IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 21

Court of Appeal / Civil Appeal No 31 of 2023

Between

Crapper Ian Anthony

… *Appellant*

And

Salmizan bin Abdullah

… *Respondent*

GROUNDS OF DECISION

[Civil Procedure — Judgments and orders]
[Tort — Negligence — Causation]
[Tort — Negligence — Damages]
[Damages — Assessment]

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v
Salmizan bin Abdullah

[2024] SGCA 21

Court of Appeal — Civil Appeal No 31 of 2023
Sundaresh Menon CJ, Steven Chong JCA and Debbie Ong Siew Ling JAD
9 May 2024

28 June 2024

Steven Chong JCA (delivering the grounds of decision of the court):

Introduction

1 In a somewhat serendipitous way, a relatively modest personal injury claim commenced before the Magistrate's Court found its way to this court to determine a rudimentary but fundamental question of law and procedure.

2 In an effort to save time and costs, the appellant and the respondent agreed to enter into a consent interlocutory judgment at 90 per cent in favour of the respondent but "leaving the issues of damages and causation to be assessed" because the appellant disputed the causal connection between the accident and the respondent's injuries. However, during the assessment of damages hearing ("the AD hearing"), a Deputy Registrar ("DR") of the State Courts, on his understanding of this court's decision in *Tan Woo Thian v PricewaterhouseCoopers Advisory Services Pte Ltd* [2021] 1 SLR 1166 ("*Tan*

Woo Thian") expressed concerns as to whether it was legally permissible for the parties to enter interlocutory judgment with express reservation as regards causation of the respondent's claim for general damages.

3 In light of the concerns, the appellant applied for the case to be transferred to the General Division of the High Court ("General Division") to seek a pronouncement of several related preliminary questions of law, in particular, as to whether it is permissible to dispute causation to any extent after the entering of interlocutory judgment. The High Court judge below ("the Judge"), in his comprehensive judgment reported in *Salmizan bin Abdullah v Crapper Ian Anthony* [2023] SGHC 75 (the "Judgment"), answered the questions in the negative. Recognising that the decision has broad implications for all claims in the tort of negligence, including, in our view, the efficient and cost-effective management of claims covered by insurance, the Appellate Division of the High Court ("Appellate Division") rightly granted permission to appeal.

4 Following the appeal hearing on 9 May 2024, we allowed the appeal. As we will explain below, the outcome of the appeal is largely driven by two key questions. The first question is whether parties in a negligence claim for personal injuries arising from motor vehicle accidents ("PIMA") are precluded from entering into an interlocutory judgment by consent without admitting causation. With respect, the Judge below erroneously approached this question with reference to cases where the court in contested negligence claims found causation before the entering of interlocutory judgment or to cases where the court had entered interlocutory judgment in default. Quite clearly, in every contested negligence claim, the court would necessarily have to decide causation one way or the other. In a negligence claim where an interlocutory judgment has been entered in default, it would be one in which liability (and

therefore causation of damage) was not challenged before the assessment of damages. However, that does not mean that causation must invariably either be admitted or decided in every case before entering interlocutory judgment. What was not adequately appreciated by all parties is that the question before the General Division assumes that an interlocutory judgment on terms which include an express reservation on causation has been entered by *consent*. In any consent interlocutory judgment, it is for the parties to agree on what issues had been resolved with *res judicata* effect and what issues have been left open. Once that distinction is properly understood, which was overlooked below, the answer to the second question *ie*, whether bifurcation can be ordered when causation is reserved, becomes self-evident because the bifurcation would merely be the consequence of the terms of the consent interlocutory judgment. There can be no real difficulty whatsoever as to what the parties can or cannot dispute at the subsequent stage of the proceedings (*ie*, the "AD Stage").

The facts

5 On 29 March 2019, the appellant was driving a motorcycle when it collided with the respondent's motor car. The respondent allegedly suffered neck pain and back pain as a result of the accident and filed a claim at the Magistrate's Court against the appellant for general damages and special damages (including loss of income, medical expenses and transport expenses). The appellant resisted the respondent's claim on the basis of, amongst other grounds, the lack of causation for his injuries and challenged the respondent's heads of claims for general damages.

6 In the completed Form 9I of the State Courts Practice Directions 2014 (which is used to enter a consent judgment for, amongst others, PIMA claims) dated 8 January 2021, the parties expressly indicated that by consent,

interlocutory judgment is entered for the respondent against the appellant at 90 per cent "leaving the issues of damages and *causation* to be assessed" [emphasis added]. On the same day, consent interlocutory judgment was entered for the respondent against the appellant. The terms of the interlocutory judgment read:

> **UPON** this matter coming on for aCDR this day **AND UPON HEARING** Counsel for the Plaintiff who mentioned on behalf of Counsel for the Defendant **AND BY CONSENT IT IS HEREBY ADJUDGED THAT** Interlocutory Judgment be entered for 90% against the Defendant, and the Defendant do pay the Plaintiff damages to be assessed, and costs and interests reserved to the Registrar.
>
> [bold and underlined text in original]

7 On 24 March 2021, the respondent's proposed medical doctor and the appellant's proposed technical specialist were appointed as Single Joint Experts. The technical specialist stated in his report that the damage profiles of the vehicles involved were not consistent with the level of force transference required to have caused the respondent to suffer neck and lower back pain from the accident.

8 On two separate hearings before two DRs on 23 March 2022 and 20 April 2022, the parties were directed to consider the findings by this court in *Tan Woo Thian* and assess whether they had any impact on the case.

9 Subsequently, in the Joint Opening Statement on 13 June 2022 filed for the AD hearing, the appellant stated that "causation [is] disputed" in respect of the respondent's claim for pain and suffering for neck and back pain. However, the appellant agreed to pay for the respondent's medical and transport expenses.

