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

[2025] SGHCR 1

Originating Application No 251 of 2024

Between

Blakney, Gregory Allen

… *Applicant*

And

Muhammad Izz Mikail bin Mazlan

… *Respondent*

GROUNDS OF DECISION

[Courts and Jurisdiction — Transfer of cases]

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Introduction

1 HC/OA 251/2024 ("OA 251") was an application by the plaintiff in DC/DC 3399/2019 ("the DC Suit") to transfer the DC Suit to the General Division of the High Court ("the General Division") pursuant to s 54B of the State Courts Act 1970 (2020 Rev Ed) ("the SCA"). Prior to OA 251 being brought, the parties entered into a memorandum under s 23 of the SCA, in which they agreed that the District Court shall have jurisdiction to hear and try the DC Suit, notwithstanding that the plaintiff's claim in the DC Suit exceeds the District Court limit, and further, that the District Court has jurisdiction to hear and try the DC Suit "up to $500,000" ("the Memorandum"). Section 2 of the SCA states that the "District Court limit" is $250,000.

2 The defendant submitted that the plaintiff, by entering into the Memorandum, had agreed that his claim would be limited to $500,000, and elected to abandon the part of his claimed damages coming in excess of $500,000. Consequently, the defendant handled the DC Suit with the understanding that its liability for damages would not exceed $500,000. If the court now allowed a transfer of the DC Suit to the General Division, it would suffer prejudice because it would have taken drastically different methods in its handling of the DC Suit, had it known that the plaintiff's claim was not so limited.

3 Although the parties did not address the issue of whether they could, as part of a memorandum under s 23 of the SCA, also agree on an upper limit of the District Court's monetary jurisdiction, in my view, having regard to its legislative purpose, that must be permissible. However, I did not agree with the defendant's submissions regarding the effect of the Memorandum on the plaintiff's present attempt to transfer the DC Suit. A memorandum under s 23 of the SCA is an agreement on jurisdiction and any further agreement in the memorandum on the upper limit of the District Court's monetary jurisdiction is merely an expression of the extent of their jurisdictional agreement. Therefore, no part of this can be construed as an agreement by the plaintiff to limit his claim or an election by the plaintiff to abandon part of his claimed damages. Where an application is subsequently brought to transfer the proceedings in which such a memorandum had been entered, I did not think that the party resisting the transfer can rely on the memorandum in claiming that it would suffer prejudice, because that is no more than saying that a transfer would lead to a higher damages award than what had been previously contemplated as a result of the memorandum.

4 In this case, the Memorandum expanded the District Court's monetary jurisdiction to $500,000. I agreed with the plaintiff that the evidence he adduced supported, on a *prima facie* basis, the position that his claimed damages were likely to exceed $500,000. However, I did not find that the defendant would be prejudiced by a transfer. While the plaintiff only sought a transfer after some delay, the circumstances of this case were such that the defendant could not have reasonably believed that its liability for the DC Suit was limited to $500,000 and thereby relied on the same in its conduct of the DC Suit in the intervening period. For that reason, the delay is not prejudicial. Holistically evaluating all the material circumstances of the case, I was of the view that a transfer should be ordered, and I therefore allowed OA 251. My reasons were provided to the parties on 30 August 2024. There was no appeal against my decision. These published grounds set out those reasons with elaboration and supplementation, where appropriate.

Background

5 In July 2019, the plaintiff met with a road traffic accident caused by the defendant. According to medical reports adduced by the plaintiff, the accident caused him serious physical injuries, which affected his mobility and resulted in him having to undergo several surgeries and being placed on several forms of medication for pain management. These physical injuries also caused him to develop severe depression and anxiety, as a result of which he received treatment and was placed on anti-depressants.

6 The plaintiff commenced the DC Suit in November 2019. Later in October 2020, the parties entered a consent interlocutory judgment and agreed to a 70%:30% split in liability in favour of the plaintiff, with damages to be

assessed and costs reserved ("the IJ"). Subsequent to the entering of the IJ, the following developments took place:

(a) In May 2022, the plaintiff filed DC/SUM 1765/2022, which was an application for the DC Suit to be "transferred to the Enhanced Jurisdiction of the State Courts". This application was later withdrawn. For context, the "Enhanced Jurisdiction" of the State Courts refers to the State Courts' jurisdiction to hear and determine an action arising out of a motor accident or an action for personal injuries arising out of an industrial accident which is commenced in the General Division and where the damages claimed do not exceed $500,000, and which is to be transferred to the State Courts (see Supreme Court of Judicature (Transfer of Specified Proceedings to District Court) Order 2016). This application was evidently a non-starter since the DC Suit was *not* commenced in the General Division.

(b) In August 2022, the plaintiff filed HC/OA 409/2022 ("the First Transfer Application"), seeking an order that the DC Suit be transferred "to [the General Division] and/or the enhanced jurisdiction of the State Courts". Before the First Transfer Application came to be heard, in September 2022, the parties entered into the Memorandum (see [1] above). According to the defendant, it agreed to the Memorandum on the basis that the plaintiff's claim would not exceed $500,000.[1] Consequently, the First Transfer Application was withdrawn before it came to be heard. The Memorandum states as follows:

> In accordance with Section 23 of the State Courts Act (Chapter 321), the Plaintiff and the Defendant, hereby agree that the District Court shall have jurisdiction to

[1] Defendant's written submissions at para 30.

