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

[2024] SGHC(A) 9

Appellate Division / Civil Appeal No 122 of 2023

Between

Lee Wee Ching

… *Appellant*

And

Wang Piao

… *Respondent*

In the matter of Originating Claim No 406 of 2022

Between

Wang Piao

… *Claimant*

And

Lee Wee Ching

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure — Appeals — Striking out]
[Civil Procedure — Appeals — Right of appeal]

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v
Wang Piao

[2024] SGHC(A) 9

Appellate Division of the High Court — Civil Appeal No 122 of 2023
(Summons No 48 of 2023)
Kannan Ramesh JAD and See Kee Oon JAD
20 February 2024

25 March 2024

Kannan Ramesh JAD (delivering the grounds of decision of the court):

Introduction

1 AD/SUM 48/2023 ("SUM 48") was the respondent's application to strike out the appellant's notice of appeal against the decision of a Judge of the General Division of the High Court (the "Judge") in AD/CA 122/2023 ("AD 122"). The application raised the question of whether the appellant's right of appeal was circumscribed or fettered by the Rules of Court 2021 ("ROC 2021"). We answered the question in the negative and dismissed SUM 48 with costs to the appellant.

Facts

Parties and background to the dispute

2 Mr Wang Piao ("Mr Wang") was the claimant and Mr Lee Wee Ching ("Mr Lee") was the defendant in HC/OC 406/2022 ("OC 406"). Mr Wang, Mr Lee and one Mr Bryan Tio Geok Hong ("Mr Tio") were shareholders of Apek Services (Pte) Ltd ("Apek"), which was a Singapore-incorporated entity involved in the manufacture and repair of process control equipment and related products. Mr Lee was also the sole director of Korbett Pte Ltd, a Singapore-incorporated entity in the business of supplying semiconductor products and services.

3 On 22 November 2022, Mr Wang commenced OC 406 against Mr Lee, claiming that Mr Lee had breached a loan agreement between the parties (the "Loan Agreement"). In particular, Mr Wang claimed the following:

(a) Mr Lee wanted to purchase two "Vantage Rapid Thermal Processing Units" ("Vantage Unit") but could only afford one.

(b) To finance the purchase of the other Vantage Unit, Mr Lee asked Mr Wang for a loan of US$1.1m, which was the approximate purchase price of a Vantage Unit.

(c) Pursuant to the terms of the Loan Agreement, Mr Wang lent US$1.1m to Mr Lee in return for Mr Lee agreeing to repay US$1.95m within approximately six months.

(d) Mr Lee did not make payment of the sum of US$1.95m.

4 On 16 December 2022, Mr Lee filed his defence alleging that (a) he had not been lent any money under the Loan Agreement or otherwise; (b) the sum of US$1,099,911.66 had been given to him to enable the purchase of a Vantage Unit on behalf of Mr Wang, Mr Tio, and/or Apek; and (c) he had no recollection of executing the Loan Agreement.

Procedural history

5 On 13 January 2023, Mr Wang filed HC/SUM 104/2023 ("SUM 104") seeking summary judgment against Mr Lee. On 14 April 2023, an assistant registrar (the "AR") found that Mr Wang had established a *prima facie* case that Mr Lee had to repay him the sum of US$1.95m under the Loan Agreement. The AR concluded that Mr Lee had failed to show any triable issues or that he had a *bona fide* defence. He observed that: (a) Mr Lee did not plead that the Loan Agreement was a sham or had been forged; and (b) Mr Lee's attempt to re-characterise the Loan Agreement as not being a loan (when it clearly stipulated that it was such an agreement) was incoherent and did not explain how he came to sign the document. Accordingly, the AR granted summary judgment in favour of Mr Wang in the sum of US$1.95m, with interest and costs.

6 On 24 April 2023, Mr Lee filed an appeal in HC/RA 78/2023 ("RA 78") against the AR's decision. On 15 May 2023, Mr Lee took out HC/SUM 1463/2023 ("SUM 1463") to amend his defence in OC 406 and, in addition, to bring a counterclaim against Mr Wang, Mr Tio and Apek. On 16 May 2023, Mr Lee filed HC/SUM 1479/2023 ("SUM 1479") for a stay of enforcement of judgment pending the final resolution of RA 78. SUM 1479 was allowed by the Judge. On 4 August 2023, the Judge dismissed SUM 1463. His judgment was published as *Wang Piao v Lee Wee Ching* [2023] SGHC 216 ("*SUM 1463 Judgment*").

