate of Ponnusamy Sivapakiam, deceased) v. Buthmanaban s/o Vaithilingam,* [2015] 5 SLR 1422, [37].

24 All timelines in the Rules of Court and any provisions putatively available to me to pursue relief are 'held in abeyance' by HC/SUM 2065/2021. I suppose the Defendant assumed that paragraph 2 of SUMMONS UNDER O 18 R 19 would appear to act as some sort of automatic stay application, or at least appear *to me* to act as some sort of stay application. It did when I filed the 1st Affidavit by myself – now it does not, and unless the Court directed otherwise, which as far as I know the Court did not, then timelines in the Rules of Court apply.[8] I believe HC/SUM 2650 is a serious procedural breach and a questionable tactic by the Defendant, to strike out my pleadings and deliberately suppress evidence where a fair trial is possible.

25 *Per* O. 18, r. 13, the absence of a Defence by the Defendant may be deemed an admission.[9]

The Role of Law in Pleadings **by Pinsler applied to the attempted trial by ambush**

26 In this section and until paragraph 38, unless otherwise stated, I refer to and quote Jeffrey Pinsler, 'The Role of Law in Pleadings', *Singapore Academy of Law Journal*, pages 127 to 151 (1998). I quote footnotes and citations where relevant, otherwise citations are omitted here.

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[8] Even pursuant to an arbitration agreement, which the HC/S 413/2021 is not, a stay application does not stop time from running for service of the defence, for instance, and *Australian Timber Products Pte Ltd v. Koh Brothers Building & Civil Engineering Contractor (Pte) Ltd*, [2005] 1 SLR(R) 168, [16]; cited in *Carona Holdings Pte Ltd v. Go Go Delicacy Pte Ltd*, [2008] 4 SLR(R) 460, [25]-[32].

[9] *Obegi Melissa v. Vestwin Trading Pte Ltd*, [2008] 2 SLR(R) 540, [13].

27 Pinsler discusses Order 18 of the Rules of Court; he emphasises how this Order and as it relates to other Orders in the Rules of Court should protect any party from being *surprised.*

28 Perhaps the Affidavit by Goh can be viewed as a 'demurrer', "...a pleading which involved the parties alleging that the facts pleaded by the other party did not legally justify the claims or defences which he asserted. As the dispute concerned issues of law rather than the facts, the court would summarily determine those issues after hearing argument...".[10] Of course, a demurrer "...was a formal process...", whereas HC/SUM 2650/2021 appears to be an abuse of Court process.

29 Pinsler discusses O. 18, r. 11 in historical context, notably as it relates to how the Evershed Committee was "...wholeheartedly in favour of eliminating, as far as possible, the element of surprise; and we therefore favour the view that the statement of claim or defence should plead points of law of what may be called a special character...".[11] Pinsler argues that this recommendation *appears* (he emphasises) to have led to the introduction of O. 18, r. 11 because "...it leaves it up to the party to plead a point of law – the plea is not obligatory...". Of course, Pinsler refers to a plea raising a point of law. It appears the Defendant here has assumed the *whole body of pleadings* is not obligatory.

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[10] As it relates to the present, a 're-focusing of the underlying issues' as I wrote in the 1st Affidavit by myself.

[11] Final Report of the Committee on Supreme Court Practice and Procedure (the 'Evershed Committee'), presented to Parliament in 1953, Cmnd. 8878.

30 If the Defendant had submitted a pleading, O. 18, r. 11 "...provides that 'a party may by his pleading raise any point of law'. The matter of separate disposal of an issue of law is no longer the primary purpose of pleading a point of law. Nevertheless, it may be appropriate to raise a point of law in a pleading if the party concerned intends to have it summarily determined..." and here Pinsler cites Buckley J: "...if no mention of it is made in the pleading, the other side may be lulled in a sense of false security in that particular respect...".[12] In the present case, pleadings were not made by the Defendant because HC/SUM 2650/2021 was apparently an attempt at trial by ambush.