> hear and try this action notwithstanding that the claim in this action exceeds the District Court limit, *up to $500,000*.
>
> [emphasis added]

(c) After the Memorandum was entered into, there were no significant developments in the DC Suit until 10 March 2023 when the plaintiff's then solicitors filed a summons for further directions under O 37 of the Rules of Court (2014 Rev Ed).[2] Pursuant to the summons, the court directed several timelines, including for discovery, inspection, exchange of affidavits of evidence-in-chief ("AEICs") and for the filing and service of the Notice of Appointment for Assessment of Damages by 12 June 2023.[3]

(d) In April 2023, the plaintiff changed solicitors. The new solicitors filed a summons for an extension of the various timelines previously directed by the court.[4] Based on the record, the defendant did not contest the summons, and the court granted the extensions sought.[5]

(e) Pursuant to the directed timelines, the plaintiff's AEIC on quantum was filed on 28 July 2023 ("the Quantum AEIC") and the Notice of Appointment for Assessment of Damages was filed on 18 August 2023. In accordance with the Assessment of Damages Court Dispute Resolution process, the parties sought the court's indication on quantum at an Assessment of Damages Pre-Trial Conference. In a Registrar's Notice issued on 6 November 2023, the Deputy Registrar

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2 DC/SUM 619/2023.

3 DC/ORC 702/2023.

4 DC/SUM 1400/2023.

5 DC/ORC 1842/2023.

("DR") declined to provide a quantum indication. The DR made some observations on the plaintiff's approach in quantifying his claimed damages in the Quantum AEIC and noted that, in any event, the plaintiff's claimed quantum far exceeded the District Court's monetary jurisdiction limit. The DR therefore directed that any application for transfer of the DC Suit to the General Division be taken out by the plaintiff by 29 November 2023, and further, the parties may consider filing a further memorandum of agreement under s 23 of the SCA, and in the absence of any transfer application or memorandum of agreement, the plaintiff should confirm if he is abandoning any part of his claim to bring it within the District Court limit.

(f) Subsequent to the DR's directions on 6 November 2023, the plaintiff's then-solicitors applied to discharge themselves. Following that, the plaintiff's present solicitors were appointed in February 2024. It is largely undisputed that between that period, and until when OA 251 was filed on 12 March 2024, no significant procedural steps were taken by either party in connection with the DC Suit.

The applicable principles

7 Under s 54B of the SCA, there are three grounds on which a party can rely to transfer civil proceedings in a State Court to the General Division – that the proceedings: (a) involve some "important question of law"; (b) constitute a "test case"; or (c) "for any other sufficient reason, should be tried in [the General Division]".

8 The plaintiff's written submissions indicated that he was only relying on the "sufficient reason" ground for OA 251. At the hearing before me, however, the plaintiff's counsel submitted that the plaintiff also sought a transfer on the

"important question of law" ground. The "important question of law" said to be raised is: if parties had agreed by way of a memorandum under s 23 of the SCA that the District Court has jurisdiction despite the amount claimed or the value of the subject matter for which remedy or relief is sought coming in excess of the District Court limit, and where they additionally agreed on an upper limit of the District Court's monetary jurisdiction as part of the memorandum (as in the case here), can the plaintiff be taken to have elected to abandon his claim to damages awarded in excess of that limit? In my view, the plaintiff's position on this point was a complete non-starter. An "important question of law" under s 54B of the SCA is one arising within the "civil proceedings pending in a State Court" (*per* s 54B of the SCA) and for which a party seeks transfer. The question which the plaintiff's counsel had identified is one arising in the context of OA 251, the transfer application itself.

9 That being the case, I proceeded on the basis that the plaintiff relied only on the "sufficient reason" ground in OA 251. "Sufficient reason" would ordinarily be found if the plaintiff demonstrates the likelihood that his claimed damages would exceed the jurisdictional limit of the District Court (see *Keppel Singmarine Dockyard Pte Ltd v Ng Chan Teng* [2010] 2 SLR 1015 ("*Keppel Singmarine*") at [16]), but even where this is shown, the court retains the discretion as to whether to order a transfer, and a key consideration is whether prejudice would be caused to the party resisting the transfer (see *Lee Chye Chong and others v SBS Transit Ltd* [2021] 5 SLR 821 ("*Lee Chye Chong*") at [44]).

10 Accordingly, there are two stages to this analysis: (a) first, the court must be satisfied that there is *prima facie*, credible evidence that at first appearance is capable of supporting the plaintiff's case that his claimed damages would likely exceed the monetary jurisdictional limit of the District Court; and (b)

secondly, the court must undertake a holistic evaluation of all the material circumstances to consider if its discretion should be exercised to transfer the relevant proceedings, in particular, whether prejudice would be caused to the party resisting the transfer (see *Ng Djoni v Miranda Joseph Jude* [2018] 5 SLR 670 ("*Ng Djoni*") at [20]).

The parties' submissions

11 In both written and oral submissions, the plaintiff's counsel brought me through the plethora of medical and other evidence, which was also adduced in the Quantum AEIC, and argued that the plaintiff's claimed damages in the DC Suit would likely exceed $500,000. The plaintiff's counsel accepted that, by virtue of the Memorandum, what the plaintiff minimally had to show to obtain a transfer of the DC Suit on the "sufficient reason" ground is that his claimed damages likely exceed $500,000. The plaintiff's counsel also argued that there had been no inordinate delay in the taking out of OA 251, and a transfer of the DC Suit to the General Division would not cause prejudice to the defendant.

