Ng Djoni
v
Miranda Joseph Jude

[2017] SGHCR 13

High Court — Originating Summons No 401 of 2017
Zeslene Mao AR
9, 30 June; 14 July; 4 August 2017

Courts and jurisdiction – Magistrate's Court – [Power to transfer proceedings from Magistrate's Court to High Court

23 August 2017

Zeslene Mao AR:

Introduction

1 In Magistrate's Court Suit No 24052 of 2015 ("the MC Suit"), the plaintiff, Ng Djoni, claims against the defendant, Miranda Joseph Jude, for damages for personal injury arising out of a car accident. In the present application, the plaintiff sought a transfer of proceedings from the Magistrate's Court to the High Court under s 54B of the State Courts Act (Cap 321, 2007 Rev Ed) and O 89 r 1(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) on the ground that damages might exceed the jurisdictional limit of the State Courts.

2 I first heard the application on 9 June 2017. Thereafter, two further hearings were held on 30 June and 14 July 2017 because the plaintiff disclosed fresh evidence. During the hearings, the parties were also asked to consider the possibility of agreeing to an enlargement of the jurisdiction of the State Courts under s 23 of the State Courts Act. However, the parties were unable to agree and the plaintiff elected to proceed with the application for transfer.

3 Having heard the parties, I dismissed the plaintiff's application. These are my reasons.

Background to the application

4 The car accident involving the parties occurred on 27 December 2012 ("the December 2012 accident"). On 23 December 2015, the plaintiff filed a Writ of Summons in the Magistrate's Court ("the Writ"). The Writ was not served and applications for renewal were filed, first on 15 June 2016 and subsequently on 30 November 2016. On 16 March 2017, the Statement of Claim was filed. The Defence was filed in the MC Suit on 13 April 2017.

5 On 11 April 2017, the plaintiff filed this application for transfer in the High Court.

The applicable legal principles

6 Section 54B of the State Courts Act states:

> **General power to transfer from State Courts to High Court**
>
> 54B.—(1) Where it appears to the High Court, on the application of a party to any civil proceedings pending in a State Court, that the proceedings, by reason of its involving some important question of law, or being a test case, or for any other sufficient reason, should be tried in the High Court, it *may order* the proceedings to be transferred to the High Court.

> (2) An order under subsection (1) may be made on such terms as the court sees fit.
>
> [emphasis added]

7 The issue in the present application was whether there was "sufficient reason" for the making of order for transfer. In *Keppel Singmarine Dockyard Pte Ltd v Ng Chan Teng* [2010] 2 SLR 1015 ("*Keppel Singmarine*"), the Court of Appeal held (at [16]) that the likelihood that a plaintiff's damages would exceed the jurisdictional limit of the District Court would, ordinarily, be regarded as "sufficient reason" for the transfer of proceedings to the High Court under s 54B of the State Courts Act (see also *Keppel Singmarine Dockyard Pte Ltd v Ng Chan Teng* [2008] 2 SLR(R) 839 at [38] where the phrase "*possibility* of the plaintiff's damages exceeding the jurisdictional limit of the District Court" [emphasis in original] was used). The jurisdictional limit of the State Courts is currently $250,000. (The automatic transfer of cases to the District Courts for actions arising out of motor accidents for damages not exceeding $500,000 under the Supreme Court of Judicature (Transfer of Specified Proceedings to District Court) Order 2016 (Cap 322, S 597/2016) applies only to cases commenced in the High Court on or after 1 December 2016.)

8 In *Keppel Singmarine*, the court held that the plaintiff had presented "sufficient reason" that his damages would exceed the jurisdictional limit of the State Courts. The accident had caused the plaintiff to suffer serious injuries to his right arm, which resulted in an amputation. Prior to the accident, the plaintiff had been earning about $3,000 a month. As the plaintiff was at the material time 43 years old, an estimate of his claim for loss of future earnings (applying a multiplier of 14 years) was $504,000. It was also submitted that a sum of $80,000 should be awarded for the amputation alone based on past precedents. Based on the severity of the injuries suffered by the plaintiff and the

quantification of the damages submitted by the defendant, the court was prepared to accept that there was a "real possibility" that damages would exceed $250,000 (see *Keppel Singmarine* at [16] and *Ng Chan Teng v Keppel Singmarine Dockyard Pte Ltd* [2009] 2 SLR(R) 647 at [24]).