10 On 15 June 2022, during the hearing for the assessment of damages before another DR, the parties stated that they were willing to proceed with the

AD hearing despite the dispute as to the causation of the damages claimed by the respondent. In other words, as far as the parties were concerned, they were fully aware of the terms of the consent interlocutory judgment and had no difficulty proceeding with the AD hearing. However, the DR continued to express his concerns about proceeding with the AD hearing in light of *Tan Woo Thian*, in particular his view of this court's holding in *Tan Woo Thian* (at [8]) that in a bifurcated trial, the plaintiff at the liability stage would need "to show that he did, in fact, suffer one or more types of loss that was causally connected to the alleged breach". While the appellant indicated that he was prepared to agree to one head of special damages in order to proceed with the AD hearing, the DR expressed the view that "there does not seem to be any decision whereby assessment [of damages] went ahead when parties only consented to [special damages]". The appellant acknowledged the DR's concerns and raised the possibility of transferring the matter to the General Division to determine the relevant questions of law. The hearing was adjourned for the parties to make the necessary application.

11 On 6 July 2022, the appellant filed an application for the matter to be transferred to the General Division under s 54B(1) of the State Courts Act 1970 (2020 Rev Ed) ("SCA") to settle the extent to which causation can be contested at the AD Stage after entering interlocutory judgment against a defendant. The application was allowed by an Assistant Registrar on 5 August 2022. Subsequently, on 19 October 2022, the appellant filed a summons under O 33 r 2 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC 2014") for the following preliminary questions of law to be determined by a judge of the General Division:

(a) Whether causation can be reserved *in toto* to the AD Stage;

(b) If the answer to (a) is no, whether causation can be reserved to the AD Stage, if parties accept that the plaintiff suffered one or more types of special damages causally connected to the defendant's breach of duty;

(c) If the answer to (b) is no, whether causation can be reserved to the AD Stage, if parties accept that the plaintiff suffered one or more types of general damages causally connected to the defendant's breach of duty.

(hereinafter referred to as "Question 1", "Question 2" and "Question 3" individually, and as "Questions" collectively)

The decision below and the appeal

The decision below

12 In the decision below, the Judge first considered the procedural issues that arose from the application made under s 54B(1) of the SCA and O 33 r 2 of the ROC 2014. From a plain reading of s 54B(1) of the SCA, proceedings can be transferred from the State Courts *to be tried* in the General Division if the case involves some important question of law or is a test case, but it did not specifically contemplate a transfer of such proceedings to the General Division only for the court to answer those questions (as questions or issues arising in a cause or matter) without trying the proceedings. The Judge noted that there was a statutory lacuna in this regard, and observed that it may be preferable for the same judge to hear the transfer application under s 54B(1) of the SCA, as well as to decide whether to allow for the preliminary determination of questions under O 33 r 2 of the ROC 2014. This would avoid a situation where the judge who eventually hears the transferred matter disagrees that there is an important

question of law to be determined. In this case, the appellant rightly took out an application under O 33 r 2 for the General Division to determine the Questions and also included a second prayer in the application for transfer to the General Division for the matter to be transferred back to the State Courts for the assessment of damages to continue after the determination of the preliminary questions (Judgment at [19]–[22]).

13 As for the manner in which an application under O 33 r 2 of the ROC 2014 should be made, the Judge held that this should proceed in two stages. First, before any question about the subject of the application can be preliminarily determined, the logically anterior question is whether the court should grant permission for the question to be determined in the first place. Second, if the court grants permission, the court will proceed to the second stage to consider the merits of the question submitted for preliminary determination. The Judge held that a preliminary determination in this case would be appropriate and in the interests of justice as it would affect more than the immediate interest of the parties. It would benefit future litigants, insurance companies, and their legal advisors in planning their litigation roadmap and strategies. The Judge also noted that the respondent did not object to the application (Judgment at [23]–[29]).

14 Next, the Judge considered the preliminary questions of law raised by the appellant but reframed the questions as such:

(a) whether causation can be reserved *in toto* to the AD Stage; and

(b) if causation cannot be reserved *in toto* at the AD Stage, to what extent can it be challenged at the AD Stage?

The Judge held that causation cannot be reserved at all to the AD Stage in PIMA cases for the following reasons.

15 First, a cause of action in negligence is complete only when causation between the defendant's breach and the claimant's "damage" is established. The Judge held that "damage" expresses a conclusion that liability should be attached in respect of the harm. This is contrasted with "damages", which refers to the monetary sum that is usually aimed at compensating the claimant for being made worse off by the defendant's negligence. Generally, to claim damages, a claimant must also prove that he has suffered loss from the damage, in the sense that he has been made worse off as a result of the damage caused by the defendant's negligence (Judgment at [31]–[52]).

16 Second, the approach that parties can enter interlocutory judgment by consent and reserve causation *in toto* to the AD Stage (*ie*, the "Total Causation at AD Stage Approach") is wrong. The purpose of the AD Stage is to assess damages. When the issue of quantum or damages is engaged, it must mean that prior questions of liability would already have been settled. If an interlocutory judgment and final judgment make different pronouncements on the extent of a defendant's liability, this would give rise to significant difficulties for a party wishing to appeal the outcome of either judgment. As such, it is important that the distinct issues of liability and damages be kept separate to avoid the possibility of liability being dealt with twice over in the interlocutory judgment and the final judgment (Judgment at [53]–[69]).

17 Third, the approach that preserves the ability to challenge causation to some extent at the AD Stage provided that the claimant is able to prove causation in respect of some of his damage at the liability stage (*ie*, the "Partial Causation at AD Stage Approach"), is also wrong. An interlocutory judgment

which is sufficient for the parties to proceed to the AD Stage (whether by consent or not) would prevent the defendant from challenging causation to any extent at that stage. This follows from the effect and purpose of an interlocutory judgment in a bifurcated matter being to establish liability to give the claimant the right to claim damages, which are to be assessed at the AD Stage (Judgment at [70]–[80]).

18 The Judge also opined that the Partial Causation at AD Stage Approach is wrong on principle, precedent and policy. On principle, it is conceptually difficult to accept that a defendant, in a situation in which a claimant suffers multiple injuries from the defendant's breach of duty, can effectively be made globally "liable" for all the injuries on the basis that the claimant has established causation for just one of those injuries. It is also inherently inconsistent because if the claimant cannot prove causation for some of his injuries, then he should not be allowed to enter interlocutory judgment for those injuries. This approach is also difficult to apply because there would be no principle to guide the consistent application of this approach since it is unclear to what extent causation can be challenged at the AD Stage (Judgment at [82]–[87]).

