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

[2023] SGHC(A) 36

Originating Application No 46 of 2023

Between

Chan Pik Sun

… *Applicant*

And

(1) Wan Hoe Keet (Wen Haojie)
(2) Ho Sally
(3) Ho Hao Tian Sebastian
(4) Strategic Wealth Consultancy Pte Ltd

… *Respondents*

In the matter of Suit No 806 of 2018

Between

Chan Pik Sun

… *Plaintiff*

And

(1) Wan Hoe Keet (Wen Haojie)
(2) Ho Sally
(3) Ho Hao Tian Sebastian
(4) Strategic Wealth Consultancy Pte Ltd

… *Defendants*

JUDGMENT

[Civil Procedure — Costs — Whether the lower court ordered costs to be fixed or assessed for the purpose of starting the time for filing of an appeal]
[Civil Procedure — Appeals — Leave — Whether applicant must have satisfied the usual grounds for obtaining permission to appeal on costs when such appeal may be heard together with the appeal on the merits of the claims]

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v
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Appellate Division of the High Court — Originating Application No 46 of 2023
Woo Bih Li JAD and Kannan Ramesh JAD
9 October 2023

17 November 2023

Woo Bih Li JAD (delivering the judgment of the court):

1 In AD/OA 46/2023 ("the PTA Application"), Ms Chan Pik Sun ("the Applicant") seeks permission to appeal against the entire decision of the judge in the General Division of the High Court ("the Judge") on the costs of HC/S 806/2018 ("Suit 806") issued on 11 September 2023, except for that part of the decision allowing costs of $59,040.41 pursuant to the parties' agreement.[1] The Judge awarded the Respondents costs and disbursements totalling $374,365.22 which included the agreed sum of $59,040.41 for which the Applicant does not intend to appeal.[2] For ease of reference, this decision of the Judge on the quantum of costs will be hereafter referred to as "the Costs Decision".

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1 Applicant's Written Submissions dated 25 September 2023 ("AWS") at p 2.

2 AWS at p 2.

2 The first to fourth respondents in the PTA Application are Mr Wan Hoe Keet (Wen Haojie), Ms Ho Sally, Mr Ho Hao Tian Sebastian, and Strategic Wealth Consultancy Pte Ltd, respectively. For ease of reference, they will be collectively referred to as "the Respondents".

Background

3 On 14 April 2023, the Judge issued his decision in which he dismissed all the claims of the Applicant against the Respondents in Suit 806. He also awarded the Respondents "costs to be assessed, if not agreed. Unless the parties agree on costs, they shall put in their costs submissions … within three weeks" (see *Chan Pik Sun v Wan Hoe Keet and others* [2023] SGHC 96 at [206]–[207]). The decision of the Judge on the merits of the claims and on the Applicant's liability to the Respondents for costs will be referred to as "the Main Decision".

4 Thereafter, the Applicant filed an appeal on 11 May 2023, *ie*, AD/CA 50/2023 ("AD 50"), against the whole of the Main Decision. This would cover the Judge's decision on the Applicant's claims as well as her liability for costs, but not the quantum of costs which had not yet been determined.

5 The lawyers for the Respondents wrote to the court on 17 May 2023 to say that AD 50 was premature because the time for filing of an appeal had not begun to run as the parties had not agreed and the Judge had not determined the quantum of costs.[3] The lawyers for the Applicant wrote to court on 18 May 2023 expressing their disagreement on the basis that the Judge had said that costs

[3] AWS at p 5 para 5; Respondents' Written Submissions ("RWS") at p 6 para 5.

were "to be assessed".[4] The Applicant took the position that as O 19 r 4(1) of the Rules of Court 2021 ("ROC 2021") provides that "[u]nless the Court otherwise orders, the time for filing of an appeal … does not start to run until after the lower Court has heard and determined all matters in the trial, including costs" and under O 19 r 4(2), "… a direction by the lower Court that costs are to be assessed is to be regarded as a determination on the issues of costs". Accordingly, since the Judge had said that the costs were to be assessed, the time for the filing of an appeal had started to run from 14 April 2023.[5]

6 At a case management conference ("CMC") on 6 July 2023, an Assistant Registrar informed the parties that the Judge was of the view that the time to file an appeal ran from 14 April 2023.[6]

7 Parties then proceeded on that basis. In the meantime, they tendered costs submissions, and the quantum of costs was eventually determined by the Judge on 11 September 2023 (*ie*, the Costs Decision).

8 Thereafter, the Applicant filed the PTA Application on 25 September 2023 in respect of the Costs Decision. The intended appeal would apply to the entirety of the Costs Decision, except for the sum of $59,040.41 which was not in dispute.

