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

[2023] SGHC 194

Originating Application No 391 of 2023

Between

Tey Leng Yen

… *Applicant*

And

Mai Xun Yao

… *Respondent*

EX TEMPORE JUDGMENT

[Civil Procedure — Appeals — Leave]

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v
Mai Xun Yao

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Tan Siong Thye SJ:

Introduction

1 The Applicant, Tey Leng Yen, seeks permission to appeal to the General Division of the High Court against the decision of the District Judge (the "DJ") in Registrar's Appeal, DC/RA 85/2022 ("RA 85"). The DJ had allowed an appeal by the Respondent, Mai Xun Yao, against the decision of the Deputy Registrar (the "DR") who had awarded costs of $40,000 in the Applicant's favour. The DJ found that the DR (who was the trial judge) had not taken into consideration an offer to settle (the "OTS") made by the Respondent before the trial which was rejected by the Applicant. This was mainly due to the parties' failure to raise the issue of the OTS to the DR before the DR's costs award was made. However, the existence of the OTS was brought to the attention of the DR at the first tranche which dealt with the liability of the parties. In view of

the OTS, the DJ allowed the Respondent's appeal, reversed the DR's costs award and ordered costs of $20,000 in the Respondent's favour instead, with disbursements to be fixed if not agreed.

2 The Applicant was dissatisfied with the costs award made by the DJ and applied in DC/SUM 706/2023 ("SUM 706") for permission to appeal against the DJ's decision as the DJ's decision is appealable only if permission is granted. In SUM 706, after hearing the application and the submissions of the parties, the DJ denied the Applicant permission to appeal against the DJ's decision on the basis that the necessary criteria for permission to appeal to be granted had not been satisfied.

3 The Applicant now makes this application for permission to appeal against the decision of the DJ and to set aside the DJ's decision which rejected the Applicant's application for permission to appeal in SUM 706. Having considered the parties' submissions, I find that the application is unmeritorious as the threshold for permission to appeal to be granted has not been met.

4 I shall set out below the brief facts and procedural history of the case before explaining my views on why the application for permission to appeal against the decision of the DJ is unmeritorious.

Background facts and the proceedings below

Background facts

5 The Applicant and the Respondent were business partners in two companies (the "two companies"). One of the two companies was Sheenway Exhibition and Projects Pte Ltd ("SE&P"). The Applicant held 40% of the shares in SE&P and the Respondent held 60% of the shares in SE&P. As a result

of differences which arose, the parties entered into a settlement agreement (the "SA"). As part of the SA, the parties had agreed that SE&P would cease all operations except the collection of outstanding debts. Further, the receivables were to be distributed between the Applicant and the Respondent in accordance with the proportion of shares they each held. The parties also appended their signatures to a document which stated that SE&P's receivables were in excess of $530,000 (see *Tey Leng Yen v Mai Xun Yao* [2021] SGDC 65 (the "Trial Judgment") at [1]–[6]).[1]

6 The Applicant subsequently commenced a suit in the District Court, DC/DC 45/2018 ("DC 45"), against the Respondent on 5 January 2018 on the basis that the Respondent had breached various terms of the SA (see the Trial Judgment at [3]).

7 On 17 March 2020, the Respondent made an offer to settle (the "OTS") which included the following terms:[2]

> (a) The Respondent shall make available to the Applicant the accounts of the two companies after March 2013; and
>
> (b) Any net balance in the accounts of the two companies (after deducting the expenses, taxes, etc) shall be split between the Applicant and the Respondent in accordance with their respective shareholdings in the two companies.

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1 See Applicant's affidavit dated 18 April 2023 ("Applicant's 18 April 2023 Affidavit") at pp 15–24, for the Trial Judgment.

2 See Applicant's 18 April 2023 Affidavit at Tab D, pp 50–51, for the OTS made by the Respondent.

8 The Applicant did not accept the OTS.[3]

The trial

9 The trial was bifurcated. The first tranche dealt with the liability of the parties. There were two issues to be decided at the first tranche: (a) whether the Respondent had breached the SA by allowing SE&P to continue operating; and (b) whether the Respondent had breached the SA by failing to distribute the receivables of SE&P in accordance with the proportion of the shares held by the parties (see the Trial Judgment at [14]).