12 In OA 251, the plaintiff initially sought the setting aside of the Memorandum, on the ground that he was "incapable of thinking clearly or concentrating well during the months that preceded the signing of [the Memorandum] … [and] not in the right state of mind to seek sufficient clarification from [his] lawyers regarding [the Memorandum", as a result of the pain he was suffering and the side effect of the medications he was taking.[6] However, at the hearing before me, the plaintiff's counsel sensibly confirmed that this was no longer pursued. Given the plaintiff's position that his claim would likely exceed $500,000, I did not see how the Memorandum had a

6 Plaintiff's supporting affidavit for HC/OA 251/2024 at para 9.

bearing on whether he could demonstrate "sufficient reason" under s 54B of the SCA to obtain a transfer of the DC Suit to the General Division and why the Memorandum had to be set aside at all (assuming it was even necessary as a matter of law). I only briefly observe that, I do not think a party seeking to resile from a previously entered memorandum in the context of a subsequent transfer application requires permission of the court to do so. Section 23 of the SCA is intended to *enlarge* the jurisdiction of the District Court in appropriate cases and a memorandum thereunder serves the same effect (see [19] below); it gives parties the *choice* to have their case heard in the District Court where they so wish, but I do not think it is the intention of s 23 to bind the parties to their choice of forum where they had previously agreed to confer jurisdiction on the District Court. That being said, where a memorandum had been previously entered and did not specify an agreed upper limit regarding the District Court's monetary jurisdiction, the plaintiff subsequently seeking transfer would face an uphill task because it would not be able to rely on the jurisdictional limit of the District Court *alone* to demonstrate "sufficient reason" under s 54B of the SCA.

13 The defendant made the following submissions in response. First, the defendant argued that the plaintiff had not adduced credible evidence showing that his claim would likely exceed $500,000.[7] Secondly, a transfer of the DC Suit would cause prejudice to the defendant. The factual circumstances which the plaintiff relied on in arguing that his claimed damages would exceed $500,000 had already been known to him when the Quantum AEIC was prepared, and yet no transfer application was taken out earlier. It is therefore implicit that the plaintiff knew that he was "bound by the [M]emorandum" and that he had "agreed that his claim would not exceed $500,000".[8] By virtue of

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7 Defendant's written submissions at paras 15–24.

8 Defendant's written submissions at para 37.

the Memorandum, the plaintiff should be taken as having elected to abandon the part of his claimed damages exceeding $500,000. Consequently, the defendant had handled the DC Suit with the understanding that the plaintiff's claim would not exceed $500,000, and had it known otherwise, it would have likely taken drastically different methods in the handling of the DC Suit, for example, by seeking to set aside the IJ, administering interrogatories for the plaintiff to provide documents or information in support of his claim amount, or pursuing medical re-examination of the plaintiff.[9]

Issues relating to the Memorandum

14 Before turning to the transfer application proper, I consider two preliminary issues raised by the Memorandum. The Memorandum derives its force from s 23 of the SCA, which states as follows:

> **Jurisdiction by agreement in certain actions**
>
> **23**. Where the parties to an action agree, by a memorandum signed by them or their respective solicitors, a District Court has jurisdiction under section 19(2) to hear and try the action even though —
>
> (*a*) the amount claimed in the action exceeds the District Court limit; or
>
> (*b*) any remedy or relief sought in the action is in respect of a subject matter the value of which exceeds the District Court limit.

15 Section 19(4) of the SCA provides that the District Court has *no jurisdiction* to hear and try an action where the amount claimed in the action or the value of the subject matter for which remedy or relief is sought exceeds the District Court limit, *ie*, $250,000. Sections 22 and 23 of the SCA are avenues by which the District Court can come to have jurisdiction to hear and try a

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9 Defendant's written submissions at paras 38–40.

dispute, despite the limitation imposed by s 19(4) on the District Court's monetary jurisdiction.

(a) Section 22 operates by way of the *plaintiff (or claimant)* electing to "abandon" the excess amount, *ie*, where the plaintiff informs the court that it is not seeking an award of damages exceeding the District Court limit, the consequence of which is that a claim exceeding the District Court limit can proceed to be heard and tried in the District Court, but the District Court cannot award a sum of damages that is more than the District Court limit (see *Tan Chee Heong v Chen Hua* [2023] 5 SLR 1190 ("*Tan Chee Heong*") at [14], [16] and [24]).

(b) Section 23 of the SCA allows the parties to *agree*, by a memorandum signed by them or their respective solicitors ("Section 23 Memorandum"), for the District Court to have jurisdiction to hear and try an action even though the amount claimed or the value of the subject matter for which remedy or relief is sought exceeds $250,000. The agreement in a Section 23 Memorandum therefore concerns the District Court's monetary jurisdiction which, but for the parties' agreement, is limited to $250,000. By a Section 23 Memorandum, parties confer jurisdiction on the District Court by agreeing on an expansion of the District Court's monetary jurisdiction beyond $250,000.

16 However, s 23 of the SCA is silent on the following two issues, which arose in the circumstances of this case and from submissions:

(a) Whether, as part of their agreement to expand the District Court's monetary jurisdiction in a Section 23 Memorandum, parties can further agree on an upper limit of the District Court's monetary jurisdiction?

(b) Whether, as the defendant's counsel argued, such further agreement constitutes an agreement by the plaintiff to limit its claim to the extent of the upper limit, or to phrase this differently, an election by the plaintiff to abandon the part of its claimed damages in excess of the upper limit?

Whether parties to a Section 23 Memorandum can further agree on an upper limit of the District Court's monetary jurisdiction?

17 The first issue is a matter of statutory interpretation. The principles relevant to this exercise are set out by the Court of Appeal in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") (at [37]):

> … the court's task when undertaking a purposive interpretation of a legislative provision involves three steps:
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> (a) First, ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole.
>
> (b) Second, ascertain the legislative purpose or object of the statute.
>
> (c) Third, compare the possible interpretations of the text against the purposes or objects of the statute.