31 From "...a variety of procedures which enable a party to raise a matter of law for disposal...[which] are not dependent on such a matter being raised in the pleading...", is there one relevant to the present case? Indeed: "...Order 33, rule 2, as has been seen, enables the court to determine a matter of law before, at or after the trial whether or not it has been pleaded. An application may be made under Order 14, rules 12 and 13 for summary judgement on a 'question of law'. If there is an unanswerable objection in law concerning the cause of action in a writ or statement of claim or defence in a defence pleading, an application may be made pursuant to Order 18, rule 19 to strike out the writ or pleading...This procedure involves a summary determination of the issues of law raised...". Obviously, rules mentioned by Pinsler here under Order 14 and Order 18 are for a trial *with* pleadings, and made *explicitly*, he emphasises, to prevent surprise, and not for what the present case appears to be: an attempt at trial without pleadings and made with an

[12] *Independent Automatic Sales Ltd v. Knowles & Foster*, [1962] 3 All ER at 30.

obfuscated collection of scandalous allegations or what the Affidavit by Goh largely appears to be.

32 With reference to O. 18, r. 11, "...the optional character of the rule certainly depreciates the priority of avoiding surprise...". However, I suppose Pinsler may not have imagined the present case: "...as long as *the material facts are pleaded* pursuant to Order 18, rules 7 and 8, the parties are not obliged to go further and include points of law...". But the Defendant did not make pleadings under those Rules, nor any another. The Defendant selected, presented, and attached *material evidence* and legal arguments of unknown origin in some kind of 'application', or else in 'submissions' by Rajah & Tann which, as far as I know were not made, in what appears to be an abuse of Court process for trial by ambush.

33 "...[T]he Evershed Committee regarded, it would seem, the avoidance of surprise in the statement of claim as a priority equal to the achievement of that purpose in the defence and reply (the pleadings with which that rule was concerned). It should be said that the Evershed Committee was not concerned with the pleading of material facts in the statement of claim (which was already required by the Rules), but with matters of law...".

34 In any case, the Defendant here appears, through what appears to be an abuse of Court process embodied as HC/SUM 2650/2021, to do something which "...concerns points of law which a party *may*, not must, raise...". However, if the Affidavit by Goh is deemed a pleading of some sort, which it clearly is not, then it is *doubly* effective in achieving the aim of a "...pleading which is strewn with expression of law [which] would obscure the facts in issue, the very matter which the parties and the court must *focus* on to ensure that the *correct principles of law apply, and that the correct conclusion on liability is reached...*" (emphasis added).

35 If for a moment we consider HC/SUM 2650/2021 was an application made in due process (as in, after pleadings are made and closed), then it "...is designed to ensure that...the court..." IS NOT "...fully and clearly apprised as to the nature of the legal claim with which it is invited to deal with on the ex parte application, and [that] the defendant is likewise..." NOT "...apprised as to the nature of the claim which he has to meet..." (here Pinsler is quoting Slade LJ, I apologise to Pinsler and Slade LJ but I had to add the negatives).

36 And so, "...Although the court may allow a defence raised even if the material facts have not been sufficiently pleaded – if the opposing party is not surprised or otherwise prejudiced – a too liberal exercise of such a discretion based on the assumption (rather than the reality) of due notice may well compromise the fundamental purpose of the pleading system, which is that parties must cognisant of the issues to be raised at trial...", namely, apparent illegal activity at NTU. Indeed, I believe that NTU "...very well admit to the facts alleged in..." my Statement of the Claim, and through HC/SUM 2650/2021 "...raise a point of law..." due to abuse of Court process, NOT "...pursuant to Order 18, rule 11, which would become the sole issue for determination...".

37 It could have been argued, I presume, that "...the defendants had merely raised a point of law (as opposed to an allegation of fact giving rise to a point of law)...For example, a point of law arising from the plaintiff's statement of claim..." and so, it becomes clear that NTU and Rajah & Tann have decided that, for them, as it concerns a Defence, "...the plea would have been a matter of choice rather than obligation...". Of course, Pinsler here was referring to a plea in the *pleadings* raising a point of law, and not altogether the absence of pleadings as in the present case.

In short, with no pleadings and therefore no issue as such, the Defendant appears to assume that the Court *would* "...countenance points of law which are raised merely in a hypothetical context [and so] do not have a direct bearing on the issues...".