10 The DR who was the trial judge in the second tranche on assessment of damages found that the Applicant succeeded in proving that the Respondent had breached the SA by allowing SE&P to continue operating (see the Trial Judgment at [16]–[48]). However, the DR found that the Applicant failed to prove that the Respondent had breached the SA by failing to distribute the receivables of SE&P in accordance with the proportion of the shares held by the parties as SE&P was still in operation with outstanding receivables, debts and expenses. Thus, the receivables could not be distributed until after SE&P's liabilities were settled (see the Trial Judgment at [50]–[54]). Given the Applicant's success on the first issue, the DR found that the Applicant was entitled to interlocutory judgment with damages to be assessed for the loss occasioned by the Respondent's breach of the SA by allowing SE&P to continue operating (see the Trial Judgment at [55]). The Respondent appealed to the High Court against the decision of the DR, but the appeal was dismissed on 15 July 2021.[4]

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3 See Mai Xun Yao's affidavit dated 4 April 2023 at pp 8–33, for the Notes of Evidence of 10 March 2023; Notes of Evidence of 10 March 2023 at pp 6–7, para 7.

4 Notes of Evidence of 10 March 2023 at p 8, para 11.

11 In the second tranche of the trial, the Applicant submitted that she was entitled to 40% of SE&P's receivables which was determined as at March 2013, being what she was entitled to under the SA in accordance with the proportion of the shares she held in SE&P. The DR, however, found that the Applicant had failed to prove the loss she suffered and the quantum of that loss as a result of the Respondent's breach which allowed SE&P to continue operating because the company was in operation and the Applicant's share of SE&P's receivables could only be determined after SE&P's liabilities were settled. The DR thus awarded nominal damages of $1,000 to the Applicant with interest.[5]

The DR's costs award

12 On 18 November 2022, the DR awarded costs of $40,000 in favour of the Applicant, with disbursements to be agreed or taxed as the Applicant had succeeded in her claim in the first tranche on liability and was awarded nominal damages in the second tranche when damages were assessed.[6] However, at the hearing on costs, the parties did not inform the DR of the existence of the OTS which had substantial implications on the costs award.

13 Subsequently, the Respondent realised the implication of the OTS on the issue of costs. On 21 November 2022, the Respondent wrote to the DR to reconsider the costs award (the "Respondent's 21 November 2022 Letter") in the light of the OTS. In the Respondent's 21 November 2022 Letter, the Respondent had set out the circumstances surrounding the OTS and submitted that the costs award by the DR should be reconsidered in view of the OTS.[7] On

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5 Notes of Evidence of 10 March 2023 at pp 9–10, paras 12–14.

6 Applicant's 18 April 2023 Affidavit at pp 41 (line 28) to 42 (line 2).

7 See Applicant's 18 April 2023 Affidavit at Tab E, pp 53–57 for the Respondent's 21 November 2022 Letter (without enclosures).

23 November 2022 the DR replied that her decision on costs made on 18 November 2022 was to stand.[8] Nothing further was said by the DR about the OTS.[9]

The DJ's decision on costs in RA 85

14 In RA 85, the Respondent made the following arguments:[10]

(a) Order 22A r 9(3) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (the "ROC 2014") should apply. There was a valid OTS which had not been withdrawn and had not expired before the disposal of the suit. The Applicant had obtained a judgment which was not more favourable than the terms of the OTS. Therefore, the Respondent should have been entitled to costs on the indemnity basis from the date the OTS was served until the date of the decision on the assessment of damages by the DR.

(b) In the event the DJ disagreed that O 22A r 9(3) of the ROC 2014 applied, the Applicant should still have not been awarded costs. The Applicant cannot be regarded as the successful party since she had only been awarded nominal damages in the second tranche of the trial.

15 On 10 March 2023, the DJ allowed the Respondent's appeal in RA 85 and awarded costs of $20,000 in the Respondent's favour instead, with disbursements to be fixed if not agreed.[11] The DJ's decision can be summarised as follows:

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8 Applicant's 18 April 2023 Affidavit at para 37.

