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

[2023] SGHC 193

Originating Application No 424 of 2023

Between

Hon G

… *Applicant*

And

Tan Pei Li

… *Respondent*

EX TEMPORE JUDGMENT

[Civil Procedure — Appeals — Leave]

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v
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Introduction

1 This is an application by Hon G ("the Applicant") to the General Division of the High Court for permission to appeal against the decision of the District Judge ("the DJ") in Magistrate Court Originating Claim No 184 of 2022 ("MC Claim"), after the DJ rejected his application in Magistrate Court Summons No 810 of 2023 ("MC Summons"). The respondent in this application is Tan Pei Li ("the Respondent").

2 The Applicant and the Respondent entered into an oral agreement where the Applicant agreed to sell two luxury pre-owned watches to the Respondent: (a) a Rolex Datejust Diamond watch (the "Rolex Watch"); and (b) a Hublot Big Bang Unico Diamond watch (the "Hublot Watch") (collectively, referred to as

"the Watches"). As part of the oral agreement, the Respondent was to pay the purchase price of $28,000 for the Rolex Watch first, while the payment of the purchase price of $16,000 for the Hublot Watch would be deferred.[1] Pursuant to the oral agreement, the Respondent made payment of $28,000 and the Watches were delivered to the Respondent.[2] Thereafter, the Respondent withheld payment of the remaining $16,000 on the basis that the Watches were not authentic. The Applicant filed the MC Claim to claim the purchase price of $16,000 for the Hublot Watch from the Respondent. The Respondent counterclaimed for a refund of the purchase price of $28,000 for the Rolex Watch.

3 In the MC Claim, the DJ found in favour of the Respondent and entered judgment for the Respondent against the Applicant for the sum of $28,000. The DJ also ordered for interest to be paid on the judgment sum and fixed costs of the action to be paid by the Applicant to the Respondent. The Applicant was dissatisfied with the DJ's decision and filed the MC Summons to seek permission from the DJ to appeal against the DJ's decision as the decision in the MC Claim is only appealable if permission is granted. The DJ heard the application and after considering the submissions of the parties, the DJ dismissed the MC Summons as the Applicant had failed to satisfy the necessary criteria for the permission to be granted. In the present application, the Applicant seeks permission to appeal against the DJ's decision.

4 I shall first briefly set out the background facts and the DJ's decisions in the court below.

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1 Affidavit of Hon G affirmed on 25 April 2023 at para 13.

2 Affidavit of Hon G affirmed on 25 April 2023 at para 14.

Background facts and the DJ's decisions in the MC Claim and the MC Summons

Summary of the background facts and the parties' positions

5 The Applicant and the Respondent were friends at the material time. On or about 5 January 2022, the Applicant and the Respondent entered into an oral agreement for the Applicant to sell and for the Respondent to purchase the Watches. The purchase price of $28,000 for the Rolex Watch was paid immediately, while the purchase price of $16,000 for the Hublot Watch was to be paid in three months or, at the Respondent's option, by monthly instalments. The Respondent made payment of $28,000 on 5 January 2022.[3] The Watches were delivered by the Applicant to the Respondent on 6 January 2022.[4] The Respondent, however, did not make payment of the purchase price of $16,000 for the Hublot Watch. The Applicant, therefore, sought to claim the sum of $16,000 from the Respondent by commencing the MC Claim (see *Hon G v Tan Pei Li* [2023] SGMC 8 (the "Trial Judgment") at [4]–[5]).[5]

6 The Respondent claimed that a key term of the oral agreement between the parties was that the Watches must be authentic. However, the Watches were found to be counterfeit by an expert, Mr Eric Ong (the "Expert"). Therefore, the Respondent counterclaimed for breach of contract or, alternatively, a failure of consideration (see the Trial Judgment at [6]).

7 In response to the Respondent's counterclaim, the Applicant had accepted that the Watches were sold on the basis, either express or implied, that

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3 Affidavit of Hon G affirmed on 25 April 2023 at para 14.

4 Affidavit of Hon G affirmed on 25 April 2023 at para 14.

5 For the Trial Judgment, see Affidavit of Hon G affirmed on 25 April 2023 at p 8, Tab-1.

the Watches were authentic. The Applicant had also accepted that the Watches which were the subject of the Expert's examination were not authentic. However, the Applicant denied that the Watches which were the subject of the Expert's examination were, in fact, the Watches which had been delivered by the Applicant to the Respondent. Instead, the Applicant claimed that: (a) there were discrepancies in the Expert's reports on the Watches; and (b) the Respondent was facing financial difficulties which provided a motive for counterfeit watches to be provided to the Expert for examination instead of the Watches sold by the Applicant (see the Trial Judgment at [7]).