18 For the purposes of the first step, there are two possible interpretations. On the one hand, if Parliament intended that parties entering into a Section 23 Memorandum also be able to agree on an upper limit of the District Court's monetary jurisdiction, then it would have enacted clear words to that effect, and the absence of such provision in s 23 might suggest that the parties cannot do so. On the other hand, the silence of s 23 might also suggest that it does not preclude parties from agreeing on an upper limit of the District Court's monetary jurisdiction as part of a Section 23 Memorandum. In other words, any

further agreement on an upper limit of the District Court's monetary jurisdiction is not inconsistent with s 23.

19 As for the legislative purpose of s 23, it is in my view similar to that of s 22 of the SCA. As mentioned, these sections are avenues by which the District Court can come to have jurisdiction to hear and try a dispute despite the value of the claim being in excess of the District Court limit. Their common purpose is to enlarge the jurisdiction of the District Court and allow parties to confer jurisdiction on a District Court which it otherwise did not have (see *Tan Chee Heong* ([15(a)] above) at [46]). This allows and encourages parties to bring their claims before the District Court, and benefit from the lower costs and the simplified procedure, where they are of the view that the complexity of the dispute may not warrant bringing the action to the General Division, or where the damages likely to be awarded may not be significantly above the District Court limit to justify the increased costs associated with litigating in the General Division (see *Tan Chee Heong* at [47] and [52]).

20 I prefer the interpretation that s 23 *allows* parties to further agree on an upper limit of the District Court's monetary jurisdiction as part of a Section 23 Memorandum. I say so for two reasons. First, any such further agreement is an incident of the parties' agreement to confer jurisdiction on the District Court pursuant to s 23 of the SCA. At the risk of repetition and stating the obvious, a Section 23 Memorandum concerns the District Court's *jurisdiction* (and more specifically, its monetary jurisdiction). This is made clear by the title of s 23 of the SCA, which states "Jurisdiction by agreement in certain actions". Where a Section 23 Memorandum is entered into, the parties agree to expand the District Court's monetary jurisdiction, and any *further* agreement in a Section 23 Memorandum on an upper limit of the District Court's monetary jurisdiction will be an incident of that primary agreement. Since s 23 affords the parties the

right to *confer*, by agreement, jurisdiction on the District Court which the District Court otherwise did not have, it similarly will allow parties to delimit, by agreement, the *extent* of that jurisdiction which they agree to confer. This is also consistent with principle. Since the foundation of the District Court's jurisdiction in cases where a Section 23 Memorandum is entered into is the parties' agreement, it should also be open to parties to delimit the extent of the District Court's monetary jurisdiction by agreement in cases where they consider this necessary.

21 Secondly, such an interpretation furthers the legislative purpose of s 23, which is to enlarge the jurisdiction of the District Court to encompass cases that are suitable to be heard and tried in the District Court despite it coming within the civil jurisdiction of the General Division. Where parties to such a case enter into a Section 23 Memorandum, they must do so with a view to benefitting from the simplified procedure and lower costs in the District Court. Whether an action is heard and tried in the District Court or the General Division has consequences in terms of the complexity and extent of interlocutory procedures to be adhered, the work required, and ultimately, the party-and-party costs recoverable. All other things being equal, the successful party is likely to recover lesser costs from the unsuccessful party if the matter proceeds in the District Court, than if it had proceeded in the General Division. It is established law that the level of recoverable party-and-party costs should be proportionate to the value of what is claimed (see, for example, O 21 r 3(2)(*g*) of the Rules of Court 2021 and *Lin Jian Wei and another v Lim Eng Hock Peter* [2011] 3 SLR 1052 at [57]–[58]). Therefore, if parties agree for an action that otherwise came within the General Division's civil jurisdiction to be heard and tried in the District Court, with the awareness that they stand to potentially recover lesser costs in the action than they would have if the matter had proceeded in the General Division, I think

their agreement would have been driven by some view they had regarding the level of damages that would ultimately be awarded, which prompted them to consider the expense of litigating in the General Division as not being worthwhile.

22 Of course, in most cases, the attributes of the case (such as the extent of personal injury or property damage, in the context personal injury-motor accident claims) or the parties' respective positions on quantum may be implicit as to what the level of damages awarded is likely to be, and parties may find it unnecessary to further agree on an upper limit of the District Court's monetary jurisdiction in the Section 23 Memorandum. However, there can be cases where the willingness of one or both parties to the Section 23 Memorandum to recover lower costs in the action by having the action heard and tried in the District Court is premised on the value of the claim or its likely exposure for damages (as the case may be) not exceeding a certain threshold. In these cases, the parties should be free to further agree in the Section 23 Memorandum on the upper limit of the District Court's monetary jurisdiction, so that they too can take advantage of s 23 of the SCA as an avenue to have their action heard and tried in the District Court and benefit from the simplified procedure and lower costs there. Otherwise, they would only be left with the option of having the action heard and tried in the General Division. I do not think it could have been parliament's intention for s 23 to have an all-or-nothing effect, in that parties to a Section 23 Memorandum must either agree to expand the District Court's monetary jurisdiction without limit or not at all because ordinarily, the parties' desire to litigate in the District Court a matter otherwise coming within the civil jurisdiction of the General Division would have been accompanied by their view as to the level of damages likely to be awarded, and in order for s 23 to serve its purpose of enlarging the jurisdiction of the District Court to encapsulate as

many suitable cases as possible, it should be open to parties to further agree on an upper limit of the District Court's monetary jurisdiction where they see that necessary.

23 Accordingly, where parties to a Section 23 Memorandum further agree on an upper limit of the District Court's monetary jurisdiction, the District Court's monetary jurisdiction is expanded beyond $250,000, but only to the extent of that agreed upper limit. For the purposes of any subsequent transfer application taken out, the agreed upper limit will also be the relevant threshold against which "sufficient reason" is assessed for the purposes of s 54B of the SCA.