7 On 6 September 2023, Mr Lee filed AD/OA 43/2023 ("OA 43") for an extension of time to file an application for permission to appeal the Judge's decision to dismiss SUM 1463. He sought an extension of 14 days after the decision in RA 78 was made. OA 43 was allowed and Mr Lee was granted an extension of time of 14 days from 26 October 2023. Mr Lee's permission to appeal application – AD/OA 56/2023 ("OA 56") – was thereafter filed on 9 November 2023. OA 56 was dismissed on 15 January 2024.

8 RA 78 was dismissed by the Judge on 3 October 2023. His decision was published as *Lee Wee Ching v Wang Piao* [2023] SGHC 277. On 14 November 2023, Mr Lee appealed the decision in RA 78 in AD 122. On 28 November 2023, Mr Wang filed SUM 48 to strike out AD 122.

Decision Below

9 In RA 78, Mr Wang submitted that a *prima facie* case against Mr Lee had been established as the claim was based on the Loan Agreement. Mr Lee's bare allegations did not raise any triable issues. On the other hand, Mr Lee submitted that there was a triable issue as to whether the sum of US$1,099,911.66 transferred to him in August 2018 was a loan for him to purchase a Vantage Unit for himself, or whether it was to enable him to purchase the Vantage Unit on behalf of Mr Wang, Mr Tio and/or Apek. If the latter, there was in fact no loan notwithstanding the Loan Agreement.

10 The Judge found that Mr Wang had established a *prima facie* case for summary judgment. The Loan Agreement provided that Mr Wang agreed to extend a personal loan of US$1.1m (the "Loan Amount") to Mr Lee in return for Mr Lee agreeing to repay Mr Wang the sum of US$1.95m in accordance with a prescribed schedule. It was not disputed that Mr Wang had disbursed the

Loan Amount to Mr Lee, or that Mr Lee had failed to make any repayment to Mr Wang in accordance with the Loan Agreement. Mr Lee thus breached the Loan Agreement.

11 The Judge further found that Mr Lee had not shown that there was a fair or reasonable probability that he had a real or *bona fide* defence. The Judge found that there was evidence to contradict Mr Lee's assertion that Mr Wang intended to purchase a Vantage Unit for himself. The Judge also found Mr Lee's explanation that Mr Wang intended for Mr Lee to hold a Vantage Unit on trust for Mr Wang to be unconvincing as this explanation failed to account for the Loan Agreement. The Judge further found Mr Lee's evidence to be inconsistent and unreliable. The Judge rejected Mr Lee's argument that Mr Wang's failure to pursue repayment of the loan for four years after it became due showed that there was in fact no loan as alleged. The Judge agreed with Mr Wang that it was too late for Mr Lee to contend on appeal that the Loan Agreement was inauthentic.

12 The Judge therefore dismissed RA 78.

The parties' cases in SUM 48

Mr Wang's submissions

13 Mr Wang submitted that AD 122 should be struck out on two grounds: (a) Mr Lee did not have a right to file the appeal in AD 122; and (b) AD 122 was an abuse of process and/or it was in the interests of justice that the appeal be struck out.

14 On the first ground, Mr Wang contended that Mr Lee had no right to file the notice of appeal in AD 122. His argument was that Mr Lee had exhausted

his right of appeal in respect of the AR's decision in SUM 104 by appealing to the Judge in RA 78 because of a rule that Mr Wang termed the "One Appeal Rule". Mr Wang submitted that the One Appeal Rule provided for a "default position" that "an unsuccessful party in an application is not allowed to file more than one appeal in respect of that application, unless the Court otherwise orders" [emphasis omitted]. In Mr Wang's view, the One Appeal Rule was provided for in O 18 r 4(1) ROC 2021, which states that "each party is allowed to file only one appeal for each application unless the Court otherwise orders". Mr Wang further submitted that while the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA") did not explicitly prohibit Mr Lee from filing AD 122, the SCJA must be read *alongside* the One Appeal Rule in O 18 r 4(1) ROC 2021. According to Mr Wang, the One Appeal Rule addresses the proliferation of unnecessary appeals and thus should be strictly adhered to.