19 On precedent, local authorities do not address whether an interlocutory judgment precludes a defendant from challenging causation at the AD Stage. Further, English authorities also do not support this, and the authorities that supposedly establish this principle should not be followed (Judgment at [88]–[109]).

20 On policy, the Partial Causation at AD Stage Approach is inconsistent with how our courts have been apportioning liability in PIMA cases and would not be in line with the broad policy of encouraging parties to settle their PIMA cases as early as possible. This is because it would give rise to further

disputes as to the content of the liability judgment and reignite issues of causation at the AD Stage. There is also no reason why the defendant cannot deal with the causation issues at the liability stage. Finally, if the extent of the admitted liability is not clear, the claimant may also suffer additional worry and anxiety (Judgment at [110]–[115]).

21 Instead, the approach that the parties cannot challenge causation to any extent at the AD Stage (*ie*, the "No Causation at AD Stage Approach") is correct as it accords with the conceptual points in the tort of negligence. The claimant would need to establish causation before the quantification of damages. Since the quantification of damages only arises in respect of damage that is proven, it must follow that the claimant must prove causation in this manner with respect to each part of the damage he has allegedly suffered. Further, where a single breach of duty causes multiple injuries, all the injuries would form a single cause of action. The claimant must bring his claim once and for all against the defendant in respect of all of the alleged damage, even if there is a possibility that further damage might be discovered by the claimant in the future (Judgment at [117]–[125]).

The appeal

22 The Judgment was delivered on 30 March 2023. On 30 May 2023, the appellant filed an application before the Appellate Division for permission to appeal against the Judgment. The Appellate Division allowed the application on 2 August 2023. The Appellate Division held that while there was no *prima facie* case of error in the Judgment, there was a question of importance upon which further argument and decision of a higher tribunal would be to the public advantage. The question was: where interlocutory judgment has been entered in a claim in the tort of negligence, save as regards the heads of damage that have

been established at the liability stage, is it open to the defendant to challenge causation on the other heads of damage claimed at the assessment of damages stage? The other issue to be clarified was in respect of *Tan Woo Thian* and *Ngiam Kong Seng and another v Lim Chiew Hock* [2008] 3 SLR(R) 674 ("*Ngiam Kong Seng (CA)*"), because *Ngiam Kong Seng (CA)* appeared to support the Total Causation at AD Stage Approach even though it was not cited in *Tan Woo Thian*.

23 Thereafter, the appellant filed the Notice of Appeal to the Appellate Division on 10 August 2023. On 23 August 2023, the appellant filed a further application for the appeal to be transferred to this court, which was allowed on 25 September 2023 by consent.

The parties' submissions

24 The respondent adopted a neutral position in this appeal and made no submissions.

Independent counsel's opinion

25 Mr Cavinder Bull *SC* ("Mr Bull") was appointed as independent counsel on 10 November 2023.

26 Mr Bull submitted that while bifurcation is intrinsically a matter of case management for the court's discretionary determination and issues did not need to be demarcated based on liability and quantum or damages, the analysis would be materially different when interlocutory judgment is entered in the course of bifurcated proceedings. Liability should be fully established before an interlocutory judgment may be entered.

27 Mr Bull further agreed with the Judge that a claimant must prove causation of damage to establish liability. He argued that *Tan Woo Thian* should be preferred over *Ngiam Kong Seng (CA)* because being careless *per se* does not found liability in negligence. He also agreed that the Judge's decision, which drew a distinction between damage and loss, is a positive step which added conceptual clarity to the law of negligence. However, he observed that there may be some potential difficulties in this distinction: this may be inconsistent with some prior decisions of this court; it may be challenging to identify if something ought to be classified as damage or loss; and this distinction may also not immediately fit well with negligence claims outside PIMA cases. Mr Bull also agreed with the Judge that issues of causation of damage in relation to all the heads of damage claimed must be established at the liability stage, which would demarcate the heads of losses that may subsequently be claimed and assessed at the AD Stage. Finally, remoteness of loss should be dealt with at the AD Stage instead of the liability stage.

The appellant's submissions

28 The appellant agreed with Mr Bull that the court has wide powers to bifurcate proceedings, and this was aligned with Mr Bull's submission that it cannot be a blanket rule that bifurcation would not be appropriate where causation is disputed. However, as regards whether an interlocutory judgment can be entered even before causation of damage has been established, the appellant disagreed with Mr Bull. The appellant argued that the nature of an interlocutory judgment need not be final as to liability and further opined that a cause of action does not require all elements of liability to be proven. Moreover, given that the overarching goal in bifurcation is to achieve expedition and cost-effectiveness in the trial process, liability and quantum or damages should not be rigidly apportioned as suggested in the Judgment.

29 The appellant also argued that the Partial Causation at AD Stage Approach should be preferred. First, this would retain the distinction between damage and loss and would also be consistent with the Judge's holding that an interlocutory judgment can be entered only after liability has been established. Second, it would not be inconsistent or difficult to apply this approach in practice since it had been the approach taken by the courts for over two years between *Tan Woo Thian* and the Judgment with no difficulties in the lower courts. Third, in various other aspects of negligence, such as the test for remoteness and the existence of a duty of care, the law also does not require such specificity. Fourth, the courts have also predominantly spoken of causation of harm at a high level of abstraction or even perceived harm. Fifth, this approach is adopted in other jurisdictions such as the UK. Sixth, this approach would be aligned with the definition of a cause of action as defined in *Letang v Cooper* [1965] 1 QB 232 at 242–243, which is "simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person". And where causation for at least one injury has been established, a cause of action has been established. Seventh, the No Causation at AD Stage Approach adopted by the Judge was unnecessarily strict, especially in light of non-injury motor accident claims, which would often involve some dispute as to whether certain parts of the claimant's vehicle had sustained damage and whether the defendant caused that damage.

The issues to be determined

30 For the procedural aspects of the Judgment, while we noted that the ambit of s 54B(1) of the SCA and O 33 r 2 of the ROC 2014 was not entirely clear (see [12]–[13] above), we do not think that it is necessary to address this issue since it did not arise in this appeal.