Whether a further agreement on an upper limit of the District Court's monetary jurisdiction in a Section 23 Memorandum constitutes an agreement by the plaintiff to limit its claim?

24 The second issue can be answered quite simply, with reference to how an agreement in a Section 23 Memorandum is to be characterised. As explained previously (at [20]), any further agreement in a Section 23 Memorandum on an upper limit of the District Court's monetary jurisdiction is an agreement concerning the *jurisdiction* of the District Court. The jurisdiction of a court is its authority to hear and determine a dispute (see *Muhd Munir v Noor Hidah and other applications* [1990] 2 SLR(R) 348 at [19]). An agreement on jurisdiction therefore reflects the parties' choice of forum. Therefore, the agreement which a Section 23 Memorandum is intended to capture concerns *where* a dispute will be heard and determined, and where an upper limit of the District Court's monetary jurisdiction is specified, the *extent* of that agreement, depending on the value of the claim in the dispute.

25 Of course, I accept that a plaintiff would enter into a Section 23 Memorandum with a specified upper limit on the District Court's monetary jurisdiction only if it were of the view that the value of its claim does *not* exceed that upper limit. However, I do not think it is the intent of a Section 23 Memorandum to capture the plaintiff's subjective view or bind it to the same for the purposes of the proceedings in question. A Section 23 Memorandum has effect by virtue of s 23 and there is nothing in s 23 or in its legislative purpose which suggests that it is intended to be akin in function to a consent interlocutory judgment or an express agreement about the limit of the defendant's liability. The sole intent of a Section 23 Memorandum is to record the parties' common intention that the claim be heard and tried in the District Court, despite the value of this claim exceeding the District Court limit, and where an upper limit of the District Court's monetary jurisdiction is specified, on the basis that its value does not exceed the specified upper limit. I therefore did not see how any further agreement in a Section 23 Memorandum on an upper limit of the District Court's monetary jurisdiction can be construed as an agreement by the plaintiff to limit the value of his claim, or as an election by the plaintiff to abandon the part of his claimed damages coming in excess of that upper limit.

26 The plaintiff is obviously entitled to change his position regarding the value of his claim and subsequently take the view that his claim exceeds the upper limit of the District Court's monetary jurisdiction previously agreed to in a Section 23 Memorandum. The impediment arises only because he is seeking to transfer a claim that was commenced in the District Court – initially subject to the District Court limit and later the agreed upper limit in the Section 23 Memorandum – to the General Division. Since "sufficient reason" would be found from the likelihood that a plaintiff's claimed damages exceed the previously agreed jurisdictional limit of the District Court in the Section 23

Memorandum (see *Keppel Singmarine* ([9] above) at [16]), the only remaining issue in such a case is whether a transfer, *despite* the Section 23 Memorandum and the expanded monetary jurisdiction of the District Court previously agreed upon, occasions prejudice to the defendant resisting the transfer. The plaintiff's change in position as to the value of its claim, without more, only implies a higher damages award, if the proceedings were transferred. However, the possibility of a higher damages award following a transfer does not in and of itself constitute prejudice which warrants the court to refuse a transfer where the relevant grounds are established (see *Tan Kee Huat v Lim Kui Lin* [2013] 1 SLR 765 ("*Tan Kee Huat*") at [43]). Therefore, I do not think that a defendant who resists a transfer of the relevant proceeding can complain of prejudice on account of the plaintiff resiling from a Section 23 Memorandum and now taking the view that the value of its claim exceeds the previously agreed monetary jurisdictional limit of the District Court.

Sufficient reason

27 To demonstrate "sufficient reason", the plaintiff had to adduce credible evidence which at first appearance is capable of supporting his position that the quantification of his claim exceeds the monetary jurisdiction limit of the District Court as agreed to in the Memorandum, *ie*, $500,000 (see generally *Ng Djoni* ([10] above) at [29]). Certain aspects of the plaintiff's evidence were less than desirable in that it lacked the precision which could directly support his desired quantification. However, when considered as a whole and taken together, I was satisfied that the evidence supported the plaintiff's position that his claim in the DC Suit *as a whole* exceeds $500,000. Let me explain.

28 *Loss of income*: The plaintiff was the Managing Director of Belgarath Investments Pte Ltd ("Belgarath"), which was an investment vehicle he had

used to run several food and beverage businesses, such as "Subway" and "Chilli's Grill & Bar". At the time of the accident, Belgarath (through a subsidiary) owned and operated the "Sarpino's" pizzeria restaurant, and it operated three restaurants and had four franchisees.[10] Based on the plaintiff's Notices of Assessment as exhibited in his Quantum AEIC, his assessable income for the year 2017 was $550,620.00, and for the year 2018, it was $240,000.[11] The plaintiff explains that the accident in 2019 impacted his ability to run and manage his business, as a result of which he ceased business at four of Sarpino's outlets in the months that followed.[12] The plaintiff asserts that his annual income in the years which followed fell from $71,700 (for 2019) to $23,100 (for 2022).[13] I note that the plaintiff did not, in the Quantum AEIC or in the supporting affidavit for OA 251, adduce Notices of Assessment or other forms of supporting documents proving his annual income for those years. However, given that much of the plaintiff's income had been derived through the salary he drew as Managing Director of Belgarath,[14] and given that such income would have been significantly reduced when substantial parts of Belgarath's only business (the operation of the Sarpino's restaurants) gradually ceased in the years following the accident, I did not think the plaintiff's evidence as to his loss of annual income in the years following the accident is *prima facie* incredible or to be disbelieved. On this basis, it appears that the accident caused an immediate reduction of about $170,000 in the plaintiff's income (when his income for the years 2018 and 2019 were compared against each other), which

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10 Affidavit of Evidence-in-Chief of Gregory Allen Blakney in DC/DC 3399/2019 ("Plaintiff's AEIC") at para 39; Applicant's Notice of Intention to Refer filed 13 March 2024.

