IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 27

Originating Summons No 2 of 2022 (Summons No 4 of 2022)

Between

(1) Shee See Kuen
(2) Joveen Miu Harn Peng
(3) Ng Seng Yu
(4) Ng Ah Moi
(5) Leong Churn Meng (Liang Junming)

… *Applicants*

And

PT Trikomsel Oke Tbk

… *Respondent*

Originating Summons No 3 of 2022 (Summons No 5 of 2022)

Between

(1) Leong Churn Meng (Liang Junming)
(2) Ong Chong Hock Joseph
(3) Chin Mui Leng
(4) Tan Guan Lee Company Ltd
(5) Ng Seng Yu
(6) Tong Sau Kwan
(7) William Koh Chee Wei
(8) Lin Zhuo @ Lin Ning
(9) Yeo Yu Kin

… *Applicants*

And

PT Trikomsel Oke Tbk

… *Respondent*

JUDGMENT

[Civil Procedure — Service — Leave for service out of jurisdiction — Transfer of appeal]

Shee See Kuen and others
v
PT Trikomsel Oke Tbk and another matter

[2022] SGCA 27

Court of Appeal — Originating Summonses Nos 2 and 3 of 2022
(Summonses Nos 4 and 5 of 2022)
Judith Prakash JCA
21 February 2022

29 March 2022 Judgment reserved.

Judith Prakash JCA:

1 CA/SUM 4/2022 ("SUM 4") and CA/SUM 5/2022 ("SUM 5") are *ex parte* applications for leave to serve the Originating Summonses in CA/OS 2/2022 ("OS 2") and CA/OS 3/202 ("OS 3") out of jurisdiction on PT Trikomsel Oke Tbk ("PT Trikomsel"). OS 2 and 3 are applications to this court seeking the transfer of AD/CA 4/2021 ("AD 4") and AD/CA 5/2021 ("AD 5") from the Appellate Division of the High Court ("Appellate Division") to the Court of the Appeal. An interesting question arises as to whether it is necessary for this court to grant fresh leave for service out of jurisdiction if the court below had granted the same in the suits from which AD 4 and 5 arise.

Facts

2 PT Trikomsel is the respondent in OS 2 and 3 and AD 4 and 5. It is an Indonesian company with its address in Indonesia. The applicants herein were

the plaintiffs in HC/S 564/2018 ("Suit 564") and HC/S 565/2018 ("Suit 565") in which PT Trikomsel was one of the defendants. Interlocutory judgment for damages to be assessed was entered against PT Trikomsel in both suits. Among other things, the judgments made it liable for fraudulent misrepresentations contained in offering circulars for two tranches of "Senior Fixed Rate Notes" which the applicants had purchased. Damages then had to be assessed.

3 By the time of the assessment of damages hearings, the writs of summons against the other defendants in the suits had either expired without being served or had been set aside. The only remaining defendant in both suits was PT Trikomsel. At the assessment hearings, the applicants were awarded damages on the normal compensatory basis against PT Trikomsel. The applicants were dissatisfied, however, as they had failed to obtain punitive and aggravated damages. The High Court Judge ("Judge") rejected the latter claims as they were not specifically pleaded. AD 4 and AD 5 are the applicants' appeals against the Judge's dismissal of their claims for punitive and aggravated damages.

4 The sequence of events that gave rise to SUM 4 and 5 is as follows. OS 2 and OS 3 (collectively, "the Transfer Applications"), were filed on 26 January 2022. The applicants seek to transfer the appeals to this court on the basis that a decision of this court, *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd* [2021] SGCA 111 ("*Noor Azlin*"), is implicated in the appeals (see s 29D(2)(*c*)(ii) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) read with O 56A r 12(3)(*d*) of the Rules of Court (2014 Rev Ed) ("ROC")). Briefly, the applicants seek to persuade this court to reverse its holding in *Noor Azlin* that punitive and aggravated damages must be specifically pleaded. By letters dated 27 January 2022 ("27 Jan letters") from the Registry of the Supreme Court, PT Trikomsel was directed to file its papers in the