15 There are two aspects to the second ground. The first aspect was that AD 122 was an abuse of process as Mr Lee's real purpose in filing the appeal was to delay proceedings and vex Mr Wang. Mr Wang alleged that even before RA 78 was heard, Mr Lee had declared that he would bring an appeal if he was unsuccessful in that appeal. Mr Wang also alleged that OC 406 was protracted by various late applications and also by applications that lengthened proceedings such as an extension of time application filed by Mr Lee.

16 The second aspect was that it was in the interests of justice that AD 122 be struck out. Mr Wang repeated his arguments on the One Appeal Rule (canvassed above at [14]) and the lack of *bona fides* in Mr Lee's appeal (canvassed above at [15]). It is apparent that for this aspect to stand, Mr Wang had to succeed on the first ground and the first aspect above.

Mr Lee's submissions

17 Mr Lee submitted that Mr Wang's interpretation of O 18 r 4(1) ROC 2021 as creating a One Appeal Rule was erroneous. O 18 r 4(1) ROC 2021 was intended to avoid multiple appeals being filed in respect of the various applications heard in an omnibus Single Application Pending Trial ("SAPT"). O 18 r 4(1) ROC 2021 did not concern the parties' entitlement to appeal decisions of lower courts. Mr Lee contended that O 18 ROC 2021 neither created new rights nor attenuated existing rights. It simply restructured the rules governing appeals in the Rules of Court (2014 Rev Ed). Mr Lee argued that his right to appeal the Judge's decision in RA 78 was governed by the SCJA, which permitted him to file the notice of appeal in AD 122.

18 On the issue of abuse of process, Mr Lee argued that (assuming that the court found that he had a right to file the notice of appeal in AD 122) it cannot be an abuse of process to exercise a right of appeal provided for by law. Mr Lee also argued that his declaration of intent to appeal the decision in RA 78 even before the appeal was heard was merely made in a case management context. It did not evince any abusive intent. Mr Lee also pointed out that the court in OA 43 had held that it was not apparent that OA 43 was taken out for a collateral purpose.

Issues for decision

19 The two key issues in SUM 48 were as follows:

(a) whether O 18 r 4(1) ROC 2021 provided for a One Appeal Rule which permitted only a single-tier of appeal, unless the court otherwise orders; and

(b) whether AD 122 should be struck out as an abuse of process or in the interests of justice.

Issue 1: Interpretation of O 18 r 4(1) ROC 2021

20 We agreed with Mr Lee that his right to file the notice of appeal in AD 122 was governed by the SCJA and not ROC 2021. The SCJA allows more than a single tier of appeal (without needing permission of court) by a party against whom summary judgment has been granted by an assistant registrar. Mr Lee therefore had the right to appeal the Judge's decision in RA 78 and file the notice of appeal in AD 122.

21 It is important to start with the source of the right of appeal which in turn relates to the appellate jurisdiction of the court. Courts in Singapore are creatures of statute, and are seised of the jurisdiction conferred upon them by the relevant provisions in the legislation creating them: *Blenwel Agencies Pte Ltd v Tan Lee King* [2008] 2 SLR(R) 529 ("*Blenwel Agencies*") at [23]. The jurisdiction of appellate courts is therefore statutorily provided for and the corollary of this is that the right of appeal is also statutorily conferred: *Blenwel Agencies* at [24].

22 The SCJA sets out the appellate civil jurisdiction of the Appellate Division of the High Court (the "Appellate Division"): s 35 of the SCJA. Section 35 states:

> **Civil jurisdiction**
>
> **35.**—(1) This Division applies to the Appellate Division in the exercise of its civil jurisdiction.
>
> (2) The civil jurisdiction of the Appellate Division consists of the following matters, subject to the provisions of this Act or any written law regulating the terms and conditions upon which those matters may be brought:

> (*a*) any appeal against any decision made by the General Division in any civil cause or matter in the exercise of its original or appellate civil jurisdiction;
>
> (*b*) any appeal or other process that any written law provides is to lie, or that is transferred in accordance with any written law, to the Appellate Division.