11 Plaintiff's AEIC at paras 35 and 47.

12 Plaintiff's AEIC at para 42.

13 Plaintiff's AEIC at para 47; Supporting affidavit for HC/OA 251/2024 at para 25.

14 Plaintiff's AEIC at para 35.

would only have increased in the years that followed as each of the Sarpino's outlets gradually ceased operations.

29 *Claim for medical expenses*: In his supporting affidavit for OA 251, the plaintiff states that he has a claim for medical expenses in the region of $178,487.22. The plaintiff has supported this head of claim with various receipts which evidence how each of the expenses had been incurred, which mainly took the form of consultation and medication fees.[15] I accept that for this head of claim, the plaintiff has adduced credible evidence which supports his desired quantification.

30 *Loss of future earnings and loss of earning capacity*: According to medical reports adduced in the Quantum AEIC, the accident left the plaintiff with serious orthopaedic injuries.[16] Specifically, a medical report prepared in June 2023 states that the plaintiff's injuries left him with a permanent disability of 34%.[17] According to the plaintiff, the injuries also left him in a state of chronic pain, and also resulted in him developing conditions of anxiety and depression.[18] A psychiatric report prepared in May 2022 confirmed that the plaintiff was diagnosed with post-traumatic stress disorder ("PTSD") and extremely severe levels of depression and anxiety.[19] A memo dated 22 November 2022, prepared by three doctors who have managed the plaintiff's post-accident medical care from February 2020 states that the plaintiff is "unable to meaningfully perform his duties as an employee in *any* workplace

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15 Supporting affidavit for HC/OA 251/2024 at para 18.

16 Plaintiff's AEIC at paras 9–21.

17 Plaintiff's AEIC at para 21.

18 Plaintiff's AEIC at paras 23–31.

19 Plaintiff's AEIC at para 30(h).

due to his injuries and [post-traumatic stress disorder]" arising from the accident.[20]

31 In my view, the evidence supports the plaintiff's assertion that the accident resulted in him not being able to carry on the same business or employment which he used to before the accident, and that his ability to find employment going forward is also adversely impacted. I accepted, as the defendant argued, that the plaintiff failed to clearly quantify what is the estimated value of his claim for these two heads of claim, and correspondingly, there is also no supporting evidence relating to the likely quantum of these heads of claim.[21] However, having regard to (a) evidence of the earning capacity of the plaintiff *before* the accident, the roles in which he was previously employed and the remuneration he had been paid in those roles[22] and (b) the medical evidence which suggests that the plaintiff is no longer able to engage in any equivalent form of employment as a result of the accident, both of which are *prima facie* credible, I was satisfied that any claim for loss of future earnings and loss of earning capacity, when viewed alongside the plaintiff's other claims for loss of income and medical expenses, support the plaintiff's position that the overall quantum of his claims in the DC Suit is likely to exceed $500,000.

32 *Other claims*: The plaintiff has also detailed several other claims in his supporting affidavit for OA 251, such as a claim for the future medical expenses that he is likely to incur,[23] special damages in the form of physical damage

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20 Plaintiff's AEIC at p 97.

21 Defendant's written submissions at para 21.

22 Plaintiff's AEIC at para 33.

23 Supporting affidavit for HC/OA 251/2024 at paras 20–22.

caused to the motorcycle that he was riding at the time of the accident,[24] as well as a claim for a lost business opportunity because the accident resulted in him not being able to capitalise on the surge in demand for food deliveries during the COVID-19 pandemic period using Sarpino's business model.[25] The quality of the evidence which the plaintiff has adduced in support of each of these claims was far from ideal – for example, the estimated medical costs were quantified on the basis of the plaintiff's own assertions, without actual reference to quotes or expenses incurred previously;[26] the claim for the lost business opportunity does not even have a quantification of the damages sought.[27] As such, I did not attribute a specific figure to these claims and also did not rely on them in and of themselves in concluding that the plaintiff's claims are likely to exceed $500,000. That being said, I did not think these claims are in of themselves incredible or without apparent basis so that they should be disregarded for the present analysis. When taken together with the other claims for loss of income, medical expenses, loss of future earnings and loss of earning capacity (which by themselves already support the plaintiff's position on his desired quantification), these other claims did lend support to the plaintiff's overall position that his claims are likely to exceed $500,000.

33 In disputing that the plaintiff has demonstrated "sufficient reason", the defendant argued that plaintiff's claims for loss of income and loss of future earnings are too remote and should not be considered as *prima facie* evidence that his claim exceeds $500,000.[28] I disagreed with this submission and even if

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24 Supporting affidavit for HC/OA 251/2024 at para 24.

25 Supporting affidavit for HC/OA 251/2024 at para 32.

26 Supporting affidavit for HC/OA 251/2024 at paras 20–23.

27 Supporting affidavit for HC/OA 251/2024 at paras 31–33.

28 Defendant's written submissions at para 21.

it were true that the plaintiff's claims were remote or legally defective in any other way (on which I made no finding either way), that would not be relevant in the present analysis. In finding "sufficient reason", the issue is whether the plaintiff has satisfied the court through his evidence that the value of his *claim* is likely to exceed $500,000. What is relevant is the quality of the evidence adduced by the plaintiff to support the desired quantification, and a transfer application like OA 251 is not the appropriate forum for dealing with arguments relating to the merits or viability of the plaintiff's claims.