38 What is this hypothetical point of law which the Defendant here may bring forward with 'relevant legal submissions by solicitors' perhaps, to be made we know not where and when, as I wrote in the 1st Affidavit by myself? In a hearing, did the Defendant wager, had the attempt at trial by ambush not come to light? And through apparently abusing Court process, pursuant to O. 18, r. 8 and r. 19, and O. 14, r. 12 and r. 13, and to be addressed under O. 33, r. 2?

***Justice of the case v. Conduct of the case* in the judgement of The Honourable Judge of Appeal Justice V. K. Rajah JA**

39 In this section and until paragraph 53, I quote from *Lee Chee Wei v. Tan Hor Peow Victor and Others and Another Appeal* [2007] SGCA 22, in the Court of Appeal, The Honourable Judge of Appeal, Justice V. K. Rajah delivering the judgement of the court. I mention when others are directly quoted by V. K. Rajah JA, otherwise citations are omitted.

40 The apparently farcical investigation at NTU suggests that "...the factual matrix should entail, as it does in the present case, that the "justice of the case" is at odds with the "conduct of the case"..." and so the Defendant has apparently abused Court process in an attempt to negate any possibility that the "...conflict be resolved so that a just outcome is ultimately ensured...".

41 I believe the Defendant was hoping for an outcome where the Court "...disallowed the plaintiff's alternative claims for specific performance or damages in lieu of specific

performance…", perhaps "…ordering that nominal damages…be paid to the plaintiff…" or even that I pay costs to the Defendant.

42 I believe the re-focusing of the underlying issues in the present case may be understood, from the Defendant's perspective, in the following terms: "…The starting point…[is] that a written contract articulated in precise terms cannot be varied or qualified by extrinsic evidence…". And so, my employment contract with NTU is a "…written document thereby precluding any attempt to qualify or supplement the document by reference to pre-contractual representations…". As such, my claim (having signed an employment contract with NTU) to work legally and ethically under the Animals and Birds Act, NACLAR Guidelines, and numerous other policies in Singapore and at NTU putatively regulating animal research, is "…some (chance) remark or statement (often long-forgotten or difficult to recall or explain)…The entire agreement clause obviates the occasion for any such search and the peril to the contracting parties posed by the need which may arise in its absence to conduct such a search…[and so] *shall have no contractual force, save in so far as they are reflected and given effect in that document*…[T]he formula used is abbreviated to an acknowledgment by the parties that the agreement constitutes the entire agreement between them… ".[13]

43 However, in this case, ~~since~~ the Defendant has admitted to not duly investigating when I reported Rupshi Mitra for ordering me to engage in illegal activity, to terminating my contract unlawfully, and to committing extortion against me, and 'the four corners' of my employment contract *are* under the jurisdiction of this Court, regardless of any allusions to absolute autonomy NTU may harbour. Indeed, "…It is elementary that whether an

[13] Emphasis added by V. K. Rajah JA; here V. K. Rajah JA is citing Gavin Lightman J.

agreement has legal effect is a matter of the intentions of the parties…or in other words…" my employment contract "…should be treated as if…" NTU "…had not intended to create legal relations…".[14] Obviously, it cannot be assumed nor reasonably expected that an employment contract at NTU is a legal mechanism for carrying on a corrupt business, and because of which I suffered harm.

44 In other words, it is decidedly not the case here that "…[t]he contractual relationship between the parties was now circumscribed by the signed agreements and those alone…",[15] and decidedly not the case, with regards to my employment contract, that "…such clauses effectively erased any legal consequences that might have ensued…[and] excluded any implied term, collateral warranty and misrepresentation…" of, for example, the University Code of Conduct and other policies subscribed to in my employment contract, as well as Singapore law. In other words, any claim by the Defendant that my employment contract with NTU "…denude[s] what would otherwise constitute a collateral warranty of legal effect…[or] renders inadmissible extrinsic evidence to prove terms other than those in the written contract…" is null and void.[16] Indeed, such a claim would "…render entire agreement clauses meaningless and remove an important safeguard…" to the function of society.[17] Whereas "*…A presumption can be rebutted; an express term of the contract, barring mistake or fraud…*",[18] my working legally and ethically are

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[14] Here V. K. Rajah JA is quoting Lightman J cited by Mr. Christopher Nugee QC.