31 As for the issues relating to the substantive law on negligence that the Judge comprehensively addressed, save for our clarifications (see [60]–[63] below) with respect to the seeming inconsistency between this court's decisions in *Tan Woo Thian* and *Ngiam Kong Seng (CA)*, it is strictly not necessary to deal with the other points that the Judge considered.

32 There were essentially two main questions which, in our view, were dispositive of the appeal before us:

(a) Are parties in a PIMA claim precluded from entering into an interlocutory judgment by consent without admitting causation?

(b) Can and should bifurcation be ordered when causation is reserved?

Whether parties in a PIMA claim are precluded from entering into an interlocutory judgment by consent without admitting causation

33 In the Judgment, the Judge essentially held that parties in a PIMA claim are precluded from entering into an interlocutory judgment by consent without admitting causation because the term "interlocutory judgment" had a specific meaning in that the court had decided all the issues which conclusively established liability. Four reasons were proffered to support the Judge's holding:

(a) O 13 r 2 of the ROC 2014 defines an interlocutory judgment as a judgment which is interlocutory only as to the amount but final as to the right of the plaintiff to recover damages and costs. (Judgment at [59]).

(b) The claimant obtains his right to claim damages from the judgment on liability, and it must thus follow that the interlocutory

judgment would have determined liability fully between the parties (Judgment at [60]).

(c) The assessment of damages at the AD Stage is what follows after interlocutory judgment has been entered, and liability must thus have been settled when interlocutory judgment is entered (Judgment at [63]).

(d) There is the possibility of inconsistent judgments if liability could be dealt with twice in the interlocutory judgment and at the final judgment stages. Further, if both an interlocutory judgment and final judgment make different pronouncements on the extent of a defendant's liability, this would give rise to significant difficulties for a party wishing to appeal the outcome of either judgment (Judgment at [62]).

34 Mr Bull agreed with the Judge's decision on this issue and provided further reasons to support the Judge's decision. He contended that the meaning of an "interlocutory judgment" would be consistent with the judicial language of giving or entering judgment, which connotes a pronouncement of liability. Moreover, O 15 rr 15(3) and (4) of the ROC 2021, which both state that "[i]f the hearing was ordered to be bifurcated, *when the Court gives judgment on liability*…" [emphasis added] also supported the position that an "interlocutory judgment" should relate to a pronouncement of liability. Furthermore, some forms of interlocutory judgments such as interlocutory judgments in default of appearance carry with them the implication that liability for the cause of action has been established, and it would be more consistent for all types of interlocutory judgments to carry with them the same implication of liability having been established.

35 In our judgment, we disagreed with the Judge and Mr Bull. We held that liability does not need to be fully established before a consent interlocutory judgment can be entered in the context of PIMA cases.

36 O 13 r 2 of the ROC 2014 and O 15 r 15 of the ROC 2021 were cited by the Judge and Mr Bull, respectively, as support for the proposition that an interlocutory judgment must establish liability for PIMA cases. O 13 r 2 of the ROC 2014 and O 15 r 15 of the ROC 2021 read as follows:

> **[ROC 2014]**
>
> **Claim for unliquidated damages (O. 13, r. 2)**
>
> 2. Where a writ is endorsed with a claim against a defendant for unliquidated damages only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.
>
> **[ROC 2021]**
>
> **Assessment of damages or value and taking of accounts (O. 15, r. 15)**
>
> 15.—(1) This Rule applies to the assessment of damages and the taking of accounts, and in this Rule, unless the context otherwise requires, "damages" includes damages for personal injuries or value of movable and immovable property and amounts due on taking of accounts.
>
> …
>
> (3) If the hearing was ordered to be bifurcated, when the Court gives judgment on liability, it may give directions on the assessment of damages and proceed subsequently to assess damages or order the Registrar to assess damages.
>
> (4) If the hearing was ordered to be bifurcated, and the Court gives judgment on liability and for damages to be assessed, and no provision is made by the judgment as to how the damages are to be assessed, the damages must, subject to the provisions of this Rule, be assessed by the Registrar or Judge, and the party entitled to the benefit of the judgment must, within one month from the date of the judgment, apply to the Court for directions and the provisions of Order 9, Rule 25(12) apply to the application for directions.

O 13 r 2 of the ROC 2014 deals with the specific situation when an interlocutory judgment is entered in default of appearance, while O 15 r 15 of the Rules of Court 2021 considers the assessment of damages after judgment has been entered for liability. These provisions are clearly specific to the two aforementioned situations and do not exclude the possibility of entering into an interlocutory judgment by consent without admitting or establishing liability by reserving causation to the AD Stage.

37 As for the precedents cited by the Judge and Mr Bull in support of the Judgment on this issue, they did not support the proposition that an interlocutory judgment can *only* be entered after liability has been established.

38 The Judge considered the Privy Council's decision in *Strachan v The Gleaner Co Ltd and another* [2005] 1 WLR 3204 ("*Strachan*") and this court's decision in *U Myo Nyunt (alias Michael Nyunt) v First Property Holdings Pte Ltd* [2021] 2 SLR 816 ("*U Myo Nyunt*"), while Mr Bull referred to this court's decision in *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 525 ("*Wellmix*"), and the High Court decisions of *Lim Chi Szu Margaret v Risis Pte Ltd* [2006] 1 SLR(R) 300 ("*Margaret Lim*") and *Aries Telecoms (M) Bhd v ViewQwest Pte Ltd (Fiberail Sdn Bhd, third party)* [2017] 4 SLR 728 ("*Aries Telecoms*").

39 In our view, a careful examination of these cases revealed that they do not concern situations of parties entering interlocutory judgments by consent with an express reservation for causation to be determined at the AD Stage. We first considered *Strachan*, *U Myo Nyunt* and *Wellmix*, which were cases in which interlocutory judgment was entered by default.