23 As explained by the Court of Appeal in *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 ("*Dorsey James Michael*") at [41]–[49], the SCJA also statutorily delimits parties' rights of appeal by stipulating matters that are (a) appealable as of right, (b) appealable with leave (*ie*, permission) and (c) non-appealable. Section 35(2)(*a*) of the SCJA provides that the civil jurisdiction of the Appellate Division consists of, amongst other matters, any appeal against any decision of the General Division of the High Court (the "General Division") in any civil cause or matter in the exercise of its original or appellate civil jurisdiction, subject to the provisions of the SCJA or any written law regulating the terms and conditions upon which those matters may be brought. Sections 29 and 29A of the SCJA (respectively bearing the section headers "No appeal in certain cases" and "Permission required to appeal in certain cases"), read with the Fourth and Fifth Schedules to the SCJA, respectively stipulate the types of matters where there is no right of appeal or where permission to appeal is required.

24 Section 29 of the SCJA, read with the Fourth Schedule, does not prohibit a second-tier appeal to the Appellate Division from a first-tier appeal to a Judge of the General Division by a party against whom an assistant registrar has granted summary judgment. Section 29A of the SCJA, read with the Fifth Schedule, similarly does not contain any requirement to seek the permission of the Appellate Division to appeal a decision of a Judge of the General Division dismissing an appeal against the grant of summary judgment by an assistant

registrar. Accordingly, it is clear that the decision of the Judge in RA 78 is appealable to the Appellate Division as a matter of right.

25 The speech of the Senior Minister of State for Law (as he then was), Mr Edwin Tong SC, during the second reading of the Supreme Court of Judicature (Amendment No 2) Bill (Bill No 33/2018) ("the 2018 SCJA Amendment Bill") supports this view. The Minister highlighted that some of the amendments made in the 2018 SCJA Amendment Bill were meant to consolidate provisions on matters which were non-appealable, or appealable only with permission. Thus, the Minister stated that "the first objective of these amendments is to put them all into one location, so that the Schedules themselves, the Fourth and the Fifth, will house all the matters which are either non-appealable or appealable only with leave": Singapore Parl Debates; Vol 94, Sitting No 84; [2 October 2018] (Mr Edwin Tong Chun Fai, Senior Minister of State for Law). Had Parliament intended to bar a second-tier appeal from decisions made in applications or to require permission of court before such appeals can be mounted, such intention would have been clearly spelt out by the inclusion of a suitable rule in the Schedules to the SCJA. In this regard, the SCJA already contains provisions providing for only one general tier of appeal in certain cases (see, for example, s 29A(1)(*b*) read with paragraph 2(1) of the Fifth Schedule to the SCJA providing generally for one tier of appeal for civil claims of up to $250,000, unless permission of court is granted). The absence of a purported "One Appeal Rule" in the SCJA is conclusive that such a "Rule" was not intended.

26 Is O 18 r 4(1) ROC 2021 relevant to the question of the right of appeal? We are of the view that it is not. O 18 r 4(1) ROC 2021 does not provide for a One Appeal Rule. It simply lays down a procedural rule for *how* a party's statutory rights of appeal should be exercised. A holistic reading of O 18 ROC 2021 (the "Order") makes this evident. Order 18 r 2(1) ROC 2021 states that the

Order "is subject to any written law on the right to appeal and any requirement to apply for permission to appeal". The Order therefore expressly acknowledges that the right to appeal and the requirement to apply for permission to appeal in certain cases is governed by written law, which includes the SCJA. Further, Division 5 to O 18 ROC 2021 sets out rules governing appeals from the General Division to the Appellate Division or the Court of Appeal. Nothing in Division 5 prohibits a second-tier appeal from a decision of a Judge dismissing an appeal against an assistant registrar's decision to grant summary judgment or requires permission before such an appeal can be brought. Seen in this light, O 18 r 4(1) ROC 2021 provides that parties seeking to appeal against *multiple* orders made by a court pursuant to an application, such as an SAPT, should file only *one* appeal for each such application unless the court otherwise orders. This is underscored by O 18 r 4(2) which is specifically provided as an exception to O 18 r 4(1). Order 18 r 4(2) provides that "[i]n the case of a single application pending trial dealing with more than one matter and where permission to appeal is required for one or more of the matters, each party must file a separate notice of appeal for matters which require permission to appeal, and for matters which do not require permission to appeal". This makes the point that O 18 r 4 is intended as a rule to streamline the number of notices of appeal that should be filed and not stipulate whether a notice of appeal may be filed. The latter is the purview of the SCJA.

27 We make a final point that Mr Wang's argument ignores the fact that ROC 2021 is subsidiary legislation under the SCJA. As such, ROC 2021 cannot have the effect of fettering a right of appeal conferred under the SCJA unless that is specifically permitted by the SCJA. Nor should it be interpreted in this manner.