Transfer Applications by 7 February 2022. However, at a Case Management Conference on 8 February 2022 it came to light that the applicants had not served the Transfer Applications on PT Trikomsel. In addition, it appears that the 27 Jan letters were dispatched, but not to PT Trikomsel's last known address in Central Jakarta ("Address 2"). The 27 Jan letters were only sent to PT Trikomsel's previous address in Jakarta ("Address 1"). This was because Address 1 was the address stated by the applicants in the Transfer Applications. In a letter to the court dated 10 February 2022, the applicants claimed that Address 1 was stated in the Transfer Applications because they had learnt that PT Trikomsel had changed its registered address to Address 2 only after issuing those proceedings.

5 Pertinently, for the purpose of this judgment, the applicants were granted leave to serve the Writs of Summons ("Writs") in Suits 564 and 565 on PT Trikomsel at Address 1 in January 2019. Further, the Memorandum of Service dated 30 May 2019 in both suits shows that the Writs were served on PT Trikomsel at *Address 2*.

SUM 4 and 5

6 On 21 February 2022, the applicants filed SUM 4 and 5 to seek leave to serve the Transfer Applications on PT Trikomsel out of the jurisdiction at Address 2. An affidavit in support of the leave applications was filed by Leong Churn Meng (Liang Junming) ("Leong"), the fifth applicant in SUM 4 and the first applicant in SUM 5. Leong states that the applications in SUM 4 and 5 are made under O 11 rr 1(*f*)(i), 1(*f*)(ii) and/or 1(*p*) of the ROC. These provisions state as follows:

ORDER 11

SERVICE PROCESS OUT OF SINGAPORE

Cases in which service out of Singapore is permissible (O. 11, r. 1)

1. Provided that the ***originating process*** does not contain any claim mentioned in Order 70, Rule 3(1), service of an originating process out of Singapore is permissible with the leave of the Court if in the ***action*** —

…

(*f*) (i) the claim is founded on a tort, wherever committed, which is constituted, ***at least in part, by an act or omission occurring in Singapore***; or

(ii) the claim is wholly or partly founded on, or is for the recovery of damages in respect of, ***damage suffered in Singapore*** caused by a tortious act or omission wherever occurring;

…

(*p*) the claim is founded on a ***cause of action arising in Singapore***;

…

[emphasis in original in bold; emphasis added in bold italics]

Issues in SUM 4 and 5

7 Preliminarily, I should clarify that the applicants were right to commence the Transfer Applications by originating summonses. Reading O 56A r 12(5) together with O 57 r 16(1) ROC, applications to this court "shall be made either by originating summons or, in an appeal ***before the Court of Appeal***, by summons." [emphasis added]. For reference, these provisions state that:

Transfer of appeal under section 29D(1)(*a*) of Supreme Court of Judicature Act (O. 56A, r. 12)

…

(5) An application under section 29D(2)(*c*)(ii) of the Supreme Court of Judicature Act must be made in accordance

> with Order 57, Rule 16, and must be filed and served no later than 14 days after the date of service of the Respondent's Case.
>
> …
>
> **Applications to Court of Appeal (O. 57, r. 16)**
>
> **16.**—(1) Except where this Order provides otherwise, every application to the Court of Appeal shall be made either by originating summons or, in an appeal before the Court of Appeal, by summons.

8 Before the Transfer Applications are granted (if at all), AD 4 and 5 are not before this court. Pursuant to O 57 r 16(1) ROC, the Transfer Applications had to be commenced by way of originating summonses. An originating summons was also used to bring the transfer applications in *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd* [2021] 2 SLR 440, *Wei Fengpin v Raymond Low Tuck Loong and others* [2021] SGCA 115, *Choo Cheng Tong Wilfred v Phua Swee Khiang and another* [2022] SGCA 8 and *Milaha Explorer Pte Ltd v Pengrui Leasing (Tianjin) Co Ltd* [2022] SGCA 9.

9 However, it bears emphasising that the High Court had already granted leave for the service of the Writs out of jurisdiction and such service had been duly effected. In these circumstances, the issues that arise for my determination are:

(a) Whether leave to serve out of jurisdiction must be separately granted by this court in respect of the Transfer Applications when leave for service out of jurisdiction of the originating process on PT Trikomsel had been granted by the court below ("Issue 1")?