The DJ's decision in the MC Claim

8 Following a one-day hearing, the DJ found in favour of the Respondent. A summary of the DJ's findings is as follows:

(a) The DJ accepted the Expert's reports and found that the Watches were not authentic. The alleged discrepancies in the Expert's reports on the Watches, as alleged by the Applicant, were not discrepancies. The Expert had given his explanations which were accepted by the DJ (see the Trial Judgment at [11]–[33]). The DJ found that the Respondent's alleged motive for swapping the Watches with counterfeit watches because of her financial difficulties was unsubstantiated and speculative (see the Trial Judgment at [34]–[38]). The DJ found that the Applicant's allegation about the swapping of the Watches with counterfeit watches was inherently improbable from the perspectives of time and logic (see the Trial Judgment at [39]–[43]).

(b) The DJ allowed the Respondent's counterclaim on the basis that there was a breach of contract. The Applicant had accepted that the sale of the Watches was on the basis that the Watches were authentic.

Accordingly, there was a breach of the oral agreement as the Watches were not authentic. Given that this lack of authenticity in the Watches fell within one of the four situations in which an innocent party is entitled to discharge a contract, as set out by the Court of Appeal in *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd and another appeal* [2007] 4 SLR(R) 413 (at [99]), the Respondent was entitled to discharge the oral agreement. The Respondent was, therefore, entitled to a refund of the purchase price of $28,000 which she had paid to the Applicant for the Rolex Watch (see the Trial Judgment at [50]–[62]).

(c) The DJ rejected the Applicant's reliance on s 35(1)(*a*) and s 35(4) of the Sale of Goods Act 1979 (2020 Rev Ed) ("SOGA") to rebut the Respondent's counterclaim that the Respondent was deemed to have accepted the Watches because: (i) the Respondent had intimated to the Applicant that she had accepted the Watches; and (ii) the Respondent had retained the Watches after the lapse of a reasonable time without intimating to the Applicant that she had rejected the Watches. The Applicant argued that s 11(3) of the SOGA prevented the Respondent from rejecting the Watches. However, the DJ found that there was a lack of evidence to support the Applicant's defence to the Respondent's counterclaim that the Respondent had intimated to the Applicant that she had accepted the Watches. Further, a reasonable time had not elapsed since the Watches were luxury watches which could not be readily assessed by a layperson at the point of delivery. The Respondent would have required time to identify an expert to examine the Watches. Therefore, the SOGA did not affect the Respondent's counterclaim for breach of contract (see the Trial Judgment at [63]–[77]).

(d) The DJ also found that there was a failure of consideration as the Watches were not authentic. Thus, the Applicant was unjustly enriched.

9 On 18 April 2023, the DJ dismissed the Applicant's claim of $16,000 and made the following orders (see *Hon G v Tan Pei Li* [2023] SGMC 21 (the "DJ's 18 April 2023 Judgment") at [3] and [4]):[6]

(a) the Applicant was to refund the Respondent the sum of $28,000 with interest at 5.33% per annum from the date of the MC Claim to the date of the Trial Judgment; and

(b) the Applicant was to pay the Respondent costs of the action which were fixed at $8,000 plus reasonable disbursements to be agreed plus any applicable goods and services tax.

The DJ's dismissal of the MC Summons

10 The Applicant was dissatisfied with the DJ's decision and sought to appeal against it. Pursuant to s 21(1)(*a*) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed), the Applicant requires permission to appeal against the DJ's decision. The Applicant, therefore, filed the MC Summons for permission to appeal against the DJ's decision in the MC Claim. After considering the parties' submissions, the DJ dismissed the application. The detailed grounds of the DJ's decision can be found in the DJ's 18 April 2023 Judgment. I set out below a summary of the Applicant's submissions and the DJ's 18 April 2023 Judgment.

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6 For the DJ's 18 April 2023 Judgment, see Affidavit of Tan Pei Li affirmed on 23 May 2023 at p 6, Exhibit TPL-1.

11 The DJ applied the well-settled test for permission to appeal as set out in *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 ("*Lee Kuan Yew*") at [16]. There must be: (a) a *prima facie* case of error; (b) a question of general principle decided for the first time; or (c) a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage (see the DJ's 18 April 2023 Judgment at [7]).