40 In *Strachan*, the plaintiff sued the defendants for libel and obtained a judgment in default of defence in the Supreme Court of Jamaica for damages to be assessed. Damages were assessed and judgment was entered for that sum. The defendants then applied to set aside the default judgment, which was eventually set aside by Walker J. Dissatisfied with this, the plaintiff applied before the Supreme Court of Jamaica to set aside the decision which had earlier set aside the default judgment. However, Smith J held that he did not have jurisdiction to do so. The plaintiff appealed against Smith J's decision to the Court of Appeal of Jamaica, then to the Privy Council. The Privy Council in *Strachan* dismissed the appeal because Smith J had no power to set aside Walker J's decision. In its judgment, the Privy Council held that the interlocutory judgment was not spent even though damages remained to be assessed and Walker J therefore had the jurisdiction to set aside the default interlocutory judgment, and held that:

> In their Lordships' opinion these questions are easily answered if three points are borne in mind. *The first is that, once judgment has been given (whether after a contested hearing or in default) for damages to be assessed, the defendant cannot dispute liability at the assessment hearing*: see *Pugh v Cantor Fitzgerald International* [2001] EWCA Civ 307; The Times, 30 March 2001 citing *Lunnon v Singh* (unreported) 1 July 1999; Court of Appeal (Civil Division) Transcript No 1415 of 1999. If he wishes to do so, he must appeal or apply to set aside the judgment; while it stands the issue of liability is res judicata. The second is that, whether the defendant appears at or plays any part in the hearing to assess damages, the assessment is not made by default; the claimant must prove his loss or damage by evidence. It is because the damages were at large and could not be awarded in default that the court directed that they be assessed at a further hearing at which the plaintiff could prove his loss. *The third is that the claimant obtains his right to damages from the judgment on liability; thereafter it is only the amount of such damages which remains to be determined.*
>
> [emphasis added]

The Judge relied on *Strachan* in holding that because "the claimant obtains his right to claim damages from the judgment on liability … [it follows] that that judgment has determined liability fully between the parties" (Judgment at [60]).

41 The Judge also referred to this court's holding in *U Myo Nyunt*. There, the respondent entered interlocutory judgment in default of appearance against the appellant under O 13 r 2 of the ROC 2014, and thereafter obtained a further judgment on assessment of damages in the appellant's absence. Subsequently, the appellant applied to set aside, amongst others, the interlocutory judgment and the judgment on assessment of damages, which was refused by the High Court. On appeal, this court, citing *Strachan*, held that after a judgment in default under O 13 r 2 of the ROC 2014 is entered with damages to be assessed, the defendant is not entitled to dispute liability at the AD Stage (*U Myo Nyunt* at [47]). Following this, the Judge concluded that causation, therefore, cannot be re-opened *in toto* at the AD Stage once interlocutory judgment has been entered (Judgment at [61]). This case involved an appeal against the General Division's decision not to set aside, amongst others, an interlocutory judgment that was entered in default of appearance under O 13 r 2 of the ROC 2014.

42 Like *Strachan* and *U Myo Nyunt*, *Wellmix* was also concerned with an interlocutory judgment entered in default. There, an action was commenced against the respondent by the appellant for breach of his duties as a director of the appellant. However, the respondent failed to file the necessary affidavits of evidence-in-chief ("AEICs"), and an Assistant Registrar thereafter made an order that the respondent serve the AEICs by a stipulated date failing which judgment would be entered in the matter for the appellant. The respondent served the AEICs late, and interlocutory judgment was entered by default in favour of the appellant with damages to be assessed. The respondent sought to set aside the interlocutory judgment, but the application was refused by an

Assistant Registrar. A judge hearing the appeal against this decision also dismissed the appeal. However, the judge acceded to the request for further arguments by the respondent, and the interlocutory judgment was set aside thereafter. The appellant then filed a notice of appeal against the judge's decision to set aside the interlocutory judgment, and the respondent applied to strike out the notice of appeal. Amongst others, the respondent argued that the interlocutory judgment was an interlocutory order and, therefore, could not be appealed against. In this context, this court in *Wellmix* observed at [15] that:

> Where, in an action, interlocutory judgment is entered against the defendant after hearing in chambers on the merits, does that order finally dispose the rights of the parties? … There is much force in the argument that a determination as to liability does not finally or fully dispose of the rights of the parties where damages are also claimed in the action. That will only be a partial determination of the rights … On this view, an interlocutory judgment with damages to be assessed will not be an order which finally disposes of the rights of the parties in that action.

43 In our judgment, *Strachan*, *U Myo Nyunt* and *Wellmix* do not support the proposition that an interlocutory judgment must, in all cases, fully establish liability. In our view, the observations made by the Privy Council and this court in these decisions must be understood in their proper context: these decisions related to interlocutory judgments obtained in default (of defence; of appearance; and through the failure to comply with an order of court respectively), the consequence of which was that liability was not challenged when interlocutory judgment was entered in these cases. These decisions neither purported to exhaustively define when an "interlocutory judgment" *could* be entered, nor, more pertinently, did they even concern a *consent* interlocutory judgment in which the parties agreed on what had been determined with *res judicata* effect and what had not.

44 Next, *Margaret Lim* was concerned with an application for an extension of time to file an appeal against a decision of the High Court. In that case, a claim was made by the plaintiffs against two defendants for a breach of contract for failing to serve the plaintiffs loyally and faithfully as employees of the plaintiffs. The defendants contested liability, but interlocutory judgment with damages to be assessed was entered because the defendants did not raise any point which amounted to a fairly arguable defence (see *Lim Chi Szu Margaret and Another v Risis Pte Ltd* [2005] SGDC 56). In the High Court, the court considered whether an "interlocutory judgment with damages to be assessed" constituted an "interlocutory order" within the meaning of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) such that leave was required to appeal to the Court of Appeal. It was in this particular context wherein liability was *contested* and an interlocutory judgment had been entered in respect of *liability* that the High Court held in *Margaret Lim* at [15] that the interlocutory judgment was a "final" order because it would be "final" as regards liability. Similarly, the High Court did not decide that an interlocutory judgment *necessarily* in all cases establishes liability and, therefore, would amount to a "final" order.