(b) If (a) is answered in the affirmative, whether the requirements for obtaining leave for service out of jurisdiction have been met ("Issue 2")?

Issue 1: Is leave for service out of jurisdiction of the Transfer Applications needed?

10 The starting position is that service of an originating process out of Singapore is permissible with the leave of court: O 11 r 1(1) ROC. The requirements for an application for such leave are set out in O 11 r 2 ROC. In contrast, no separate leave is required to serve "any summons, notice or order issued, given or made in any proceedings" in which "leave for service of ***the originating process*** has already been granted" [emphasis added]: O 11 r 8(1) ROC. For reference, O 11 r 8(1) ROC reads as follows:

> **Service of summons, notice or order out of Singapore (O. 11, r. 8)**
>
> **8.**—(1) Subject to Order 69, Rule 10, service out of Singapore of any summons, notice or order issued, given or made in any proceedings is permissible only with the leave of the Court but leave *shall not be required in any proceedings in which leave for service of the originating process has already been granted.*
>
> [emphasis in original in bold; emphasis added in italics]

11 The question is whether, for the purpose of the Transfer Applications, "the originating process" in O 11 r 8(1) ROC refers to the Writs and not to OS 2 and 3. If it refers to the Writs, then this court need not grant new leave for service out of jurisdiction.

12 I start by setting out the definitions of some key terms in O 1 r 4(1) of the ROC:

> (a) "originating process" means a writ of summons or an originating summons;
>
> (b) "originating summons" means every summons for the ***commencement of proceedings*** other than a writ of summons; and

> (c) "summons" means every summons in a pending cause or matter. Jeffrey Pinsler in *Singapore Court Practice* (LexisNexis, 2022) at para 1/4/10A states that such summonses are made "in pending proceedings and denotes an interlocutory proceeding".

13 In my view, OS 2 and 3 are not in substance originating processes. They should be deemed to be summonses which were made in "a pending cause or matter". As such, pursuant to O 11 r 8(1) ROC, given that leave to serve the Writs out of jurisdiction was granted in Suits 564 and 565, the applicants need not obtain fresh leave to serve OS 2 and 3 on PT Trikomsel in Indonesia. I now give my reasons.

14 First, not all originating summonses are originating processes. If after the disposition of the originating summons, there is still something left to try as between the parties, then the application whilst commenced by originating summons is interlocutory in nature. I derive this proposition from *Jurong Shipyard Pte Ltd v BNP Paribas* [2008] 4 SLR(R) 33 ("*Jurong Shipyard*").

15 In *Jurong Shipyard*, BNP Paribas ("BNPP") had issued a statutory demand for an alleged debt to Jurong Shipyard Pte Ltd ("JSPL"). JSPL took out an originating summons for an injunction to restrain BNPP from commencing winding-up proceedings pursuant to the statutory demand. The issue was whether JSPL was entitled to rely on hearsay evidence from JSPL's then-Chief Financial Officer to support its application for an injunction. Order 41 r 5 of the Rules of Court (2006 Rev Ed) ("ROC (2006)") expressly permitted reliance on hearsay evidence for "interlocutory proceedings":

> **Contents of affidavit (O. 41, r. 5)**
>
> …

> (2) An affidavit sworn for the purpose of being used in *interlocutory proceedings* may contain statements of information or belief with the sources and grounds thereof.
>
> [emphasis in original in bold; emphasis added in italics]

16 The question before Lee Seiu Kin J, therefore, was whether the proceedings commenced by originating summons were interlocutory in nature. Lee J answered this question in the affirmative (at [83]). He said as follows:

> 83 In my view, the nature of the present originating summons is ***interlocutory***. … in the present originating summons, it is ***not for me to decide the merits of the parties' arguments***; all I need to decide is whether JSPL has raised triable issues in respect of the alleged debt. If I should decide that there are triable issues, BNPP will have to bring an action against JSPL for the alleged debt and the merits of the parties' arguments will be decided at trial. If I should decide that there are no triable issues, BNPP will still have to file an application for winding up and the merits of the parties' arguments will again be decided in the winding-up proceedings. Whichever way it goes, my decision ***will not mean there is 'nothing left to try'***: see Stephenson LJ's reasoning in [79] above – the ***merits of the parties' arguments remain undetermined***.
>
> 84 … if [JSPL] had waited for an application for winding up to be presented and then applied for a stay on the same ground of a disputed debt, that application would have had to be brought in the form of a summons and would have been interlocutory in form.
>
> [emphasis added in bold italics]

17 Lee J further noted that: (a) there was nothing expressly precluding the extension of the term "interlocutory proceeding" in O 41 r 5(2) ROC (2006) to applications commenced by originating summons; and (b) policy and the general justice of the case weighed in favour of the application's inclusion in "interlocutory proceedings" (at [85]). Namely, the circumstances were of great urgency, evidence was not obtainable at short notice, and thus the court was

willing to act upon imperfect evidence to prevent irremediable mischief (at [86]–[87]).

18 In my judgment, the broader proposition in *Jurong Shipyard* applies equally under O 11 r 8(1) read with O 1 r 4(1) ROC to determine whether an originating summons is in substance a summons. Namely, an originating summons is interlocutory in nature if it is not intended to dispose of the merits of the parties' claims. However, I adopt this principle for reasons that are different to those of Lee J. This is because O 41 r 5(2) ROC (2006) (which is found in identical form in the current ROC) and O 11 r 8(1) ROC have different objects. As Lee J intimated, O 41 r 5(2) ROC (2006) exists to allow courts to act on imperfect evidence in circumstances of great urgency to prevent the infliction of irremediable prejudice. In contrast, O 11 r 8(1) aims to eliminate duplicative applications for leave for service out of jurisdiction. Before O 11 r 8(1) in its current form came into force on 1 February 1992, the equivalent provision of the Rules of the Supreme Court 1970 (1990 Rev Ed), O 11 r 9(4), did not address the problem of duplicative applications. It simply stated as follows:

> Service out of jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court.

As this court noted in *Burgundy Global Exploration Corp v Transocean Offshore International Ventures Ltd and another appeal* [2014] 3 SLR 381, the reforms to the civil procedure rules from 1991 to 1993 aimed to expedite court processes and increase efficiency. In this context, Sundaresh Menon CJ concluded that O 11 r 8(1) ROC achieved the following effect (at [105]):

> … where leave to serve the originating process on a defendant abroad had ***already been granted***, the issue of whether this was an appropriate case to exercise extraterritorial jurisdiction over that particular defendant would have already been

> considered, and it would be ***unnecessary and inefficient*** to require leave to be sought repeatedly for overseas service of every subsequent document in the proceedings.
>
> [emphasis added in bold italics]

19 Put another way, if: (a) the originating summons is *interlocutory* and hence ancillary to a pending cause or matter ("underlying proceeding"); and (b) leave for service out of jurisdiction has been granted in respect of the originating process in the *underlying proceeding*, then Singapore's courts have already determined that it is appropriate to assume personal jurisdiction over the foreign party. This is because in analysing the requirements for granting leave for overseas service, the lower court would have satisfied itself that it is appropriate for Singapore's courts to exercise personal jurisdiction in that case: see *Lee Hsien Loong v Review Publishing Co Ltd and another and another suit* [2007] 2 SLR(R) 453 at [23]. These requirements are: (a) the claim must come within one of the heads of claim in O 11 r 1 of the ROC; (b) the claim must have a sufficient degree of merit; and (c) Singapore must be the *forum conveniens*: *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 at [26].

20 Accordingly, it is superfluous for a higher court to re-analyse the requirements for granting leave for overseas service. To decide otherwise would defeat the object of O 11 r 8(1) ROC. This conclusion is implicitly supported by the learned authors in *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021). It is stated at para 11/8/1 that O 11 r 8(1) ROC "relate[s] to service of other process, ***originating or interlocutory***, on persons, such as third parties" [emphasis added]. Hence, the purpose of O 11 r 8(1) ROC is best promoted by holding that applications which are, in form, commenced by an originating summons but are in substance interlocutory summonses come within the ambit of the provision.