[15] Here V. K. Rajah JA is quoting Tay Yong Kwang J.

[16] Here V. K. Rajah JA is quoting Rajendran J.

[17] Here V. K. Rajah JA is quoting the British Columbia Court of Appeal.

[18] Emphasis added by V. K. Rajah JA; here V. K. Rajah JA is quoting McLachlin CJSC.

"...*expressed* intent and...legitimate expectations [which the] courts seek to honour..." in my contract with NTU; my unlawful termination, extortion committed against me, and what appears to be abuse of Court process by the Defendant *is* fraud.

45 As I discuss in the 1st Affidavit by myself, the Defendant attempted to construe the argument, within the bounds of my employment contract, that there can be neither 'specific performance' nor substantial remedy of damages for breach of contract. However, through what appears to be an abuse of Court process, the Defendant conceals an admission of guilt, namely the illegality of the work I was ordered to engage in and extortion committed against me.

46 The remedy I prayed for is reinstatement or damages. Regarding reinstatement: "...Specific performance is a decree of the court which compels the defendant personally to do what he promised to do...the court has the discretion either to grant it or to leave the parties to their rights at law...[with] considerations such as (a) whether damages would be an adequate remedy; and (b) whether the person against whom the relief of specific performance is being sought would suffer substantial hardship...". I understood from the Registrar at the Employment Claims Tribunal that an order for reinstatement is very unlikely, and so presented my case to the Supreme Court – and *still* believed there is a possibility for conciliation under the guidance of the Court. The attempted trial by ambush, through abuse of Court process, would have been disappointing if it were not, now that I see past the obfuscation of documents and confusion, oppressive. Frankly, it is hard to believe. Indeed, I had not anticipated such tactics were possible, and so submitted the documents I did previously.

47 As the Court may see, from the day I *spoke* with the Chair of the School of Biological Sciences at NTU and until the present moment, I act reasonably and with due consideration to sensitivities. During this time, I hoped that, just maybe, NTU will be reasonable and somewhat fair, if without a measure of gracefulness. Instead, NTU responds with dismissal, intimidation, farcical emergencies, and a superiority that is pompous as it is incompetent – indeed, the same descriptive could be applied to the action in HC/SUM 2650/2021. As the Registrar at the Employment Claims Tribunal I had the honour of meeting said, I always 'extended the gentleman's hand'. As I replied to her at that time, 'all NTU has done is slap it away', and now I add that NTU slaps it away in a blustering, offensive, and fraudulent manner. From content in the Affidavit by Goh I discussed earlier, it is clear to me that NTU will not make due consideration for the fact that the present forum is either the highest or proximal to the highest in Singapore. The reason why I put reinstatement in my Writ and Statement of the Claim is decency and a belief in the decency of others.

48 "...While the subject matter of the contract may readily lend itself to an order of specific performance, the more pertinent issue in every case is whether specific performance constitutes the just and appropriate remedy in the circumstance...". In the Affidavit by Goh, reinstatement was argued to be legally unsustainable as well as inappropriate, and through an apparent abuse of the process of Court, an attempt was made by the Defendant to render any question of a 'just' remedy irrelevant. Since there are no pleadings by the Defendant – of what relevance is anything concerning illegal activity at NTU? Fortunately, the attempt at trial by ambush through abuse of Court process has now been brought to the Court's attention.

49 "...The next and perhaps the most pertinent issue is...damages in lieu of specific performance...that the plaintiff ought to have reasonably anticipated that the damages claimed would have to be quantified should his prayer for specific performance fail..." is given, since a figure for damages in lieu of specific performance is quoted in my Writ of Summons, and because NTU continue to 'slap my hand away', the Court may order the same – a hearing for assessment of damages would be arranged in a normal and just course of events. In an attempt at trial by ambush, I believe the Defendant may have "...noted that the crucial words 'to be assessed' were not pleaded and that no application had been made to effect an amendment...[and conveniently] the plaintiff had..." NOT "...been amply alerted to and apprised of..." how the Defendant may abuse Court process to deprive me of my rights and dodge liability. This was effected by the Defendant through a removal of "...the function of the pleadings [which] is to give fair notice of the case which as to be met and to define the issues which the court will have to decide on so as to resolve the matters in dispute between the parties...", namely unlawful termination and extortion, and which are admitted by the Defendant through that same removal.