9 See Applicant's 18 April 2023 Affidavit at Tab F, pp 90–91 for the court's reply dated 23 November 2022.

10 Notes of Evidence of 10 March 2023 at pp 10–11, para 18.

11 Notes of Evidence of 10 March 2023 at p 24, para 45.

(a) The OTS remained valid at the time the DR made an assessment on damages. Further, the Applicant did not obtain a judgment that was more favourable than the OTS. Although the Applicant had won on the first liability issue of the Respondent's breach of the SA by allowing SE&P to continue operating, the Applicant was awarded only nominal damages as the Applicant could not prove the damages suffered. The Applicant had to wait until after SE&P's liabilities had been settled and its operations ceased before she could ascertain her share of SE&P's receivables. This was akin to what was offered in the OTS. If the Applicant had accepted the OTS, she would have been in no worse a position than she was after the decision on assessment of damages was made by the DR. Therefore, the judgment obtained by the Applicant was not more favourable than the terms of the OTS.[12]

(b) The OTS was a serious and genuine attempt at settlement. Therefore, the costs consequences provided for in O 22A r 9(3) of the ROC 2014 should have applied. In other words, the Applicant was entitled to costs on the standard basis until 17 March 2020 which was when the OTS was served, and the Respondent was entitled to costs on the indemnity basis from the date the OTS was served to 18 November 2022 when the DR made her decision on damages.[13]

(c) The DR had omitted to consider the OTS as the parties did not raise the OTS when addressing the DR on costs. The DR, therefore,

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12 Notes of Evidence of 10 March 2023 at pp 12–17, paras 20–30.

13 Notes of Evidence of 10 March 2023 at pp 17–18, paras 31–33.

erred in her decision on costs and the Respondent's appeal in RA 85 was allowed.[14]

(d) The second ground of appeal raised by the Respondent was moot as the DJ had already allowed the Respondent's appeal on the basis of the OTS. Nevertheless, the DJ considered whether the Applicant should be regarded as a successful party given that she had only been awarded nominal damages. Here, the DJ stated that the general principle as set out in *Anglo-Cyprian Trade Agencies Ltd v Paphos Wine Industries Ltd* [1951] 1 All ER 873 was that where a plaintiff is only awarded nominal damages, the plaintiff should not be regarded as a successful party and costs should be awarded to the defendant as if he had succeeded in his defence. In RA 85, the DJ took the view that even if the OTS had not existed or applied, the DR should have ordered that each party should bear its own costs for the first tranche of the trial. As for the second tranche, the DJ was of the view that the Applicant should have to bear costs of the assessment of damages hearing as the Applicant took an unrealistic position in the second tranche of the trial to insist on damages unnecessarily and caused costs and expenses in the second tranche of the trial. Therefore, even if the OTS did not exist or apply, the DJ would have found that the DR erred in awarding the Applicant costs of $40,000.[15]

(e) The DJ awarded costs of $12,000 to the Applicant on the standard basis from the date of commencement of the suit to the date the OTS was served. The DJ also awarded the Respondent costs of $32,000

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14 Notes of Evidence of 10 March 2023 at p 19, para 34.

15 Notes of Evidence of 10 March 2023 at pp 19–22, paras 35–41.

on an indemnity basis from the date the OTS was served to the date of judgment in the second tranche of the trial. The net effect of this was a costs award of $20,000 in the Respondent's favour. Therefore, the DJ set aside the DR's costs award and ordered costs of $20,000 in the Respondent's favour, with disbursements to be fixed if not agreed.[16]

The DJ's decision to dismiss the Applicant's application for permission to appeal against the DJ's costs award

16 The Applicant was dissatisfied with the DJ's decision on costs in RA 85. The Applicant, therefore, filed SUM 706 for permission to appeal against the DJ's decision on costs as the DJ's decision is appealable only if permission is obtained.

17 In SUM 706, the Applicant submitted the following grounds to support her application:[17]

(a) The DJ had not given due weight to the DR's decision when deciding to overturn the DR's decision on costs in RA 85.