21 For completeness, *Syed Suhail bin Syed Zin and others v Attorney-General and another* [2021] 4 SLR 698 ("*Syed Suhail*") also demonstrates that not all originating summonses are originating processes which give rise to new civil proceedings. There, See Kee Oon J held that applications for pre-action discovery and pre-action interrogatories under O 24 r 6(1) and O 26A r 1(1) ROC respectively, brought by originating summonses, did *not* commence "civil proceedings" within the meaning of ss 2(2) and 34 of the Government Proceedings Act (Cap 121, 1985 Rev Ed). One reason cited was that such applications were not even "interlocutory" in nature, but were "limited" applications filed for the specific purpose of obtaining information: at [33]. Hence, *Jurong Shipyard* and *Syed Suhail* caution against the assumption that all originating summonses are originating processes.

22 In the present case, I hold that OS 2 and 3 are indeed interlocutory in nature. The Transfer Applications only raise the administrative or procedural question of which court should hear the substantive appeals in AD 4 and 5. Deciding the Transfer Applications will in no way dispose of the merits of the appeals. The appeals relate to the separate question of whether the applicants are entitled to claim punitive and aggravated damages without specifically pleading such damages. Applying O 11 r 8(1) ROC, as leave was granted to serve the Writs in both suits on PT Trikomsel in Indonesia, this court need not grant fresh leave for overseas service of OS 2 and 3 on the same party in Indonesia.

23 Second, and however, there remains the conceptual question of what the "pending cause or matter" is. This question arises as a "summons" is defined in O 1 r 4(1) as a summons in a "pending cause or matter". It appears necessary for me to hold that Suits 564 and 565, AD 4 and 5 and OS 2 and 3 are conceptually a single set of proceedings. If so, the proceedings commenced by

the Writs are still pending. Any application made in these proceedings, including the Transfer Applications, then takes the benefit of the leave for service out of jurisdiction granted in Suits 564 and 565.

24 For the avoidance of doubt, I do not think that there is a substantive difference between the words "proceedings", "cause" or "matter" which are used in the definitions of "originating summons" and "summons" in O 1 r 4(1) ROC. As Lord Selborne LC stated in *Sidney Faithorne Green (Clerk) v Lord Penzance and others* (1881) App Cas 657, "cause" refers to "any suit, action, matter, or other similar proceeding competently brought before and litigated in a particular Court" (at 671) (see also *Stroud's Judicial Dictionary of Words and Phrases* vol 3 (Daniel Greenberg ed) (Sweet & Maxwell, 10th Ed, 2020) at p 380; David Hay, *Words and Phrases Legally Defined* vol 1 (LexisNexis, 5th Ed, 2018) at p 429). I therefore do not distinguish between these words in the analysis that follows.

25 I come, therefore, to the question of whether an appeal, a transfer application and the first instance suit are in substance the same proceedings. The authorities are divided. In my view, the answer to this question is dependent on the legal and factual context in which it arises. I provide some examples.

26 In the context of a committal for contempt of court, it was held that proceedings in relation to which the contemptuous act was done were pending until the *appeal* had been dismissed or the time for appeal had elapsed. In *Delbert-Evans v Davies and Watson* [1945] 2 All ER 167, two newspapers had, after a criminal trial and before it was known whether there would be an appeal, published accounts of the alleged criminal activities of the accused. Humphreys J held that (at 174):

> … newspapers which choose to publish or editors of newspapers who choose to publish comments upon a criminal case while it is still ***pending***, and a criminal case is still pending while the time for appealing has not run out at least, and most assuredly in the case of a man ***who is appealing or is proposing to appeal*** — if they choose to comment on the facts of the case other than upon matters which have been given in evidence in open court, they do so at their peril.
>
> [emphasis added in bold italics]

27 In contrast, for the purpose of assessing costs in civil proceedings, appeals are regarded as conceptually distinct from the first instance proceedings. In *Hawksford Trustees Jersey Ltd v Stella Global UK Ltd and another (No 2)* [2012] EWCA Civ 987, Rix LJ observed that (at [58]):