12 The Applicant submitted that there were four *prima facie* cases of error and two questions of general principle decided for the first time. The DJ disagreed with the Applicant. A summary of the Applicant's submissions and the DJ's findings are as follows:

(a) The first *prima facie* case of error alleged by the Applicant was that the DJ had failed to consider whether the Watches were sold on an "as-is-where-is" basis before concluding that the Applicant had breached the oral agreement. The thrust of the Applicant's argument was that the Watches were sold on an "as-is-where-is" basis and that the risk of the Watches being counterfeit passed to the Respondent upon delivery. Therefore, the Respondent should be deemed to have accepted the Watches without any warranty or guarantee. The DJ found that the Applicant's argument was untenable. While the Applicant had pleaded that the Watches were sold on an "as-is-where-is" basis, the Applicant had also pleaded that the sale of the Watches was on the basis, express and/or implied, that the Watches were authentic. The DJ had proceeded on the basis that the Applicant's pleaded case was that the Watches were sold on an "as-is-where-is" basis subject to them being authentic. Therefore, the DJ found that there was no *prima facie* case of error (see the DJ's 18 April 2023 Judgment at [11]–[14]).

(b) The second *prima facie* case of error alleged by the Applicant was that the DJ had erred in finding that the Respondent had been deprived substantially of the whole benefit of the oral agreement. The Applicant argued that the Respondent was not so deprived as the sale of the Watches which were pre-owned was done on an "as-is-where-is" basis without the boxes or papers for the Watches. The DJ found that the authenticity of the Watches was a key term of the oral agreement and the Respondent was deprived substantially of the whole benefit of the oral agreement. Therefore, the DJ found that there was no *prima facie* case of error (see the DJ's 18 April 2023 Judgment at [15]–[17]).

(c) The third *prima facie* case of error alleged by the Applicant was that the DJ had erred in finding that the Respondent was not deemed to have accepted the Watches pursuant to s 35(1)(*a*) of the SOGA despite the Respondent's evidence at the hearing that she had been satisfied with the Watches when she first took delivery of them. According to the Applicant, s 35(1)(*a*) of the SOGA states that a buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them and this can encompass acceptance by acquiescence. The DJ rejected the Applicant's submission. Section 35(2)(*a*) of the SOGA states that a buyer is not deemed to have accepted goods under s 35(1) of the SOGA until he has had a reasonable opportunity to examine them. The DJ had found that a reasonable time had not elapsed between the date of delivery of the Watches and the date the Respondent rejected the Watches because she had learnt that the Watches were not authentic. The Respondent also did not have a reasonable opportunity to examine the Watches.

(d) The fourth *prima facie* case of error alleged by the Applicant was that the DJ had erred in allowing the Respondent's counterclaim based on the ground of failure of consideration notwithstanding that the parties had not disputed the existence of the oral agreement. The DJ rejected the Applicant's submission.

(e) The Applicant further argued that there were two questions of general principle which were decided for the first time. The details of the Applicant's submission and the DJ's findings on these issues are as follows:

(i) The first question of general principle was whether s 11(3) of the SOGA applies to a situation where the breach of contract substantially deprives the innocent party the whole benefit of the contract. The DJ accepted that this was a question of general principle. However, the DJ found that this was not a question which had been *decided* for the first time. Rather, the DJ had left the question open (see the Trial Judgment at [77]). Therefore, there was nothing to be appealed against by the Applicant in this regard. Counsel for the Applicant accepted this at the hearing before the DJ (see the DJ's 18 April 2023 Judgment at [31]–[32]).

(ii) The second alleged question of general principle related to when, for the purposes of s 35(1)(*a*) of the SOGA, a buyer is deemed to have intimated to the seller that he has accepted the goods. The DJ accepted that this was a question of general principle and could have been a question decided for the first time. However, the DJ declined to grant the Applicant permission to appeal on the basis that this question of general

> principle did not have any bearing on the outcome of the Trial Judgment. This was because s 35(2)(*a*) of the SOGA made clear that s 35(1) of the SOGA would not apply such that a buyer is deemed to have accepted the goods until the buyer has had a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract. In the present case, the DJ had found that reasonable time had not elapsed between the date of delivery of the Watches and the date the Respondent rejected the Watches because she had learnt that the Watches were not authentic. Hence, the Respondent did not have a reasonable opportunity of examining the Watches for the purpose of ascertaining whether they were in conformity with the oral agreement. Therefore, the issue relating to s 35(1) of the SOGA was not relevant to the outcome of the Trial Judgment (see the DJ's 18 April 2023 Judgment at [33]–[34]).