Whether prejudice would be caused to the defendant by a transfer

34 As the Court of Appeal explained in *Keppel Singmarine* ([9] above) (at [17]), the mere existence of a "sufficient reason" does not automatically entitle a party to have the proceedings transferred pursuant to s 54B(1) of the SCA; a holistic evaluation of all the material circumstances needs to be undertaken in every case where a transfer application is made, and in particular, the court needs to consider the prejudice that might be visited upon the party resisting such a transfer. Further, as mentioned earlier, the prejudice that had to be established could not simply be the fact that a transfer would lead to an award of damages that exceeds the District Court's monetary jurisdiction limit (see *Tan Kee Huat* ([26] above) at [43]).

35 The defendant made two arguments as to why it would suffer prejudice as a result of a transfer of the DC Suit to the General Division. First, much of the evidence which the plaintiff now relies in support of his position that his claims in the DC Suit exceed $500,000 were in fact already known to the plaintiff at the time at the time when the Quantum AEIC was filed in July 2023,

and yet OA 251 was only taken out in March 2024.[29] Secondly, as a result of the Memorandum, the defendant had handled the DC Suit on the understanding that the plaintiff's claim would not exceed $500,000, and had the defendant known otherwise, it would have handled the DC Suit differently, such as by setting aside the IJ, and pursuing other steps such as administering interrogatories for the plaintiff to provide evidence to substantiate his claim amounts, as well as requiring the plaintiff to undergo medical re-examination.[30]

36 The real complaint raised by the defendant's first argument is the prejudice it would suffer due to the plaintiff's *delay* in taking out OA 251. To recall, the plaintiff had previously taken out an application for transfer under s 54B of the SCA in August 2022, which was withdrawn after the parties entered the Memorandum also in September 2022 (see [6(b)] above). Delay should therefore be assessed with reference to when the first transfer application was taken out (August 2022), and not based on when the DC Suit was filed (November 2019). I think it cannot be seriously disputed that there has been some delay, for two reasons. First, the grounds on which the plaintiff relies to support the desired quantification of his claims and a transfer of the DC Suit are circumstances which have been known to him from the outset – especially with respect to the claims for loss of income, loss of future earnings and loss of earning capacity, the plaintiff's case is that the accident had an *immediate* impact on his ability to continue his business and seek proper employment. Secondly, it is telling that much of the evidence and grounds which the plaintiff now relies in OA 251 to demonstrate "sufficient reason" is the same evidence that he relies on in the Quantum AEIC. Between August 2022 and now, it does not appear that there has been such a material deterioration or an escalation of

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29 Defendant's written submissions at para 37.

30 Defendant's written submissions at paras 38–40.

the accident's impact on the plaintiff which justifies the plaintiff now taking the view that his claims exceed $500,000, if he had not previously taken that view.

37 The authorities show that a delay in the pursuit of a transfer would not be prejudicial where the party seeking the transfer establishes a material change in circumstances in justification of the subsequent transfer application (see *Tan Kee Huat* at [35]; *Ng Djoni* ([10] above) at [54]; see also *Lim Yew Beng v Lim Kwong Fei and another* [2024] SGHC 229 at [16]). However, I do not think that is the only circumstance in which a delay can be found to be not prejudicial. After all, the analysis of whether there is prejudice requires a holistic evaluation of all the circumstances of the case (see *Ng Djoni* at [20]). In my view, an equally significant consideration is whether the period of delay had caused the party resisting the transfer to conduct the proceedings in reliance on the belief that its exposure to damages would be limited to the District Court limit or a higher limit which the parties may have agreed pursuant to a Section 23 Memorandum. For example, in *Keppel Singmarine* ([9] above), the Court of Appeal found it prejudicial that the transfer application was only taken out four years after the parties had entered into a consent interlocutory judgment for a 70%:30% split in liability with damages to be assessed. As the court explained (at [19]), "both parties had accepted and relied on the consensual agreement for a substantial period of time", and to that end, the defendant's insurers had also set aside a reserve of $250,000 (being the maximum sum payable based on the District Court limit) for the purposes of the claim pursuant to statutory regulations. In *Ng Djoni*, the High Court found it prejudicial that there had been delay in the plaintiff's commencement of the claim (about three years after the accident) and thereafter further delay in the service of the writ and statement of claim and the taking out of the transfer application (about two years after the commencement of the claim). I note that the court had found prejudice because

it concluded that the transfer attempt was *not* prompted by a material change in circumstances, but the court also observed that, as a result of the delay, by the time the writ and statement of claim were served on the defendant, "it was reasonable for the defendant to rely on the fact that his liability would be limited to the Magistrate Court's jurisdiction" (at [54]).

38 In my view, the procedural history of this case prior to the commencement of the second transfer application, *ie*, OA 251, is such that the defendant could *not* have reasonably believed that its exposure to damages in these proceedings would be limited either to the District Court limit (before the first transfer application was taken out) or $500,000 (after the Memorandum was entered). The plaintiff's first transfer application would have made the defendant alive to the plaintiff's position that his claim exceeded the District Court limit. Although the parties subsequently agreed to expand the District Court's monetary jurisdiction to $500,000 by the Memorandum, that could not have led the defendant to form any reasonable belief that its exposure to damages would be limited to only $500,000. As I have explained earlier (at [25]), the legal effect of a Section 23 Memorandum is to record the parties' agreement as to where their dispute will be heard and determined, and where an upper limit of the District Court's monetary jurisdiction is specified, the extent of that agreement, depending on the value of the claim in the dispute. It would be quite a different matter if, in place of the Memorandum, the plaintiff had elected under s 22 of the SCA to abandon his claimed damages which come in excess of the District Court limit, but that is not the case here.