(b) The DJ had considered the OTS when it was not brought up to the DR at the hearing on costs.

(c) The DJ had considered the OTS when the DR had already taken it into account after the request for further arguments was denied.

(d) The DJ erred in her conclusion that the judgment obtained by the Applicant was not more favourable than the terms of the OTS.

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16 Notes of Evidence of 10 March 2023 at pp 23–24, paras 44–45.

17 See Tab-4 of Respondent's Bundle of Documents, for the Notes of Evidence of 13 April 2023; Notes of Evidence of 13 April 2023 at p 7, para 4 and p 9, paras 9–10.

(e) There was a procedural irregularity in RA 85 as the Respondent had been labouring under the misapprehension that the Rules of Court 2021 applied instead of the ROC 2014.

18 The DJ dismissed SUM 706.[18] The DJ's decision can be summarised as follows:

(a) The Applicant's position appeared to be inconsistent. On the one hand, the Applicant took issue that the DJ had considered the OTS in RA 85 when it had not been brought up to the DR during the hearing on costs before the DR. On the other hand, the Applicant took issue that the DJ had considered the OTS in RA 85 when the DR had already considered the OTS when it was brought to the attention of the DR by way of the Respondent's 21 November 2022 Letter. The Applicant's counsel also accepted that these were contradictory positions.[19]

(b) The hearing of RA 85 operated as a *de novo* hearing and the DJ was allowed to consider the OTS. The DJ also gave due weight to the DR's decision when evaluating whether the DR had erred in deciding on the award of costs. The DR had not indicated that she had considered the OTS, or provided reasons to support the DR's award of costs in light of the OTS. In view of the facts of the case, the DR's award of costs could not be sustained.[20]

(c) While the Respondent may have taken the erroneous position that the Rules of Court 2021 applied to the RA 85 instead of the ROC

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18 Notes of Evidence of 13 April 2023 at p 9, para 11.

19 Notes of Evidence of 13 April 2023 at p 7, para 5.

20 Notes of Evidence of 13 April 2023 at p 8, paras 6–7.

2014, the court clearly recognised that it was the ROC 2014 which applied. Further, the substantive law was the same in both the ROC 2014 and the Rules of Court 2021.[21]

(d) The Applicant was dissatisfied with the outcome of RA 85 but could not point to any *prima facie* case of error of law for which permission to appeal ought to be granted.[22]

19 The DJ awarded costs of $1,000 (all-in) in favour of the Respondent following the dismissal of the Applicant's application for permission to appeal in SUM 706.[23]

20 The Applicant now seeks this Court's permission to appeal against the DJ's decision. This is pursuant to O 19 r 15(2) of the Rules of Court 2021 which states that where the lower court does not grant permission to appeal, a party may apply to the General Division of the High Court.

My decision

The law on permission to appeal

21 The applicable legal principles for permission to appeal are set out in *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 ("*Lee Kuan Yew*") at [16]. For permission to appeal to be granted, 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. This was

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21 Notes of Evidence of 13 April 2023 at p 9, paras 9–10.

22 Notes of Evidence of 13 April 2023 at p 8, para 8.

23 Notes of Evidence of 13 April 2023 at pp 10–11.

affirmed by the Court of Appeal in *Lin Jianwei v Tung Yu-Lien Margaret and another* [2021] 2 SLR 683 at [85].

22 For there to be a *prima facie* case of error, the general rule is that it must be an error 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]).

23 In light of the above, and having heard the parties' submissions, I am of the view that the arguments raised by the Applicant are unmeritorious. I fully agree with the DJ's decision to dismiss SUM 706 which I have summarised at [18] above. None of the three grounds laid down in *Lee Kuan Yew* were made out to allow for the granting of permission to appeal. I shall briefly set out below my views on the Applicant's arguments.

There was no* prima facie *case of error

24 The Applicant alleges that there were four *prima facie* cases of error:

(a) the DJ wrongly disturbed the DR's costs award which should not ordinarily be tampered with;[24]

(b) the DJ failed to give due weight to the DR's costs award;[25]

[24] Applicant's Written Submissions ("AWS") at paras 14–20.