13 In view of the DJ's finding that there was no *prima facie* case of error or question of general principle decided for the first time, the DJ dismissed the Applicant's application for permission to appeal against the DJ's decision. The DJ also ordered the Applicant to pay the Respondent the costs of the application which was fixed at $1,000 (all-in) plus any applicable goods and services tax.

14 The Applicant now makes this application for permission of the General Division of the High Court to appeal against the DJ's decision.

My decision

The law on permission to appeal

15 Order 19 r 15(2) of the Rules of Court 2021 makes clear that where the lower court does not grant permission to appeal, a party may apply to the General Division of the High Court for such permission.

16 As I have summarised at [11] above, the criteria to be satisfied for permission to appeal to be granted were clearly set out in *Lee Kuan Yew* at [16], which was recently affirmed by the Court of Appeal in *Lin Jianwei v Tung Yu-Lien Margaret and another* [2021] 2 SLR 683 at [85]. The DJ considered the criteria when dealing with the Applicant's application for permission to appeal.

17 In addition, the DJ helpfully summarised the key principles relating to a *prima facie* case of error based on a survey of the case law as follows (see DJ's 18 April 2023 Judgment at [8]):

> (a) A *prima facie* case of error must be one of law and not of fact, though permission to appeal may be granted in *exceptional circumstances* where the error is one of fact which is obvious from the record (see *Rodeo Power Pte Ltd and others v Tong Seak Kan and another* [2022] SGHC(A) 16 at [10]).
>
> (b) Where the error in question is an error of law, there are two conjunctive issues to consider: (i) whether the appeal is likely to succeed, which is a standard that goes beyond merely an arguable case; and (ii) whether there is a likelihood of substantial injustice if permission is not granted (see *Zhou Wenjing v Shun Heng Credit Pte Ltd* [2022] SGHC 313 at [37]).

(c) Where it is an error of fact, the test is whether the error is obvious from the record and clear beyond reasonable argument.

(d) Whether it is an error of law or an error of fact, the applicant must show something more than just his disagreement with the court's decision (see *Bellingham, Alex v Reed, Michael* [2022] 4 SLR 513 at [100]–[101]).

18 As is clear from the Applicant's affidavit dated 25 April 2023, the Applicant seeks this Court's permission to appeal against the DJ's decision in the MC Claim by relying on substantially the same arguments which were canvassed before the DJ in the MC Summons.[7]

19 The arguments raised by the Applicant in the MC Summons and in the application before me are unmeritorious and I fully agree with the DJ's decision in dismissing the application as found in the DJ's 18 April 2023 Judgment. I shall briefly set out below my views on each of the Applicant's arguments.

There was no* prima facie *case of error

20 I begin by considering the four *prima facie* cases of error which the Applicant alleges were committed by the DJ.

21 First, the Applicant submits that the DJ erred in finding that the Applicant had breached the oral agreement on the sole basis that the Watches were counterfeit.[8] Specifically, the DJ had failed to consider that the Watches

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7 Affidavit of Hon G affirmed on 25 April 2023 at para 9.

8 Written Submissions of the Applicant ("WSA") at para 24.

were sold on an "as-is-where-is" basis.[9] I am unable to see how this discloses a *prima facie* case of error. As is evident from the DJ's 18 April 2023 Judgment at [12], the DJ had in fact considered that the Applicant had pleaded that the Watches were sold on an "as-is-where-is" basis. At the same time, the DJ was cognizant that the Applicant also pleaded that the Watches were sold on the basis, express and/or implied, that they were authentic. The DJ understood correctly, in my view, from the Applicant's pleadings that the Applicant sold the Watches on an "as-is-where-is" basis, *subject to* the Watches being authentic. It was not the case that the Watches were sold *solely* on an "as-is-where-is" basis such that the Applicant can claim that any risk of the Watches being counterfeit or having other defects would have passed to the Respondent upon delivery of the Watches.[10] It was not for the DJ or this Court to correct defects in the Applicant's pleadings or disregard the Applicant's concession in his pleadings that the Watches were sold on the basis that they were authentic.