50 Given that my "...claim was not in any way sprung upon the defendants, the failure to plead the words 'to be assessed' should not be construed as prejudicial...the words 'to be assessed' are in effect superfluous given that any claim for damages must necessarily be assessed...It follows that failure to apply for an amendment to include the words 'to be assessed' should not *per se* impair the discretion to order an assessment of damages...".

51 And so, I humbly pray that my case will be one "...amply illustrating the pragmatic judicial approach that eschews refusal of a claim purely on account of a technical error of pleading...", and not one where the Defendant apparently abuses "...procedural laws...to

such an extent that injustice is done...".[19] Indeed, "...Rules of court which are meant to facilitate the conduct of proceedings invariably encapsulate concepts of procedural fairplay. They are not mechanical rules to be applied in vacuum, devoid of a contextual setting...", let alone blatantly abused as the Defendant is apparently doing.[20]

52 My "...unwavering focus on...[my] preferred remedy of specific performance as opposed to damages..." is a sign of my goodwill, but is being used by the Defendant as material in the attempt at trial by ambush. Remedy claimed, as opposed to apparent illegal activity at NTU is, "...in this case an unfortunate and largely irrelevant distraction..." used by the Defendant in abuse of court process to rob me of my rights and dodge liability.

53 "...In addition, we note that in the interests of saving time and costs, it was eminently reasonable, in these proceedings, for the plaintiff to have focused first and foremost on establishing the questions of agency, liability, and the preferred remedy of specific performance rather than that of damages...While his failure to adduce evidence on damages may, on hindsight, not have been the most prudent course of action, it was not in any way *mala fide* or calculated to gain any undue advantage. It defies both fairness and logic to assert that the plaintiff in the present case is precluded from claiming damages even though he had specifically pleaded for it, simply because of the defendant's inchoate presumption that evidence on damages would be led at the same trial...", let alone a *trial without pleadings by the Defendant.*

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[19] Here V. K. Rajah JA is quoting Lai Kew Chai J.

[20] Here V. K. Rajah JA is quoting Chao Hick Tin JA.

"...The merits of the case must be fairly assessed. The plaintiff had timeously put forward both claims in one and the same cause of action, and had, as was perfectly entitled to, focused on the claim for specific performance at the trial..." as well as proceedings prior and "...assumed that the issue of damages would be dealt with at a later stage in terms of a separate assessment should his claim for specific performance be rejected...Even in the absence of the words 'to be assessed', the court's power to award and assess damages in lieu of specific performance cannot be seriously disputed...", and in the factual matrix of unlawful termination and extortion, as admitted by the Defendant.

No Tool of Convenience to Prevent Justice **in the judgement of The Honourable Justice Kan Ting Chiu SJ**

54 In the Affidavit by Goh, it was argued that my Statement of the Claim is frivolous and vexatious 'clearly and beyond argument'. In the 1st Affidavit by myself, I responded as I understood how matters stood at that time: that there is nothing frivolous and vexatious about my claim to unlawful termination, and any claim that it might be is, itself, vexatious.

55 I believe my Statement of the Claim could be deemed 'frivolous and vexatious' *only if* the issue of apparent illegal activity at NTU was inadmissible. Since the Defendant did not make any pleadings, the attempted trial by ambush may have proceeded with that assumption in mind. In other words, it *proceeds under the assumption that unlawful termination is not an issue.* But to strike out my action based on O. 18, r. 19(1)(b), as purported in SUMMONS UNDER O 18 R 19, the Defendant must have made pleadings. Instead, the Defendant did not make pleadings, and applied for a stay of those paramount court proceedings – in defiance of the Rules of Court as they relate to justice in my understanding.