45 In *Aries Telecoms*, the main action was a claim by the plaintiff against the defendant for conversion arising from the defendant's refusal to return equipment to the plaintiff. The parties agreed to a consent interlocutory judgment on *liability* in favour of the plaintiff, with damages to be assessed. A preliminary issue was then raised for determination under O 14 r 12 of the ROC 2014 on whether the plaintiff was entitled to an account of profits or an order that profits should be disgorged to the plaintiff. The plaintiff also sought to claim punitive, exemplary or aggravated damages as an alternative. The judge decided that the plaintiff was only entitled to ordinary damages. The plaintiff filed a notice of appeal against this decision and also applied to the High Court

seeking a declaration that no leave to appeal to the Court of Appeal was required in respect of an order that was made under O 14 r 12 of the ROC 2014 for a preliminary issue to be tried. In determining if an interlocutory judgment with damages to be assessed was a final order under the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"), the High Court considered the cases of *Wellmix* and *Margaret Lim*. The court opined at [30]–[31] that the decision in *Wellmix* that an interlocutory judgment was an "interlocutory order" was not convincing because "the purpose of an interlocutory judgment … [is to] dispose of the question of liability, once and for all, between the parties … [and] every appeal against an interlocutory judgment … would necessarily be on liability alone." However, we noted that the specific question that the High Court had to answer was whether a determination of a question of law or construction of any document under O 14 r 12 of the ROC 2014 was a "final order" or "interlocutory order" under the SCJA. The observations that the High Court made on *Wellmix* were not entirely necessary since the only relevant holding in *Wellmix* that the High Court had to consider was that a final order had to be an order that disposed of the entire action. It did not have to consider whether an "interlocutory judgment" could *only* refer to a judgment that establishes liability entirely, and we did not think that the views expressed by the High Court in *Aries Telecoms* were intended to be a definitive pronouncement that *all* interlocutory judgments would necessarily dispose of the question of liability.

46 Contrary to the narrow definition of an "interlocutory judgment" adopted by the Judge, Mr Bull helpfully pointed out that a wider approach to the meaning of an "interlocutory judgment" is not entirely unprecedented. In *Fidelitas Shipping Co Ltd v V/O Exportchleb* [1966] 1 QB 630 at 641–642 ("*Fidelitas*"), the English Court of Appeal opined that an interlocutory judgment

is merely a judgment on any issue which is not decisive of the suit. Pertinently, the court held that:

> In the case of litigation the fact that a suit may involve a number of different issues is recognised by the Rules of the Supreme Court which contain provisions enabling one or more questions (whether of fact or law) in an action to be tried before others. *Where the issue separately determined is not decisive of the suit, the judgment upon that issue is an interlocutory judgment* and the suit continues …
>
> [emphasis added]

Fidelitas has also been cited with approval in the UK Supreme Court decision of *Test Claimants in the FII Group Litigation v Revenue and Customs Commissioners (formerly Inland Revenue Commissioners)* [2020] 3 WLR 1369 at [66] and in the High Court of Australia decision of *Bass v Permanent Trustee Co Ltd* (1999) 161 ALR 399 at [57].

47 We broadly agreed with the definition of an "interlocutory judgment" in *Fidelitas*. We did not think that the term "interlocutory judgment" should be as narrowly defined as suggested by the Judge and Mr Bull. Fundamentally, the meaning of the words "interlocutory" and "judgment" do not invariably bear any connotation of establishing liability. The meaning of a "judgment" in common law is defined in *PNG Sustainable Development Program Ltd v Rex Lam Paki* [2022] SGHC 188 at [41] in the following manner:

> … At common law, a judgment is an adjudication by a court of competent jurisdiction upon a cause of action, which: (a) terminates the litigation or a defined part of it in relation to that cause of action; and (b) determines the cause of action or a defined part of it conclusively between the parties to the litigation, *ie* in a manner which the parties cannot thereafter dispute or reopen before that court. …

During the oral hearing, Mr Bull also acknowledged that a court's determination on *only* the existence of a duty of care and the breach of such a duty (without

fully establishing liability in negligence) would still be properly considered a judgment. Separately, the term "interlocutory" is defined as "a decree or judgment: given in the course of an action or as a preliminary to coming to trial; preliminary, provisional, interim": *Shorter Oxford English Dictionary* (Oxford University Press, 6th edn, 2007). Neither "interlocutory" nor "judgment" bears any implication relating to the specific issue of *liability*. Instead, in our judgment, an interlocutory judgment is an intermediate judgment that determines a preliminary or subordinate point but does not finally decide the case (see also, Bryan Garner *et al*, *Black's Law Dictionary* (Thomson Reuters, 11th edn, 2019)). There is also no principled reason why the term "interlocutory judgment" should have a different meaning when used in the context of a PIMA case.

48 Under this definition, an interlocutory judgment can be entered by consent on issues that do not wholly establish liability. In such a consent interlocutory judgment, it is for the parties to agree on what had been resolved with *res judicata* effect and what had not. Implicit in such situations is that the terms of the consent interlocutory judgment would have resolved some issues in dispute but not necessarily liability between the parties. It is difficult to see why parties cannot consent to leave certain issues (even those concerning liability such as causation) to be determined at the second stage of proceedings. For example, it is eminently possible and conceptually consistent for a consent interlocutory judgment to be entered in which the existence and breach of duty of care have been established, but a final judgment whereby causation of damage was not eventually made out and with the result that no damages were due to the claimant. We noted the Judge's concern that it would be difficult to know what to appeal against if causation of damage was dealt with at the second stage of proceedings (see [16] above), but his concern was also founded on the

incorrect presupposition that there cannot be an interlocutory judgment without first establishing liability. In this example, should parties seek to appeal against causation of damage, it would be clear that they can and should appeal against the final judgment. Besides, in the context of the present appeal, it bears noting that an appeal does not generally lie against a *consent* interlocutory judgment save for exceptional circumstances, such as where a party's consent was vitiated due to the conduct of the judge (see *Nim Minimaart (a firm) v Management Corporation Strata Title Plan No 1079* [2010] 2 SLR 1 at [33]–[34]). Instead, a consent interlocutory judgment would ordinarily bind the parties unless fresh proceedings are commenced to set it aside (*Loh Der Ming Andrew v Koh Tien Hua* [2021] 2 SLR 1013 at [60]). This is because such a judgment is not premised on an adjudicated outcome, and there would be no decision of the court on the merits which would form the subject matter of an appeal (*JCQ v JCR* [2024] SGCDT 1 at [26]). As the High Court also explained in *TOC v TOD* [2016] SGHCF 10 at [6]:

> Generally, a consent order is an order of court entered by agreement between the parties with the approval of the court. The order so reached by agreement has a binding effect on the parties who implicitly, have no right of appeal. The recourse to any unhappy party is to apply to have the consent order set aside.