[25] AWS at paras 21–25.

(c) the DJ conducted a detailed examination of matters relating to the OTS and the determination of nominal damages which she should not have done;[26] and

(d) the Rules of Court 2021 had been wrongly applied in RA 85.[27]

25 Addressing the first and second allegations together, the Applicant submits that the DJ had committed an error in disturbing the DR's costs award. According to the Applicant, the DJ could not have reached a just decision on the issue of costs because she did not have "the benefit of having heard [DC 45] from conception to conclusion" unlike the DR.[28] Furthermore, the Applicant alleges that the DJ failed to accord due weight to the DR's costs award. The Applicant accepts that while it is trite law that a judge in chambers is entitled to exercise his discretion unfettered by that of the Registrar, due weight should be given to the latter's decision: *Tan Boon Heng v Lau Pang Cheng David* [2013] 4 SLR 718 at [22].

26 I am unable to accept that the DJ could not have reached a just decision on the issue of costs simply because she did not have "the benefit of having heard [DC 45] from conception to conclusion".[29] If this were so, this would mean that every appellate decision by an adjudicator not involved in proceedings below would necessarily lead to a *prima facie* case of error for which an appeal would lie. Furthermore, the Applicant has no basis to substantiate her allegation that the DJ had failed to accord due weight to the DR's costs award beyond emphasising that the DR was better placed to make

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26 AWS at paras 26–29.

27 AWS at paras 30–32.

28 AWS at para 18.

29 AWS at para 18.

the costs award.[30] However, a perusal of the DJ's oral grounds in RA 85 dated 10 March 2023 shows that the DJ had expressly considered the DR's costs award and that the DR had erred by omitting to consider the OTS costs regime. Specifically, the DJ found that it was "almost certain" that the DR omitted to consider the OTS costs regime when making the decision on costs because: (a) there was no record of the OTS costs regime being raised in parties' costs submissions in the hearing after the decision on assessment of damages was rendered; (b) although the existence of the OTS was mentioned briefly by the Defendant's counsel after the decision on liability was rendered, there was no indication that the DR considered this in her award on costs; and that (c) the DR's oral remarks before awarding costs were brief and failed to mention the OTS costs regime.[31] In the circumstances, the DJ had properly applied her mind to the DR's costs award and there was no *prima facie* case of error in this regard.

27 Turning to address the third alleged error, the Applicant takes issue with the DJ for having gone into a "detailed examination of all the matters in reaching her decision in [RA 85] such as going into a detailed examination of matters relating to the OTS and the determination of nominal damages."[32] The Applicant relies on the High Court decision of *Essar Steel Ltd v Bayerische Landesbank and others* [2004] SGHC 90 at [14] which in turn cites *Hoddle v CCF Construction* [1992] 2 All ER 550 ("*Hoddle*") at 550–551 for the proposition that "it would not be in the interests of justice if judges in chambers entered into detailed examination of all the matters that were before the master in order to decide whether they would have come to the same decision as the master".

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30 AWS at para 24.

31 Notes of Evidence of 10 March 2023 at p 19, para 34.

32 AWS at para 27.

28 In my view, the DJ's purportedly "detailed examination" of the DR's decision does not raise a *prima facie* case of error in and of itself. The relevant passage in *Hoddle* (at 550–551) merits reproduction in full:

> [I]t would be highly undesirable as a matter of general principle that a judge [in chambers] should intervene and make different orders as to costs from that made by a master, unless it can be shown by the appellant that the master demonstrably erred in the exercise of his discretion in the order that he made. If it can be shown that the master took into account matters that he should not have taken into account or failed to take into account matters that he should have taken into account, in those circumstances the judge in chambers would be entitled to vary the order made by the master, but in my judgment it would not be in the interests of justice if judges in chambers entered into detailed examination of all the matters that were before the master in order to decide whether they would have come to the same decision as the master. Generally speaking, in my judgment, judges in chambers should not allow appeals against costs orders by masters, *unless it can be shown that the order made was unreasonable or erred in law or, as I have indicated, either failed to take into account proper matters or took into account matters that should not have been taken into account.*
>
> [emphasis added]

From the passage above, it can be seen that while the court in *Hoddle* had cautioned against going into too detailed an examination of the matters below, the court nonetheless accepted that appeals against costs awards can be allowed where the award made was unreasonable, resulted from an error of law or resulted from *the failure to take into account proper matters* or from the taking into account of matters which should not have been taken into account.