56 On what assumptions could the Defendant have possibly assumed that Rules of Court would be suspended? The first assumption is that I would not notice and here the Defendant assumed incorrectly. The second is *invoking the inherent powers of the Court*, and now that the attempt at trial by ambush has been brought to the Court's attention, I humbly pray the Defendant will not by justified for making such an assumption.

57 Is there a precedent for O. 19, r. 19(1)(b) being used to invoke the inherent power or jurisdiction of the Court? I refer to the judgement by Kan Ting Chiu SJ in *Lee Siew Ngug and others v. Lee Brothers (Wee Kee) Pte Ltd and another* [2015] SGHC 106. That case and mine are similar in that the Defendant appears to be "...relying on the inherent power or jurisdiction of the courts and their contractual right..." and the application to strike out in that case also came under O. 18, r. 19(1)(b). I believe any similarity ends there. I would be very interested to know if there is a precedent for O. 18, r. 22.

58 Kan Ting Chiu SJ writes: "...the court's inherent jurisdiction or power is not a tool of convenience to turn to whenever there is a problem to overcome. It is involved sparingly when needed to do justice or to prevent injustice between parties...". Had the Defendant's attempt at trial by ambush not been noticed, is it possible that O. 92, r. 4 would have been invoked by the Defendant, to overcome the 'problem' of apparently illegal activity at NTU, and *prevent* justice by suspension (arguably, blatant disregard) of Rules of Court?

59 Quoting Chao Hick Tin JA in *Samsung Corp v Chinese Chamber Realty Pte Ltd and Others* [2003] SGCA 50: "...[W]here a matter of procedure is covered by the Rules of Court and those rules are clear, the court should be most circumspect in declining to follow those rules. Failure to follow the clear directions in the rules is tantamount to the court re-

writing the rules to fit the 'justice' of each case...". As I understand, a trial without pleadings is tantamount to denying my case any hope for justice.

60 As discussed above, I do not believe there is any *need* to override the express provisions of the Rules of Court.

Summary

61 I make this application pursuant to O. 19, r. 7(1) of the Rules of Court.

62 I certify that no defence has been served on me by the Defendant, Nanyang Technological University, within the period fixed by the Rules of Court for service of defence.

63 I humbly pray for costs to be awarded to me because the Defendant apparently abused Court process.

64 I humbly pray for an assessment of damages to be awarded to me because I suffered harm after NTU unlawfully terminated my contract and committed extortion against me. The amount stated on my Writ of Summons is S$ 3, 048, 000 (three million and forty-eight thousand Singaporean dollars).

How I worked out that HC/SUM 2640/2021 is an abuse of Court process

HC/SUM 2065/2018 may not be an originating summons nor a pleading

65 I believe O. 18, r. 19 may not be grounds in an application such as HC/SUM 2650/2021, because:

i. Pleadings were not made by NTU for HC/S 413/2021. In other words, no defence or defence and counterclaim was made by the Defendant.

ii. There is no evidence of an originating summons, or else as an originating summons SUMMONS UNDER O 18 R 19 is irregular.[21]

HC/SUM 2605/2021 may not be under Order 33

66 I believe a trial of HC/S 413/2021 may not proceed under Order 33 of ROC, since HC/SUM 2650/2021 should have informed me 'with sufficient particularity either in its heading or in its body the statute or rule of court under which the court is being moved'.[22]

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[21] Indeed, I believe HC/SUM 2650/2021 is in breach of one or more of the following O. 18, r. 19(3); O. 7, r. 2; O. 7, r. 3(1); O. 7, r. 3(2) / O. 6, r. 2(1)(c); O. 7, r. 6; O. 10, r. 5 / O. 10, r. 1; possibly O. 7, r. 4; and would also allow for dismissal under O. 12, r. 8.

[22] *Singapore Civil Procedure 2015 Volume 1,* at 77-78 (G.P. Selvam ed., Sweet & Maxwell Asia 2014)

In addition, I should have been informed with *sufficient particulars* the grounds for striking out.[23]

67 For the sake of argument, if we assume that the application HC/SUM 2650/2021 was made under O. 33, r. 2, then this is inconsistent with the order applied for in O. 33, r. 1(1) in SUMMONS UNDER O 18 R 19.