As such, no confusion could possibly arise as to which judgment *ie*, interlocutory and/or final, can be the subject matter of appeal.

49 A key concern raised by Mr Bull in stating that an "interlocutory judgment" in the context of a PIMA case (including a consent interlocutory judgment) should only be used for a judgment that fully establishes liability was that it would facilitate clarity in the usage of the term "interlocutory judgment" and would avoid confusion among court users (see [34] above). While we agreed with Mr Bull that these are important goals in the usage of legal terms,

we did not think that giving the term "interlocutory judgment" a broader meaning as above would detract from these goals.

50 In determining what an "interlocutory judgment" means under this broader definition, what is crucial is the *context* in which that particular interlocutory judgment has been entered and the terms of that interlocutory judgment. Thus, for example, where parties dispute liability and proceedings are bifurcated as between liability and quantum and the court delivers an interlocutory judgment after the first tranche of proceedings, what the court delivers is an interlocutory judgment *on liability*. However, where parties have agreed to enter into a consent interlocutory judgment, what has been decided would be an interlocutory judgment on the matters that the parties had agreed to, regardless of whether the interlocutory judgment entirely established liability. There can be no confusion as to what the interlocutory judgment was entered in respect of; any doubt would be a consequence of the conduct of the parties' counsel in drafting the consent interlocutory judgment and not because of the legal effect of the consent interlocutory judgment.

51 At this juncture, it is apposite to underscore the importance of ensuring accuracy, precision, and clarity in drafting such a *consent* interlocutory judgment. For one, a clear distinction should be drawn between an interlocutory judgment on *issues* and an interlocutory judgment on *liability*. Where it is the latter, then it would, by definition, mean that such an interlocutory judgment would have established liability fully reserving only issues relating to the assessment of damages; where it is the former, then it is important to expressly define the particular *issues* that the interlocutory judgment had resolved.

52 Finally, it was not lost on us that the context in which the questions of law arose in this case was a consent interlocutory judgment in which the parties

had agreed to reserve issues of causation to the AD Stage. The parties knew what the interlocutory judgment was entered in respect of – they clearly agreed to reserve issues of causation to the second stage of proceedings. The preliminary questions of law that were the subject of this appeal only arose because the DR raised the issue of the legal effect of *Tan Woo Thian* during the AD hearing, and that the legal effect of a consent interlocutory judgment had not been adequately or comprehensively addressed by the parties (see [8] and [10] above).

Whether bifurcation can be ordered when causation is reserved

53 The second issue that was dispositive of the appeal was whether bifurcation can and should be ordered in PIMA cases when causation is reserved and where liability has not been determined at the first stage of the proceedings.

54 The Judge recognised that "bifurcating a trial between liability and quantum would not be the only feasible way of achieving a just and effective disposal of a matter. In this regard, the Rules of Court confers broad case management powers on the court to fashion an appropriate procedure to suit the needs of the parties" (Judgment at [140]). However, the Judge noted that in a bifurcated trial for a PIMA case, "parties would be required to enter interlocutory judgment for *liability* before proceeding to the AD Stage. While such interlocutory judgments in the context of PIMA cases would usually be by consent, it is not material whether this is the case" [emphasis in original] (Judgment at [58]).

55 Mr Bull contended that the court has wide powers to bifurcate proceedings, which is intrinsically a matter of case management for the court's discretionary determination. There is also no reason bifurcation should only be

restricted to a split between issues or questions going to liability and issues or questions going to quantum or damages.

56 We first considered O 15 rr 15(3) and (4) of the ROC 2021 (see [36] above), which, as noted by Mr Bull, may imply that bifurcation must be along liability and quantum or damages. In our judgment, we agreed with Mr Bull that O 15 r 15 did not carry such an implication. The heading of O 15 r 15 makes clear that this rule is only specific to the specific scenario where the issues are split on the basis of liability and quantum or damages and do not deal exhaustively with the court's powers and discretion in bifurcating proceedings.

57 As a matter of case management, there is also nothing in principle or policy requiring bifurcation to be strictly between liability and quantum or damages. As explained by the General Division in *The Resolution and Collection Corp v Tsuneji Kawabe and others* [2023] SGHC 100 at [6], "[a]lthough a bifurcation of liability and damages is the common use … [t]he question is, whether, it is just and convenient to order a bifurcation in this action." Bifurcation is, at its core, driven by considerations of promoting expeditious proceedings, cost-effectiveness and ensuring the efficient use of court resources. While the court commonly bifurcates proceedings between liability and quantum or damages, this is not inevitably so, and the key question must always be whether the bifurcation that is ordered is just and convenient in the effective and efficient disposal of the matter.

58 Further, as a matter of precedent, proceedings have not always been bifurcated on the basis of liability and quantum or damages. Perhaps, the best example of a case which was bifurcated and decided in tranches based on *issues* is the long-standing joint venture dispute between, on the one hand, BCBC Singapore Pte Ltd, Binderless Coal Briquetting Company Pty Limited and