29 I am of the view that the DJ did not err in allowing the appeal in RA 85 because the DJ correctly found that the DR failed to properly consider the OTS in making the costs award. None of the purported errors referred to in the Applicant's affidavit qualify as *prima facie* cases of error warranting the grant of permission to appeal. The Applicant refers to the Respondent's 21 November

2022 Letter where the Respondent had set out the circumstances surrounding the OTS and argued for the costs award by the DR to be reconsidered in view of the OTS.[33] The Applicant states that, despite the Respondent's arguments on the OTS in the Respondent's 21 November 2022 Letter, the DR had replied on 23 November 2022 that the DR's decision on costs was to stand.[34] Therefore, the Applicant submits that the DJ's view that the DR had not considered the issue of the OTS is "mere speculation".[35]

30 I am unable to accept the Applicant's argument that there was a *prima facie* case of error here. First, the DJ had explained that, in the absence of any reasoned decision by the DR on why the OTS did not affect the DR's decision on costs, the DJ concluded that the OTS had not been properly considered. Second, the DJ was entitled to consider the matter afresh in RA 85. Whilst the DR's decision was to be considered when deciding RA 85, costs is a matter of discretion and the DJ was entitled to decide on the issue of costs differently from the DR. The DJ considered the principles relating to costs and whether the judgment obtained by the Applicant was one which was not more favourable than the terms of the OTS. Ultimately, as was stated in *Bellingham, Alex v Reed, Michael* [2022] 4 SLR 513 at [100]–[101], an applicant must show something more than just his disagreement with the court's decision. In the present case, the Applicant has failed to show a *prima facie* case of error in relation to the DJ's consideration of the OTS in arriving at her decision to allow the Respondent's appeal in RA 85.

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33 Applicant's 18 April 2023 Affidavit at p 53.

34 Applicant's 18 April 2023 Affidavit at para 37.

35 Applicant's 18 April 2023 Affidavit at paras 33–40.

31 In her affidavit, the Applicant also alludes to a potential error by the DJ in arriving at her decision that the judgment obtained by the Applicant was one which was not more favourable than the terms of the OTS.[36] The Applicant asserts that there were reasons to reject the OTS.[37] Further, the Applicant argues that she had won in DC 45 as there was a finding that the Respondent had breached the SA and the Applicant was awarded nominal damages.[38]

32 I am unable to see how there was a *prima facie* case of error in this regard. The DJ had taken into consideration that the Applicant had won on the issue of liability as the Respondent had breached the SA and the Applicant was awarded nominal damages. On the issue of whether the judgment obtained by the Applicant was one which was not more favourable than the terms of the OTS, the DJ applied the well-settled principles which include the following:[39]

> (a) Order 22A r 9(3) of the ROC 2014 provides that the defendant should be awarded costs on an indemnity basis from the date on which an offer to settle was served if the offer to settle is one which had not been withdrawn and had not expired before the disposal of the suit and if the judgment obtained by the plaintiff is one which was not more favourable than the terms of the offer to settle. This is based on the principle that where the requirements above are fulfilled, the plaintiff should have accepted the offer to settle instead of proceeding to judgment (see *NTUC Foodfare Co-operative Ltd v SIA Engineering Co Ltd and another* [2018] 2 SLR 1043 at [25]).

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36 Applicant's 18 April 2023 Affidavit at paras 29–30.

37 Applicant's 18 April 2023 Affidavit at para 29.

38 Applicant's 18 April 2023 Affidavit at para 30.

39 Notes of Evidence of 10 March 2023 at pp 12–13, para 22.

(b) The monetary sum offered in an offer to settle is only one factor to be taken into account in determining whether the judgment obtained by the plaintiff is more favourable than an offer to settle (see *CCM Industrial Pte Ltd v Uniquetech Pte Ltd* [2009] 2 SLR(R) 20 at [40]).