68 O. 33, r. 2 states that "...The Court may order *any question or issue arising in a cause or matter...*". But SUMMONS UNDER O 18 R 19 is neither a question nor an issue, as might have been the case if NTU, represented by Rajah & Tann, made an application under O. ~~24~~ 14, r. ~~2~~ 12 or O.24, r.2 for an order to determine an issue or question ~~before discovery~~. However, there is no statement of question(s) in SUMMONS UNDER O 18 R 19, and we cannot assume that 'issue' here refers to the issue of apparently farcical investigations at NTU which must not be discovered. In any case, O. 24., r. 2(1) is in reference to O. 24., r. 1 for an order of discovery and so appears to be inapplicable.

HC/SUM 2650/2021 may not be a summons for directions

69 If we assume that the application HC/SUM 2650/2021 was made under O. 33, r. 2, then it would have to conform with O. 25, r. 7. But if I were to implement O. 25, r. 7(1), as the party to whom this putative summons for directions was allegedly addressed, I would have to serve on NTU 'summons for specifying those orders and directions in so far as they

[23] For instance, *Punton v Ministry of Pensions,* [1963] 1 WLR 186, 192.

differ from the orders and directions asked for the summons' – but what could that be, other than an (interlocutory) application to strike out an (interlocutory) application to strike out?

70 I believe any claim to by the application HC/SUM 2650/2021 to Order 25 as some sort of summons for directions is untenable for one or more of the following reasons:

(a) It may not have been submitted pursuant to O. 25, r. 1(1), since pleadings were not made by the Defendant and no Court Order was issued to suspend the same, the pleadings could not have been deemed closed and within one month, and form 44 was not used.

(b) That the duty to make all interlocutory applications on summons for directions *per* O. 25, r. 7 is untenable in SUMMONS UNDER O 18 R 19 and/or apparently meaningless as outlined above.

(c) HC/SUM 2650/2021 was not made in Form 44, *per* O. 25, r. 1(1);

(d) HC/SUM 2650/2021 does not comply with any of the exceptions to O. 25, r 1(1) listed in O. 25, r. 1(2), *e.g.* non-compliance with O. 25, r. 1(2)(b) because it was not made under O. 18, r. 22 and no directions were given; non-compliance with O. 25, r. 1(2)(a) because I was not served with a defence; non-compliance with O. 24, r. 2 for reasons mentioned above; and so on.

(e) If HC/SUM 2650/2021 is in any or some way a summons for directions, then it may be dismissal pursuant to O. 25, r. 1(4).

71 The Memorandum of Appearance to Counterclaim, Defence, and Reply Affidavit I filed in Court do not constitute a waiver.

Mohamed Mustafa Mahmoud Helmy

(FIN No. G3363781R)

Self-employed researcher, MD, PhD

10 Jurong Lake Link, #15-39, Singapore 648131

Litigant-in-person

Affirmed by the abovenamed)

Mohamed Mustafa Mahmoud Helmy) M.Helmy

In the Supreme Court, Singapore)

On the 28th day of June)

Before me

COMMISSIONER FOR OATHS

COMMISSIONER FOR OATHS
Rageswari d/o Suppiah
CI2021/0017
1 Apr 2021 - 31 Mar 2022
COURT INTERPRETER, SINGAPORE

This is the exhibit marked ANG-1 referred to in the 2nd Affidavit of Mohamed Mustafa Mahmoud Helmy and affirmed before me this Monday 28 June 2021.