White Energy Company Ltd, and on the other, PT Bayan Resources TBK and Bayan International Pte Ltd. In that case, the Singapore International Commercial Court ("the SICC") in consultation with the parties proceeded to determine the dispute over several tranches. This led to a number of judgments where the SICC ruled on discrete lists of agreed issues. In *BCBC Singapore Pte Ltd & anor* v *PT Bayan Resources TBK & anor* [2016] 4 SLR 1, the SICC ruled on certain issues relating to the scope and content of the parties' contractual obligations in relation to the joint venture. In *BCBC Singapore Pte Ltd & anor* v *PT Bayan Resources TBK & anor* [2017] 5 SLR 77, the SICC ruled on certain contractual obligations under the joint venture and alleged breaches of the parties' contractual obligations under the joint venture. In *BCBC Singapore Pte Ltd & anor* v *PT Bayan Resources TBK & anor* [2023] 4 SLR 1, the SICC ruled on the issues of loss and damages. Several of the SICC decisions were subject to appeals. Of particular relevance in the present context is that the first judgment (*ie*, *BCBC Singapore Pte Ltd & anor* v *PT Bayan Resources TBK & anor* [2016] 4 SLR 1) essentially adjudicated on the agreed issues without deciding on the question of liability. There was no suggestion that that decision (which did not determine liability) was not a judgment of the SICC. Similarly, in *Millenia Pte Ltd (formerly known as Pontiac Marina Pte Ltd) v Dragages Singapore Pte Ltd (formerly known as Dragages et Travaux Publics (Singapore) Pte Ltd) and others (Arup Singapore Pte Ltd, third party)* [2019] 4 SLR 1075, the court ordered by consent that the trial be bifurcated between issues of liability and issues of quantum, save that one issue relating to quantum be nonetheless heard at the liability stage of the proceedings (at [6]). Likewise, in *RSP Architects Planners & Engineers v Ocean Front Pte Ltd and another appeal* [1995] 3 SLR(R) 653, proceedings were bifurcated, and two preliminary issues of law were first raised: whether the management corporation was competent to institute and maintain the action against the developers claiming

damages in negligence in the construction of the various parts of the common property; and whether the management corporation had a claim against the developers, whether in contract or tort, for pure economic loss in the form of cost of repair or making good those defects complained of (at [3]–[5]). The issue of whether a duty of care was owed arose in the first stage of the proceedings but was insufficient to establish liability.

59 As for whether the court *should* bifurcate between liability and quantum or damages or in some other way, this would, in our view, depend very much on the context of the case. In particular, it bears repeated emphasis on the distinction between a consent interlocutory judgment in which parties can decide what issues have been resolved and an interlocutory judgment after a contested hearing on liability. Where it is the former, the answer to how the court should bifurcate is self-evident because bifurcation would merely be the consequence of the terms of the consent interlocutory judgment (see [4] above). Where it is the latter, the court would have to determine how best to resolve the matter, including whether to even bifurcate proceedings, taking into account the considerations listed at [57] above.

Other observations on the law of negligence

60 As a result of our decision that the court can and may order bifurcation of proceedings in PIMA cases wherein liability has not been established at the first stage of the proceedings but where an interlocutory judgment has nonetheless been entered, it was not necessary for us to deal with the conceptual points on the law of negligence which were raised by the Judge below. However, in light of the points raised by the Judge, the appellant and Mr Bull on the question of whether causation of damage is necessary to establish a cause

of action in negligence, we find it appropriate to make a few observations on this court's decisions of *Ngiam Kong Seng (CA)* and *Tan Woo Thian*.

61 In *Ngiam Kong Seng (CA)*, the first appellant was involved in an accident allegedly caused by the respondent. Immediately after and during the period following the accident, the respondent represented himself as a helpful bystander who had assisted the first appellant. The second appellant, the wife of the first appellant, was led to believe that the respondent was a good Samaritan and developed feelings of gratitude towards the respondent. Upon finding out that the respondent had been involved in the accident, she subsequently suffered from major depression and suicidal tendencies resulting from, as she claimed, having been "betrayed" by the respondent. In the High Court, the judge noted that liability was the only issue that had to be determined, but nevertheless held that even if the court had found the respondent liable on the first appellant's claim, the court would nonetheless have dismissed the second appellant's claim as "being too remote" (*Ngiam Kong Seng and another v CityCab Pte Ltd and another* [2007] SGHC 38 at [19] and [87]). The judge further explained at [90] that there was a strong suspicion that the claim by the second appellant was an afterthought and that the judge "believe[d] the [second appellant] went into a depression because she could not cope with such a heavy burden, not to mention the attendant financial worries." This court in *Ngiam Kong Seng (CA)* agreed with the findings of the High Court but noted that the High Court did not have to deal with the issue of remoteness and causation because those "relate to the extent of liability" instead of the existence of liability (at [146]–[147]).

62 We make three points. First, the remarks in *Ngiam Kong Seng (CA)* were expressed purely *in obiter* because it had already been found in the preceding paragraphs that the respondent was not liable as the respondent did not owe a duty of care to the second appellant. Second, the requisite elements to complete

a cause of action in the tort of negligence were not an issue before the court and were, hence, not fully addressed by the parties. Third, we agreed with the Judgment and shared the same view that it was unlikely that this court in *Ngiam Kong Seng (CA)* intended to make a definitive pronouncement on whether causation went towards liability, given that the court there was "primarily concerned with how the presence of liability for negligence in cases of psychiatric harm should be analysed" (see Judgment at [37]).

63 In any event, as correctly observed by the Judge at [37] of the Judgment, "any uncertainty in [*Ngiam Kong Seng (CA)*] is now resolved by the express pronouncement in *Tan Woo Thian* reiterating that causation and damage are necessary elements to establish liability in the tort of negligence". However, as we have explained above, it does not follow that causation and damage must necessarily be admitted for parties to enter into a *consent* interlocutory judgment.

Conclusion

64 For the above reasons, we allowed the appeal. To recapitulate, Question 1, as raised by the appellant, asked whether "causation can be reserved *in toto* to the AD Stage", which the Judge answered in the negative. As explained above, the Judge's answer rested on an incorrect presupposition that the court can and should only bifurcate the trial between liability and quantum because an interlocutory judgment can only be entered after liability has been fully established. We disagreed with the Judge and answered Question 1 in the affirmative. Consequently, Question 2 and Question 3, which would arise only if the answer to Question 1 was answered in the negative, did not arise for determination.

65 In closing, we express our deep appreciation to Mr Bull for his assistance and thoughtful submissions in this matter. While we did not agree with his submissions entirely, they were of considerable assistance in bringing into sharp focus the pertinent issues that were raised in this appeal.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Debbie Ong Siew Ling
Judge of the Appellate Division

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