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4 AWS at p 5 para 5; RWS at p 7 para 6.

5 Applicant's letter to court dated 18 May 2023 filed in AD/CA 50/2023 at paras 4–6.

6 NE dated 6 July 2033 in AD/CA 50/2023.

Whether the Judge had fixed costs or directed costs to be assessed

9 As mentioned above (at [3]), the Main Decision of 14 April 2023 stated that the costs awarded to the Respondents were "to be assessed, if not agreed". However, the Judge also directed parties to tender their costs submissions unless the parties agree on costs, which indicated that costs were to be fixed instead after the Judge had considered the costs submissions. The two sentences resulted in a disagreement between the parties as to whether the Judge had intended to fix costs at a later date or whether he had directed for costs to be assessed. That in turn raises the issue of when the time for filing of an appeal started to run and whether the filing of AD 50 was premature. Thus, we are of the view that this is an opportune time to clarify when costs should be regarded as being fixed or assessed, so that guidance may be provided to future litigants seeking to pursue an appeal.

10 In our view, the present case has some similarity to AD/SUM 15/2023 ("SUM 15"), which was filed in AD/CA 36/2023 (*Chia Soo Kiang (suing as the personal representative and successor of Tan Yaw Lan, deceased) v Tan Tock Seng Hospital Pte Ltd and others* ("*TTSHPL*")) and which concerned an appeal to the Appellate Division of the High Court ("the Appellate Division") against the decision of the General Division of the High Court ("the General Division"). In the General Division, the judge stated: "the plaintiff ha[d] failed to prove his case and the action must be dismissed with costs. I will hear the question of costs at a later date." (see *Chia Soo Kiang (personal representative of the estate of Tan Yaw Lan, deceased) v Tan Tock Seng Hospital Pte Ltd and others* [2022] SGHC 259 at [43]).

11 The parties in SUM 15 disputed the effect of the judge's directions. The defendants argued that the time for filing an appeal ran from the date of the court's decision because the court had determined the issue of costs, while the plaintiff argued that such time would run only after the quantum of costs had been determined by the court. The defendants had focused on the judge's first sentence while the plaintiff had focussed on the second sentence as reproduced above at [10]. The Appellate Division held that the judge did not direct any assessment of costs and had eventually fixed the quantum of costs. Hence, in accordance with O 19 r 4 of the ROC 2021, the time for filing of an appeal ran from the date when the judge fixed the quantum of costs.

12 In *TTSHPL*, it was significant that there was an indication that the judge would fix the quantum of costs himself, albeit at a later date. Such an indication meant that the judge did not direct that costs be "assessed" in the technical sense, which referred to the procedure previously known as "taxation" where a bill of costs was submitted. The previous procedure of taxation was set out in the Rules of Court (2014 Rev Ed) ("ROC 2014"), beginning with O 59 r 20 of the rules. That procedure is now termed as an "assessment" and is provided in the rules set out from O 21 r 17 of the ROC 2021. Notwithstanding the change in terminology, both the ROC 2014 and ROC 2021 provide for what are substantially similar procedures and indeed the rules both envisage the submission of a bill of costs as the initial step of the process (see O 59 r 20 of the ROC 2014 and O 21 r 17 of the ROC 2021). It is therefore clear that an assessment does not simply refer to an evaluation of the costs by the court following further submissions; rather, an assessment involves an entirely different process that begins with the submission of a bill of costs, which contrasts with the fixing of costs. Accordingly, notwithstanding that a court might state that costs are to be "assessed", the entirety of the court's directions

must be read in context to determine if the court is in fact referring to "assessment" in the technical sense or is merely directing that costs are to be "fixed" at a later date. For instance, if the directions make no reference to the process of assessment, such as the submission of a bill of costs, and instead simply indicate that the court will determine costs after further submissions have been tendered, that will mean that the court is merely directing that costs be fixed at a later date.

13 Although the Judge in the present case did direct costs "to be assessed", there was a second sentence where he directed that parties file their costs submissions without mentioning a bill of costs. In our view, the second sentence qualified the first. The two sentences, when read together, meant that when the Judge referred to an assessment of the costs, he was not using the word "assessed" in the technical sense but had used it to mean that he would evaluate or "fix" the costs himself. That was why he directed parties to put in their costs submissions without requiring the submission of a bill of costs as stipulated in O 59 r 20 of the ROC 2014, and eventually made his decision on the quantum of costs without a bill of costs being tendered. Consequently, this meant that there was no determination yet on the issue of costs on 14 April 2023 when he directed costs "to be assessed".