Before me

Commissioner for Oaths

COMMISSIONER FOR OATHS
Rageswari
d/o Suppiah
CI2021/0017
1 Apr 2021 - 31 Mar 2022
COURT INTERPRETER, SINGAPORE

Gmail

HC/S 413/2021 HC/SUM 2650/2021

Timothy Ang <timothy.ang@rajahtann.com> 8 June 2021 at 14:29
To: "helmy.m@protonmail.com" <helmy.m@protonmail.com>, Mohamed Helmy <helmy.m@gmail.com>
Cc: Wilson Zhu <wilson.zhu@rajahtann.com>, Anna Oh <anna.oh@rajahtann.com>

HC/S 413/2021

HC/SUM 2650/2021

Dear Sirs,

1. We refer to our email below.

2. In addition to the attachments in our email below, you may also retrieve a copy of our client's application in HC/SUM 2650/2021 via this link – https://transfer.rajahtann.com/message/e3YmAVyTU3dy3ZQKMua715

3. All our client's rights are reserved in the meantime

Senior Associate

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HC/S 413/2021 HC/SUM 2650/2021

Timothy Ang <timothy.ang@rajahtann.com> 8 June 2021 at 14:19
To: "helmy.m@protonmail.com" <helmy.m@protonmail.com>, Mohamed Helmy <helmy.m@gmail.com>
Cc: Wilson Zhu <wilson.zhu@rajahtann.com>, Anna Oh <anna.oh@rajahtann.com>

HC/S 413/2021

HC/SUM 2650/2021

Dear Sirs,

1. As you are aware, we act for Nanyang Technological University.

2. By way of service, we attach herewith a copy of our client's application in HC/SUM 2650/2021. Please note that a hearing date is fixed on 23 June 2021, at 9am.

3. All our client's rights are reserved in the meantime.

Timothy Ang
Senior Associate

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RAJAH & TANN ASIA
Cambodia | China | Indonesia | Laos | Malaysia | Myanmar | Philippines | Singapore | Thailand | Vietnam

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2 attachments

2021.06.08 - Summons for striking out.pdf
88K

2021.06.08 - Affidavit (Goh Ke Min Kevin).pdf
18684K

This is the exhibit marked ANG-2 referred to in the 2nd Affidavit of Mohamed Mustafa Mahmoud Helmy and affirmed before me this Monday 28 June 2021.

Before me

Commissioner for Oaths

COMMISSIONER FOR OATHS
Rageswari d/o Suppiah
CI2021/0017
1 Apr 2021 – 31 Mar 2022
COURT INTERPRETER, SINGAPORE

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

Case No.: HC/S 413/2021
Sub Case No.: HC/SUM 2650/2021
Filed: 08-June-2021 11:11 AM
Hearing Date : 23-June-2021
Hearing Time : 9:00 AM
Hearing Type : OS & Summons - General
Attend Before: Registrar

Between

MOHAMED MUSTAFA MAHMOUD HELMY
(FIN No. G3363781R)

...Plaintiff(s)

And

NANYANG TECHNOLOGICAL UNIVERSITY
(Singapore UEN No. 200604393R)

...Defendant(s)

SUMMONS UNDER O18 R 19

To: Plaintiff
MOHAMED MUSTAFA MAHMOUD HELMY
10 JURONG LAKE LINK #15-39 LAKE GRANDE Singapore 648131
Mob No.: 83555817
Email: helmy.m@protonmail.com

Let all parties concerned attend before the Court on the date and time to be assigned for a hearing of an application by the Defendant for the following orders:

1. That the Plaintiff's claim against the Defendant in HC / S 413 / 2021 be wholly struck out pursuant to Order 18 Rules 19(1)(a), (b) and/or (d) of the Rules of Court;
2. That the timelines for the Defendant to file its Defence be held in abeyance pending the resolution of this application;
3. Costs of and incidental to this application be paid by the Plaintiff to the Defendant; and
4. Such further or other order(s) as the Honourable Court deems fit.

The grounds of the application are:

1. Elaborated in the 1st Affidavit of Goh Ke Min Kevin dated 7 June 2021 filed herein.

Issued by :

Solicitor(s) for the Defendant(s)

RAJAH & TANN SINGAPORE LLP
9 Straits View #06-07 Marina One West Tower

Singapore 018937
Tel No.: 65353600
Fax No.: 62259630
Email: info@rajahtann.com
File Ref No.: WZR/TWK/ 292401/64
Solicitor in charge: 1. ZHU MING-REN WILSON,
2. TIMOTHY ANG WEI KIAT (HONG WEIJIE)

TEH HWEE HWEE
REGISTRAR
SUPREME COURT
SINGAPORE