28 For the reasons above, Mr Lee was entitled to file his notice of appeal in AD 122 pursuant to his right of appeal in the SCJA.

Issue 2: Whether the notice of appeal in AD 122 should be struck out as an abuse of the process of court or in the interests of justice

29 We declined to strike out AD 122 as an abuse of process or in the interests of justice.

30 The Court of Appeal in *Suntech Power Investment Pte Ltd v Power Solar System Co Ltd (in liquidation)* [2019] 2 SLR 564 ("*Suntech*") held at [46] that the court has the inherent jurisdiction to strike out a notice of appeal where the appeal is plainly not competent, or where the appeal is frivolous, vexatious or an abuse of the process of the court. The court will only exercise its power to strike out a notice of appeal in "clear and obvious cases" (*Suntech* at [47], citing *Riduan bin Yusof v Khng Thian Huat* [2005] 2 SLR(R) 188 at [20]–[21]).

31 Mr Wang did not dispute that AD 122 was filed within time and he made no submissions on the substantive merits of the appeal in AD 122. Mr Wang's arguments on how the appeal in AD 122 was apparently designed to delay his receipt of the fruits of his successful litigation were premature and circular as it could not be said that he was the successful party until the appeal was dismissed by the appellate court. As AD 122 was properly filed in exercise of a statutory right of appeal, Mr Wang had a high threshold to cross to strike out the notice of appeal on the basis of abuse of process or in the interests of justice. He did not succeed in doing so.

32 While Mr Wang cited the Judge's comments in the *SUM 1463 Judgment* as supportive of his view that Mr Lee had unacceptably delayed proceedings, the Judge had at [48] expressed the view that Mr Lee's proper recourse was to

appeal against the decision granting summary judgment, instead of delaying proceedings by taking out various applications. Mr Lee duly appealed, and he cannot be faulted for exercising his right to appeal.

33 One of the factors Mr Wang relied on in support of his submission that AD 122 was an abuse of process was Mr Lee's failure to pay him the costs for SUM 104 and OC 406. It seemed to us that this was in and of itself not a relevant factor. The remedy for such failure lay elsewhere instead of a striking out application. In *Independent State of Papua New Guinea v PNG Sustainable Development Program Ltd* [2020] 1 SLR 97, the Court of Appeal held at [22]–[24] that while it had the jurisdiction, pursuant to what is now s 58(1) of the SCJA (see s 40(1) for the equivalent provision for the Appellate Division) and the court's inherent jurisdiction, to stay an appeal pending payment by the appellant to the respondent of the costs of the action below, the jurisdiction should be exercised only in special or exceptional circumstances where there is a clear need for it and the justice of the case so demanded. We were therefore not persuaded that the failure to pay costs below is *per se* a relevant factor in striking out an appeal on the basis that it was an abuse of process.

34 Finally, we address Mr Lee's declaration before RA 78 was heard that he would bring an appeal if he was unsuccessful. For context, Mr Lee's statement was made in his supporting affidavit filed in OA 43 (see [7] above). Mr Lee explained that if RA 78 was dismissed, with the extension of time, he could bring an application for permission to appeal the decision in SUM 1463 and the appeal against RA 78 at the same time so that both matters could be heard together by the Appellate Division. This method of case management was *prima facie* reasonable and sensible. It saved court time and resources. The present case was *not* one where a party had exhausted his right of appeal, but

nonetheless indicated that he would take out frivolous applications in a bid to re-open concluded proceedings.

35 We thus found no reason to strike out AD 122 as an abuse of process or in the interests of justice.

Conclusion

36 For the reasons above, we dismissed SUM 48. We ordered Mr Wang to pay Mr Lee the costs of the application fixed at $13,000 inclusive of disbursements. The usual consequential orders applied.

Kannan Ramesh
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Narayanan Sreenivasan SC, Jerrie Tan Qiu Lin and Partheban s/o Pandiyan (K&L Gates Straits Law LLC) (instructed), Thrumurgan s/o Ramapiram, Tan Lai Tian Timothy, Mohamad Hasbu Haneef bin Abdul Malik and Lokman Hakim bin Mohamed Rafi (Trident Law Corporation) for the appellant;
Kronenburg Edmund Jerome, Lim Yanqing Esther Candice, Tang Kai Qing and Chan Yu Jie (Braddell Brothers LLP) for the respondent.