> In sum, the broad interpretation of the word 'proceedings' [under s 29 of the Access to Justice Act 1999 (c 22) (UK)] advocated by the Respondent is unnecessary to achieve the object of the statute, runs counter to a ***well known distinction***, made in the context of costs liability, between costs of trial and costs of appeal where trial and appeal are spoken of as ***different proceedings***, leads to a result which was clearly not contemplated by the ancillary practice directions, and undermines the fairness of the regime.
>
> [emphasis added in bold italics]

28 Further, T S Sinnathuray J in *Goh Teng Hoon and others v Choi Hon Ching* [1985–1986] SLR(R) 869 held that an appeal from the District Court to High Court is not a proceeding "pending" in the District Court. This pronouncement was made in the context of interpreting the words "proceedings pending" in a transitional provision in the Subordinate Courts Rules 1986 ("1986 Rules"). If there were proceedings pending before the District Court, the appellants would have to pay security for costs of $1,000 under the Subordinate Courts Rules 1970. If not, they would have to pay $1,500 under the 1986 Rules. Sinnathuray J held that (at [9]):

> … once a District Court has given judgment, except for matters relating to execution of the judgment, the District Court is

> *functus officio* and there can be no issue before it on which it had earlier exercised its jurisdiction. It follows that an appeal from the District Court to the High Court, is not a proceeding 'pending' in the District Court under the transitional provision of the 1986 Rules. I accordingly rule that in this case the 1986 Rules apply and the security for costs is $1,500 …

29 In the final analysis, "proceedings", "cause" or "matter" are each capable of a variety of meanings. Their proper meanings in different situations should be ascertained in the statutory context and the object(s) of the legislation in which they are used. This observation was aptly made in relation to the word "proceeding" by Smart J in *Blake v Norris* (1990) 20 NSWLR 300 at 306. There, Smart J was interpreting a power under the Jurisdiction of Courts (Cross-Vesting) Act 1987 (Vic) to transfer a "proceeding" which was "pending" to certain interstate or federal courts for determination (see also David Hay, *Words and Phrases Legally Defined* vol 2 (LexisNexis, 5th Ed, 2018) at p 2458). Thus, much will depend on the context of the particular case.

30 In my view, the object of O 11 r 8(1) ROC compels the following conclusion. For the purpose of O 11 r 8(1) ROC, the first instance trial/application, appeal and any transfer application arising from the appeal are a single set of proceedings. Accordingly, parties need only apply for leave for service out of jurisdiction *once*. If it were otherwise, and the Transfer Applications were not deemed to be summonses in a pending cause or matter, multiple courts will be applying the *same* principles on leave for service out of jurisdiction to the *same* facts. Not only are such duplicative applications a strain on judicial resources, the spectre of inconsistent results spells intractable practical difficulties.

31 In these premises, the Transfer Applications are substantively summonses in a pending cause or matter, *viz*, the appeal of the applicants'

claims in the suits. No new leave for service out of jurisdiction needs to be granted. Issue 2 is hence moot.

Correction of Address 1 to Address 2

32 Before concluding, I note that leave was granted in the Suits to serve the Writs at Address 1. The relevant orders in Suits 564 and 565 are HC/ORC 278/2019 and HC/ORC 279/2019 respectively ("the Leave Orders"). Para 1(c) of the Leave Orders stipulate that PT Trikomsel is to be served at Address 1. Given recent developments (see [4] above), I exercise the court's inherent power to vary the Leave Orders to grant leave to serve PT Trikomsel at Address 2 in Indonesia.

Conclusion

33 For all the foregoing reasons, I make no orders on both prayers in SUM 4 and 5 and no orders as to costs.

Judith Prakash
Justice of the Court of Appeal

Goh Kok Leong, Daniel Tan An Ye and Henry Li-Zheng Setiono (Ang & Partners) for the applicants in CA/SUM 4/2022 and CA/SUM 5/2022;
The respondents in CA/SUM 4/2022 and CA/SUM 5/2022 absent and unrepresented.