14 Accordingly, time to file any appeal did not run from 14 April 2023. Instead, it would have run from the date of the Costs Decision. It is questionable whether the view of the Judge (expressed at the CMC on 6 July 2023 that time for an appeal begins to run from 14 April 2023) was an error or whether he was varying his decision on costs given on 14 April 2023. As there was no evidence that he was varying his decision of 14 April 2023, it seems that the view expressed on 6 July 2023 was made in error. We appreciate that there is no

appeal or challenge against that view. Nevertheless, we are of the view that we should clarify that the directions on 14 April 2023 on costs did not mean that the time for filing of an appeal started to run. While this would mean that AD 50 was filed prematurely, there is no need to require the Applicant to re-file that appeal in the light of the Judge's view conveyed on 6 July 2023. Furthermore, no useful purpose would be achieved by directing the Applicant to re-file the appeal.

15 Therefore, if we leave aside the Judge's erroneous view that was conveyed on 6 July 2023, and, if the Applicant had not already filed AD 50, the Applicant would only have had to file a single appeal on both the Main Decision and the Costs Decision provided that she did that within 28 days from 11 September 2023, as required under O 19 r 25(1)(*a*) read with O 19 r 4(1) of the ROC 2021. This would have been so even though her appeal on the Costs Decision, relating only to the quantum of costs, was independent of the outcome of the appeal in respect of the Main Decision, as appears to be the case (see *The "Luna" and another appeal* [2021] 2 SLR 1054 ("*The "Luna"*") at [103]). Furthermore, she would not have required permission to appeal.

16 However, as mentioned above at [4], the Applicant has filed AD 50 earlier which does not extend to the quantum of costs. Since her intended appeal in respect of the Judge's decision on the quantum of costs (*ie*, the Costs Decision) appears to be independent of the outcome of the appeal against the Main Decision, she should file a separate notice of appeal. However, to do so, she will require permission to appeal (see *The "Luna"* at [104(b)]); and ss 29A(1)(*a*) and 29(2)(*b*) read with paragraph 3(*f*) of the Fifth Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed)).

Whether the Applicant must satisfy the usual requirements for obtaining permission to appeal

17 The next point is whether the Applicant needs to satisfy the usual requirements for obtaining permission to appeal.

18 The Applicant argues that where an applicant seeks permission to have the costs appeal heard together with the substantive appeal, the usual requirements for obtaining permission to appeal need not be satisfied. On this point, the Applicant relies on *The "Luna"*, among other cases.[7] The Applicant says that this position must be correct as such an applicant would be entitled to mount the costs appeal as of right had that decision been pronounced before the filing of the notice of appeal, and that the timing of a costs decision is something over which an applicant generally has little or no control. Moreover, once concerns over the wastage of judicial resources have been allayed by having the costs and substantive appeals heard together, there is no reason why an applicant must shoulder the additional burden of satisfying the usual requirements for obtaining permission to appeal purely due to the timing of a costs decision.[8]

19 The Respondents disagree and rely on various cases,[9] but those are cases which precede *The "Luna"*. As for *The "Luna"*, the Respondents argue that the present case is distinguishable as the Judge had not made two split decisions at different times – *ie*, one on the merits of the claims and the other on the issue of costs. The Respondents now take the position that the Judge had delivered his decision on costs together with the decision on the merits of the claims on

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7 AWS at p 8 at para 7.

8 AWS at pp 8–9.

9 RWS at pp 10–11.

14 April 2023, and further argue that the Applicant cannot now renege on this position, which she previously took on 18 May 2023. The Respondents thus argue that this case contrasts with *The "Luna"*, which was concerned with cases where the decision on costs was made sometime after the decision on the merits of the claims was rendered.[10]

20 In our view, it is evident that *The "Luna"* was addressing cases in which a court has made split decisions on the merits of the claims and costs. More specifically, the court was concerned about the situation where the decision on costs comes sometime after the first decision on the merits of the claims such that an unsuccessful party might have to file and serve the appeal on the merits of the claims first to meet a certain deadline to do so, *ie*, he cannot wait till the issue of costs is determined. That situation has now been addressed in the ROC 2021 which makes it clear that the time to appeal does not run until all matters in a trial, including costs, are determined. In this regard, where the court directs that costs be "assessed", that direction is to be regarded as a determination of costs (see O 19 r 4 of the ROC 2021).

21 What *The "Luna"* decided was that if there were split decisions such that the unsuccessful party had to file an appeal on the merits of the claims first and then file another one on costs, no permission to appeal for the costs issue is necessary if the costs issue would follow the outcome of the appeal on the merits of the claims (at [104(a)]). However, if the costs issue was independent of the outcome of the appeal on the merits of the claims, that party would require permission to appeal (at [104(b)]).