39 Even if the defendant did form any such belief by virtue of the Memorandum, that would have been disabused by the contents of the Quantum AEIC filed shortly less than a year after the Memorandum was entered. The Quantum AEIC would have fully alerted the defendant that the plaintiff now

takes the position that his claims exceed $500,000, despite what the Memorandum might otherwise suggest. In my view, the plaintiff's conduct throughout the procedural history of the DC Suit shows that he has not taken a firm or clear position regarding what he considers to be the likely value of his claim and the appropriate forum in which it should be heard, and consequently, the defendant could not have formed any reasonable belief about its exposure to damages and relied on the same in its conduct of the proceedings. For these reasons, I did not think the defendant can complain of any prejudice as a result of the delay in the plaintiff's pursuit of OA 251.

40 As for the second argument, for reasons similar to those I have stated earlier, I did not think the defendant could rely on the Memorandum in explaining or justifying how it had conducted the DC Suit and thereby complain of prejudice. I reiterate two points. First, given the *legal effect* of the Memorandum, the defendant could not have formed any reasonable belief that its exposure to damages would be limited to only $500,000 (see [38] above). Secondly, even if the defendant had held any such subjective belief by virtue of the Memorandum, the circumstances of the case would have disabused it of the same (see [39] above).

41 In any case, I did not think the defendant can rely on its handling of the DC Suit to establish prejudice. Where a party resisting transfer seeks to rely on its previous handling of the matter to establish prejudice, relevant considerations include whether work previously done stands to be wasted by a transfer (see *Tan Kee Huat* ([26] above) at [39]]), and where certain steps had been omitted previously because that party did not envision a transfer of the proceedings to the General Division, the utility or value of those steps being taken now (see *Ng Djoni* ([10] above) at [55]). In this case, I did not see why those interlocutory procedures which the defendant claims it would have done previously had it

known that its liability for damages would exceed $500,000 – such as the administering of interrogatories or medical re-examination – could not be done now. As the Memorandum was entered in September 2022, the period of time we are looking at is that of approximately two years (on the basis that an order for the transfer of the DC Suit is made in August 2024). I did not think the difference in time between then and now is such that they drastically reduce the utility of these interlocutory procedures.

42 For example, in so far as interrogatories are sought of information pertaining to the plaintiff's claim amount, the lapse of time would not affect the plaintiff's ability to produce the information. Since these matters are meant to support the plaintiff's claims, he would have them on hand whether now or in September 2022, and there is no meaningful difference in having these interrogatories administered now rather than earlier. As for medical re-examination, the present facts are quite unlike *Ng Djoni* (at [55]) where the court considered medical re-examination to determine the state of injuries caused by the defendant likely to be unfruitful because the plaintiff had, subsequent to the motor accident caused by the defendant, encountered two further accidents which might have had an impact on those injuries, and the lapse of time also made it more difficult to disentangle the plaintiff's injuries as caused by the defendant from the plaintiff's pre-existing medical condition. I note that the medical reports on the plaintiff's physical and psychiatric condition are relatively recent as at the time when OA 251 was heard – the report assessing the plaintiff as suffering from permanent disability of 34% was prepared in June 2023, and the plaintiff was diagnosed with PTSD in April 2022 (see [30] above). Based on the Quantum AEIC, the plaintiff's present physical and psychiatric conditions were brought about by the traffic accident in 2019 and there was nothing to suggest that the plaintiff already suffered from pre-existing medical

conditions which might be entangled with any medical condition that he suffered after the accident. In view of this, I did not think that the time which has passed since September 2022 is of such an extent that it would render any medical re-examination unfruitful.

43 Finally, as for the defendant's assertion that it would have sought to set aside the IJ had it known that its liability for damages would exceed $500,000, I similarly did not see why that could not be pursued now. It is important to note that the defendant's setting aside of the IJ is contingent on it knowing that its liability for damages would exceed $500,000. The earliest point at which such knowledge could have crystalised was September 2022, if the parties had not entered into the Memorandum. Again, I did not think the difference in time between September 2022 and August 2024 is of such an extent that there would be significant difficulties in liabilities being relitigated, if such difficulties did not already exist as of September 2022. It is therefore not open to the defendant to complain of prejudice on this count.

Conclusion

44 In a holistic evaluation of all the circumstances, I was satisfied that the DC Suit should be transferred to the General Division pursuant to s 54B(1) of the SCA.

45 As for costs, at the hearing of OA 251 on 26 July 2024, the plaintiff's counsel submitted that the plaintiff should be awarded costs of $12,000 and disbursements of $2,500. In the plaintiff's costs submissions later filed on 30 July 2024, this figure was revised to costs of $9,000 and disbursements of $2,500. The defendant's counsel on the other hand submitted that the court should make no order as to costs and pointed out that it was significant that the

plaintiff already knew his claim would likely exceed the agreed jurisdictional limit of the District Court in July 2023 when the Quantum AEIC was filed, but yet only filed the transfer application in March 2024.

46 Costs follow the event, and the plaintiff ought to be entitled to costs on account of his success in OA 251. While I did not find his delay to be of such a nature that caused prejudice (so as to refuse a transfer) or that it should deprive him of his entitlement to costs completely, I did think the plaintiff could have acted more promptly from the time the Quantum AEIC was filed and when he first began to take the clear position that the quantification of his claims in the DC Suit is likely to exceed $500,000, and that in my view was a relevant consideration in the quantum of costs to be awarded. For this reason, and on account of the work done in terms of the affidavits filed and the submissions made in OA 251, I ordered the defendant to pay the plaintiff costs of $7,500 (all in).

Perry Peh
Assistant Registrar

Nirmala Ravindran (Law Connect LLC) for the applicant;
Calvin Tan Wen Jiang (Tan Chin Hoe & Co) for the respondent.