22 The Applicant argues that the Statement of Claim ought to have been construed to mean that "although the Watches were sold on the basis that they were authentic, the Watches were nonetheless sold, *inter alia*, on an "as-is-where-is" basis".[11] Thus, the Applicant submits that the Respondent purchased the Watches with the risk that they might not be authentic. This construction proposed by the Applicant does not cohere with the Applicant's pleadings. As I have explained above at [21], the DJ was entitled to interpret the Applicant's pleadings in the way that he did. In any event, as the Respondent points out, the Applicant had accepted at the trial that where there is a contract for the sale of

9 WSA at para 25.

10 WSA at para 26.

11 WSA at para 32.

luxury goods, it is a condition that the goods must be authentic.[12] Therefore, the Applicant's argument of a *prima facie* case of error in relation to this point is without merit.

23 Second, the Applicant makes the point in her affidavit that the DJ had erred in finding that the Respondent had been deprived substantially of the whole benefit of the oral agreement.[13] While I note that the Applicant appears to have dropped this point in her written submissions, I nonetheless express my view that I am unable to ascertain any error in the DJ's factual finding that is obvious from the record to warrant the grant of permission to appeal. In light of my conclusion above (see above at [21]) that the DJ was entitled to find that the Watches were sold on the basis that they were authentic, the DJ was correct to make a factual finding that the Applicant breached the oral agreement by delivering the Watches which were not authentic. Thus, the Respondent was deprived substantially of the whole benefit of the oral agreement. This case was ultimately about an oral agreement for the sale of pre-owned, high-value luxury watches where authenticity of the Watches sold was paramount. If the Watches sold turned out not to be authentic, the Respondent would be deprived of substantially the whole benefit of the oral agreement. Whether the Respondent had been deprived of substantially the whole benefit of the oral agreement raises an issue that concerns an error of fact, not law.[14] There was, therefore, no *prima facie* case of error committed by the DJ in this regard.

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12 Respondent's Written Submissions ("RWS") at para 17; Affidavit of Hon G affirmed on 25 April 2023 at p 33.

13 Affidavit of Hon G affirmed on 25 April 2023 at para 24(b).

14 RWS at para 21.

24 Third, the Applicant alleges that another *prima facie* case of error was that the DJ had erred in finding that the Respondent was not deemed to have accepted the Watches pursuant to s 35(1)(*a*) of the SOGA notwithstanding that the Respondent's evidence at the hearing was that she had been satisfied with the Watches when she first took delivery of them.[15] The DJ has already covered this point in detail (see [12(c)] above and the DJ's 18 April 2023 Judgment at [18]–[24]). This finding had no ultimate bearing on the outcome of the Trial Judgment. This is because s 35(1)(*a*) of the SOGA is subject to s 35(2) of the SOGA. I set out ss 35(1) and 35(2) of the SOGA below:

> **Acceptance**
>
> **35.**—(1) Subject to subsection (2), the buyer is deemed to have accepted the goods —
>
> (a) when he intimates to the seller that he has accepted them; or
>
> (b) when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller.
>
> (2) Where goods are delivered to the buyer and he has not previously examined them, he is not deemed to have accepted them under subsection (1) until he has had a reasonable opportunity of examining them for the purpose —
>
> (a) of ascertaining whether they are in conformity with the contract; and
>
> (b) in the case of a contract for sale by sample, of comparing the bulk with the sample.

25 It is clear from the above that s 35(1)(*a*) of the SOGA is qualified by s 35(2) of the SOGA. The consequence of this is that where goods are delivered to the buyer and he has not previously examined them, he is not deemed to have accepted them under s 35(1)(*a*) of the SOGA *until* he has had a reasonable opportunity of examining the goods for the purpose of ascertaining whether they

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15 WSA at paras 34–35.

are in conformity with the contract. The DJ found that a reasonable time had not elapsed between the date of delivery of the Watches and the date the Respondent rejected the watches because she had learnt that the Watches were not authentic. Given that the goods in question are luxury watches, the Respondent would have required time to identify an expert to examine the Watches (see the DJ's 18 April 2023 Judgment at [22]; Trial Judgment at [70]). Thus, the Respondent did not have a reasonable opportunity to examine the Watches for the purpose of ascertaining whether they were in conformity with the oral agreement.