(c) There is nothing in Order 22A r 9(3) of the ROC 2014 which requires an offer to settle to be one which settles the entirety of the proceedings, or which prevents an offer to settle from dealing with non-monetary claims (see *Ram Das V N P v SIA Engineering Co Ltd* [2015] 3 SLR 267 ("*Ram Das*") at [30] and [42]).

(d) What is important in assessing an offer to settle is whether it is a serious and genuine offer to settle (see *Ram Das* at [46]).

(e) While the plaintiff may derive some non-monetary value from obtaining a judgment, this is subjective and incapable of precise quantification. Therefore, as a matter of principle, the non-monetary value that the plaintiff may obtain from a judgment should not be accounted for when analysing whether the judgment obtained by the plaintiff is one which was not more favourable than the terms of the offer to settle (see *Michael Vaz Lorrain v Singapore Rifle Association* [2021] 1 SLR 513 at [56]–[57]).

33 When applying the principles above, it is clear that the DJ's position that the judgment obtained by the Applicant was not more favourable than the terms of the OTS is correct. I would add that whatever the Applicant's *subjective* intentions may have been in rejecting the OTS, this would have no bearing *per se* on the *objective* inquiry of whether the judgment obtained by the Applicant

was one which was or was not more favourable than the terms of the OTS.[40] Considering the terms of the OTS with the judgment ultimately obtained by the Applicant, I am unable to agree with the Applicant that there was a *prima facie* case of error in the DJ's finding that the judgment was not more favourable than the terms of the OTS.

34 Finally, on the fourth and last alleged error, the Applicant argues that the Respondent had wrongly applied the Rules of Court 2021 instead of the ROC 2014 in mounting his appeal in RA 85.[41] However, as the DJ had noted (see [18(c)] above), the DJ was fully aware that it was the ROC 2014 which applied in RA 85. Further, the substantive law was the same in both the ROC 2014 and the Rules of Court 2021, a point accepted by the Applicant's counsel at the hearing of SUM 706.[42] Therefore, it is again unclear how this amounts to a *prima facie* case of error.

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

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

36 The Applicant makes a passing assertion in her affidavit that "there are general principles to be addressed".[43] However, I note that the Applicant appears not to be pursuing this point as her written submissions do not elaborate on the

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40 Respondent's Written Submissions at paras 58–59.

41 AWS at paras 30–32.

42 Notes of Evidence of 13 April 2023 at p 3.

43 Applicant's 18 April 2023 Affidavit at para 46.

general principles which were decided, much less which general principles were decided *for the first time*.

37 In my view, when deciding on the merits of the case in RA 85, the DJ had applied the well-settled principles relating to the determination of whether the judgment obtained by the Applicant was one which was not more favourable than the terms of the OTS (see [32] above where I have set out the principles which apply when determining the issue of favourability). There is nothing in the DJ's decision which suggests that there was a general principle being decided for the first time. It was an application of the well-settled principles which led to the conclusion that the judgment obtained by the Applicant was not more favourable than the terms of the OTS. On this basis, the DJ concluded that the costs consequences provided for in O 22A r 9(3) of the ROC 2014 should follow. In other words, the Applicant was entitled to costs on the standard basis until 17 March 2020 which was when the OTS was served and the Respondent was entitled to costs on the indemnity basis from the date the OTS was served on 17 March 2020 until 18 November 2022 which was when the DR made her decision on damages.

38 Therefore, in the absence of any further argument or elaboration by the Applicant, I am unable to accept the bare assertion by the Applicant that there are general principles to be addressed for the first time.

Conclusion

39 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. Accordingly, there is no basis for granting permission to the Applicant to appeal against the DJ's decision on costs and the Applicant's application must be dismissed.

40 I shall now hear the parties on costs to be awarded to the Respondent.

Tan Siong Thye
Senior Judge

Ng Hweelon and Isabel Ho Ci Xian (Isabel He Cixian) (Titanium Law Chambers LLC) for the applicant;
Sharon Chong Chin Yee and Kwong Yan Li Callie (RHTLaw Asia LLP) for the respondent.