

# TEE SEONG BOON v TAN CHOON NAN

CaseAnalysis  
| [2025] MLJU 538

## Tee Seong Boon v Tan Choon Nan [2025] MLJU 538

Malayan Law Journal Unreported

HIGH COURT (KUALA LUMPUR)

AKHTAR TAHIR J

CIVIL APPEAL NO WA-24NCVC-3366-09 OF 2024

3 March 2025

*Venothani a/p Raja Gopal (with Divesh Ramani) (David Gurupatham dan Koay) for the plaintiff.  
Muhammad Amir Firdaus (with Ahmad Hafiz Zubir) (Ghaffar, Hazim, Afiq & Na'im) for the defendant.*

### Akhtar Tahir J:

#### JUDGEMENT

##### Introduction

[1] The Plaintiff applied by way of this Originating Summons (“OS”) under section 327(1) of the National Land Code to remove the private caveat lodged by the Defendant on a land held under a Grant 75580, Lot 58570 Mukim Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur (“the property”).

[2] Section 327(1) of the National Land Code provides that:

(1) Any person or body aggrieved by the existence of a private caveat may at any time apply to the Court for an order for its removal, and the Court (acting, if the circumstances so require, ex parte) may make such order on the application as it may think just.

##### Brief facts

[3] The facts contained in the affidavit in support filed by the Plaintiff and the opposing affidavit filed by the Defendant indicate that the registered owner of the property had entered into a sale and purchase agreements with both the Plaintiff and the Defendant for the property in question.

[4] The Plaintiff had entered into the sale and purchase agreement with the registered owners on 26/4/2024 whereas the Defendant had entered into the sale and purchase agreement 1 day earlier on 25/4/2024. Both the Plaintiff and the Defendant had also executed the Form 14A for the transfer of the property.

##### Substantial dispute of facts

[5] In this case both the Plaintiff and the Defendant had adduced the necessary documents to support their claim of beneficial ownership of the property. The sale and purchase agreement as well as the executed transfer forms established a beneficial interest over the property for both the Plaintiff and the Defendant.

[6] The only party who can throw a light on this competing claims for the property by the Plaintiff and the Defendant are the registered owners of the properties. Unfortunately the Plaintiff failed to add the registered owners as a party to this suit or at least obtain affidavits in support for his application.

[7] With the likelihood of the element of fraud and deception in the sale of the property by the registered owners, the Court questioned whether the Plaintiff's claim is more suitable to be commenced by a Writ action or by way of OS as there are substantial dispute of facts which require oral testimony?

### **Commencement of a civil proceeding**

[8] In determining the proper manner in which this case should have commenced the Court looked at the Rules of Court 2012 ("the Rules") which lay down the rules on commencement of civil proceedings.

[9] The relevant provision is Order 5 rules 1 to 4 which stipulates as follows:

1. Mode of beginning civil proceedings (O. 5 r. 1)
2. Except as provided in these Rules and subject to Order 94, rule 2, proceedings shall be commenced either by originating summons or by writ.
3. [O. 5 r. 1 Subs. PU(A) 232/2012:r.3]
4. Proceedings which shall be begun by writ (O. 5 r. 2)
5. Proceedings in which a substantial dispute of fact is likely to arise shall be begun by writ.
6. Proceedings which shall be begun by originating summons (O. 5 r. 3)
7. Proceedings by which an application is to be made to the Court or a Judge thereof under any written law shall be begun by originating summons.
8. Proceedings which may be begun by writ or originating summons (O. 5 r. 4)
9. Proceedings-
  - (a) in which the sole or principal question at issue is or is likely to be one of the construction of any written law or of any instrument made under any written law, or of any deed, will, contract or other document, or any other question of law; or
  - (b) in which there is unlikely to be any substantial dispute of fact, are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 81 or for any other reason considers the proceedings are more appropriate to be begun by writ.

[10] In this case the Court rules that the competing claims between the Plaintiff and the Defendant gives rise to substantial dispute of facts. This especially so as the Defendant had entered the sale and purchase agreement with the registered owners 1 day before the Plaintiff and therefore had acquired a prior beneficial interest.

[11] This dispute can only be resolved by commencing the proceeding by way of a Writ whereby witnesses can be called who can be examined under oath in Court. The Court views affidavit evidence to be insufficient as well as unsuitable to resolve the dispute at hand.

[12] The Court is aware of Order 28(8) of the Rules empowers the Court to convert an OS into a Writ. This provision states as follows:

8. Continuation of proceedings as if cause or matter begun by writ (O. 28 r. 8)

(1) Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that pleadings shall be delivered or that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

[13] In this case the Court is of the view that the discretion to convert the OS to Writ cannot be applied in this case as this dispute necessitates that the registered owners be also made a party to the suit. Conversion from OS to Writ alone is insufficient to resolve the dispute.

### **Conclusion**

**[14]** In the upshot the Court thought it fit to dismiss the OS with a cost of RM3,000 rather than convert it into a Writ.

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