26 The Applicant submits that the Respondent had already inspected the Watches upon delivery at the Applicant's salon on 6 January 2022 and indicated her satisfaction with the Watches. Hence, she would have "examined" the Watches within the meaning of s 35(2) of the SOGA such that she was no longer entitled to a further opportunity to examine the goods.[16] In my view, this is unmeritorious. It was implicit within the DJ's findings that the Respondent had not in fact "examined" the Watches within the meaning of s 35(2) of the SOGA. As can be seen from the wording of s 35(2) of the SOGA itself, the examination referred to must be "for the purpose of ascertaining whether they are in conformity with the contract". The DJ proceeded on the basis that the purported cursory inspection by the Respondent of the Watches at the Applicant's salon did not qualify as such an examination in order to prevent the operation of s 35(2) of the SOGA. On the contrary, only an inspection by an expert would qualify as such examination. Thus, there was no *prima facie* case of error in the DJ's reasoning that luxury watches are "not everyday consumer goods whose quality (including authenticity) can be readily assessed by a layperson at the point of delivery" (Trial Judgment at [70]).

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16 WSA at paras 40–41.

27 Therefore, I agree with the DJ that the issue of deemed acceptance under s 35(1)(*a*) of the SOGA could not have arisen in any event and was not relevant to the outcome of the Trial Judgment. Therefore, there was no *prima facie* case of error committed by the DJ.

28 Fourth, the Applicant alleges in her affidavit that the DJ had erred in allowing the Respondent's counterclaim based on the ground of failure of consideration notwithstanding that the parties had not disputed the existence of the oral agreement.[17] Again, I note that this point appears to have been dropped from the Applicant's written submissions. The DJ had already dealt with this issue in detail (see [12(d)] above and the DJ's 18 April 2023 Judgment at [26]–[29]). What is crucial for the purpose of the present application is that the Respondent's counterclaim on the ground of failure of consideration was an *alternative* ground submitted by the Respondent and that the counterclaim was primarily founded on a breach of contract. This is clear from the Trial Judgment which states as follows (at [79]):

> 79 Turning to the [Respondent's] counterclaim based on failure of consideration, this is pleaded as an alternative basis for the refund of the $28,000 the [Respondent] paid for the Rolex Watch. Having found that the [Respondent's] counterclaim based on breach of contract should be allowed, it is, strictly speaking, not necessary for me to consider this alternative basis. Moreover, failure of consideration is, for some reason, not mentioned at all in the [Respondent's] Closing Submissions. Nevertheless, I will proceed to consider it for completeness.

29 The Applicant's submission on the alleged *prima facie* case of error is untenable as the DJ's findings on this issue were *obiter dicta* and had no bearing on the outcome of the Trial Judgment. Therefore, there was no *prima facie* case of error committed by the DJ in this regard.

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17 Affidavit of Hon G affirmed on 25 April 2023 at para 9(a)(iv).

30 For the above reasons, I find that there was no *prima facie* case of error committed by the DJ which would allow the Applicant permission to appeal against the DJ's decision.

There was no question of general principle which was decided for the first time

31 I shall next consider the alleged question of general principle which was decided for the first time.

32 The Applicant submits that the question of general principle which was decided for the first time in the present case relates to when, for the purposes of s 35(1)(*a*) of the SOGA, a buyer is deemed to have intimated to the seller that he has accepted the goods.[18] I find no merit in the Applicant's submission. As I have set out at [24]–[27] above when considering the Applicant's submission on the third *prima facie* case of error, the issue relating to s 35(1)(*a*) of the SOGA did not have any bearing on the outcome of the Trial Judgment. In the present case, the Respondent would not have been deemed to have accepted the Watches pursuant to s 35(1)(*a*) of the SOGA *until* she had a reasonable opportunity to examine the Watches for the purpose of ascertaining whether they are in conformity with the oral agreement. As I have set out at [25] above, the DJ found that the Respondent did not have a reasonable opportunity to examine the Watches to determine that they were authentic and that they were in conformity with the oral agreement. Therefore, the issue of what amounts to a buyer intimating to a seller that he has accepted the goods did not have any bearing on the outcome of the Trial Judgment because it did not even arise for decision. For this reason, I am unable to accept the Applicant's submission that

[18] WSA at para 42.

permission should be granted for him to appeal against the DJ's decision on the basis of this question of general principle.

Conclusion

33 In conclusion, I agree with the DJ that there was no *prima facie* case of error or question of general principle decided for the first time which justifies the granting of the application for permission to appeal against the DJ's decision. Accordingly, I dismiss the application for permission of the General Division of the High Court to appeal.

34 I shall now hear the parties on costs for the Respondent.

Tan Siong Thye
Senior Judge

Gerard Quek, Chua Ze Xuan (PDLegal LLC) (instructed) and
Michael Lukamto (Joo Toon LLC) for the applicant;
Lee Wei Fan (Li Weifan) (Anthony Law Corporation)
for the respondent.