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10 RWS at p 12–13.

22 In the latter situation, permission to appeal would generally be granted if the appellant is agreeable to both appeals being consolidated or fixed for hearing together (see *The "Luna"* at [104(b)]). This is different from other situations where permission to appeal is required. The unsuccessful party requires permission to appeal on costs because the court has made split decisions and the second decision is made after the time for filing of an appeal against the first decision has expired. It is different if, for example, the unsuccessful party is not appealing against the decision on the merits of the claims but only on costs. In that situation, the fact of the split decisions is immaterial and the usual requirements for obtaining permission to appeal have to be satisfied.

23 To that extent, the Applicant is correct that in the situation envisaged by *The "Luna"*, a party seeking permission to appeal would generally not have to satisfy the usual requirements for permission to appeal.

24 This is a separate issue from the question of whether the Judge had in fact made split decisions in the present case. The Respondents argue that he had not because he had already decided on 14 April 2023 that the Applicant was liable for costs. However, it is undisputed that even though he had decided the question of who should be liable for costs, he had not decided the quantum of costs. A split decision may occur when a court decides the merits of the claims but says nothing on who should be liable for costs. A split decision may also occur when a court decides the merits of the claims and liability for costs but has not decided the quantum of costs. The latter was the position in which the Applicant found herself. Indeed, her intended appeal on costs in the PTA Application arises because of the quantum of costs for which she was held to be liable, *ie*, the Costs Decision. Otherwise, she would not have had to make this

application as she had already appealed against her liability for costs in AD 50, that being part of the decision on 14 April 2023, *ie*, the Main Decision.

25 To the extent that the Respondents argue that the Applicant's lawyers had written to court on 18 May 2023 to say that the Judge had determined the issue of costs (pursuant to O 19 r 4 of the ROC 2021), this is neither here nor there. Quite clearly that letter was making that point that costs were to be assessed in the technical sense because the Judge had said that costs were "to be assessed", and the letter had stated so as the Applicant's lawyers had overlooked the next sentence where the Judge then made directions on costs submissions. It is undisputed that the quantum of costs had not yet been determined. That letter does not detract from the fact that the Judge made a second decision on the quantum of costs.

26 In the circumstances, there is no reason why permission to appeal should be denied. Therefore, we grant the Applicant permission to appeal the Costs Decision. The notice of appeal against the Costs Decision is to be filed and served within seven days from the date of our decision. The Applicant need not provide security for costs in respect of that appeal as security was already provided when she filed AD 50 and, as mentioned at [15] above, she would have been allowed to file a single appeal against both the Costs Decision and Main Decision if she had not filed AD 50 prematurely. There is no reason to now require the Applicant to provide security for costs twice.

Conclusion

27 We make the following consequential directions:

(a) The hearing of the appeal on the Costs Decision is to be fixed for hearing together with AD 50.

(b) The record of appeal in AD 50 is to stand as the record of appeal in the appeal against the Costs Decision but liberty is granted to parties to file additional documents pertaining to the appeal against the Costs Decision, if necessary. For this purpose, the parties are to seek further directions from or through the Registrar of the Supreme Court.

(c) The appellant's case on the appeal against the Costs Decision is to be filed and served within 14 days of the date of our decision and limited to seven pages excluding the cover and index pages.

(d) The respondents' case on the appeal against the Costs Decision is to be filed and served within 14 days after service of the appellant's case on the appeal against the Costs Decision and limited to seven pages excluding the cover and index pages.

(e) The appellant's reply on the appeal against the Costs Decision is to be filed and served within seven days after service of the respondents' case on the appeal against the Costs Decision and limited to five pages excluding the cover and index pages.

(f) Liberty is granted to the parties to include their cases in the appeal against the Costs Decision in their cases for AD 50 if any of the latter has not yet been filed and served.

28 The PTA Application would not have been necessary in the first place if the Applicant had not insisted that the time for filing of an appeal on the Main Decision ran from 14 April 2023 after the Respondents had said that the time did not run as yet. She took that position even before the Judge gave his view. On the other hand, the Respondents should not have resisted the PTA Application.

29 In the circumstances, we order that each side is to bear their costs of the PTA Application. The usual consequential orders apply.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

Lok Vi Ming SC, Lee Sien Liang Joseph, Muk Chen Yeen Jonathan and Clara Lim Ai Ying (LVM Law Chambers LLC) for the applicant;
Christopher Anand s/o Daniel, Harjean Kaur, Yeo Yi Ling Eileen, Lim Yi Zheng and Saadhvika Jayanth (Advocatus Law LLP) for the respondents.