9 However, the Court of Appeal noted (at [17]) that the presence of a "sufficient reason" did not automatically entitle the plaintiff to have the proceedings transferred to the High Court. It was necessary for the court to evaluate all the material circumstances. In particular, the court had to assess the prejudice that would be visited on the party resisting a transfer and the competing interests of the parties, though the prejudice could not consist of the fact that the damages awarded would exceed $250,000 if the transfer were allowed. The Court of Appeal also noted that the words "may order" in s 54B of the State Courts Act made it "abundantly clear that every transfer under the subject provision is a discretionary one requiring a principled approach that requires a balancing of the respective competing interests of the parties" (at [17]).

10 Differing from the High Court Judge, the Court of Appeal in *Keppel Singmarine* found that there was prejudice to the defendant such that an order for transfer ought *not* to be granted. First, the parties had entered into interlocutory consent judgment apportioning liability between the defendant and the plaintiff a ratio of 70:30. At the time interlocutory consent judgment was entered into, the prevailing position as set out in the Court of Appeal decision in *Ricky Charles s/o Gabriel Thanabalan v Chua Boon Yeow* [2003] 1 SLR(R) 511 was that by entering into interlocutory judgment, the parties would have been taken to have affirmed the jurisdiction of the District Court, and would have been barred from transferring the proceedings to the High Court.

The Court of Appeal was satisfied that the defendant in *Keppel Singmarine* would likely not have entered into consent judgment if it had known that the position was otherwise. Moreover, the application to transfer the proceedings was made four years since the consent judgment had been recorded and six to seven years from the date of the accident. Even if the consent judgment was to be set aside, the court noted that parties would have to re-litigate their respective liabilities and that to require the defendant to do so despite the substantial lapse of time since the accident occurred would be severely prejudicial to the defendant's interests. The Court of Appeal thus dismissed the application for transfer, awarding costs to the defendant.

11 In *Tan Kee Huat v Lim Kui Lin* [2013] 1 SLR 765 ("*Tan Kee Huat*"), Judith Prakash J (as she then was) allowed an application for transfer. There, the plaintiff was a taxi driver who had been injured by the defendant in a motor accident. The claim proceeded in the District Court, with the defendant consenting to bear 85% of liability for the accident. Subsequently, the plaintiff applied to transfer the case to the High Court on the basis that further medical reports revealed that he would not be able to continue working as a taxi driver. Based on the medical reports and other evidence, the plaintiff quantified his general damages (excluding his claim for loss of earning capacity and/or loss of future earnings) at $463,500 and special damages at $9,834.16 (see *Tan Kee Huat* at [17]). The defendant resisted the application on the basis that the plaintiff's claims were not substantiated. The defendant also pointed out that there was a separate medical report which indicated that the plaintiff could still continue his work as a taxi driver. Prakash J noted the defendant's criticisms of the medical evidence relied on by the plaintiff, but found ultimately that the hearing of the application was not the appropriate forum to determine which doctor's evidence was more credible (at [33]). On the basis of the evidence

before her, Prakash J held that the plaintiff had, *prima facie*, established the material change in circumstances needed to support an application for transfer. She found that there was no irretrievable prejudice to the defendant and granted an order for transfer.

The parties' arguments and affidavits filed

12 The plaintiff argued that his claim was likely to exceed $250,000, relying heavily on his claim for loss of earnings and/or earning capacity. In his first affidavit dated 20 March 2017, the plaintiff stated that he earned an average of about $181,415.75 per year between 2009 and 2011. Since the accident in December 2012, he suffered a drop of income of about $60,000 annually compared with his earnings prior to the accident. According to the plaintiff, the drop in income was a result of the December 2012 accident. He relied on a report from Dr James Lee of James Lee Orthopaedic Surgery dated 27 June 2016 which set out the following conclusion:

> The patient sustained a neck and back contusion. He *sustained them in 3 separate accidents, i.e., in 19/7/2005, 10/10/2008 and 27/12/2012*. He has persistent neck and backache since the accident. The pain is worse on carrying heavy objects, prolonged standing, and walking. He is unable to carry his young children. His neck and back pain comes on with prolonged standing and walking and he is unable to do more showing of his properties. The neck and back pain is also worse when he has to do prolonged driving from point to point. He is thus affected in his job as a housing agent.
>
> [emphasis added]

13 The plaintiff also set out the following table of his income over the relevant years in his first affidavit which is reproduced below:

Year	Amount
2009	$116,631
2010	$114,713

2011	$208,704
2012	$285,614.23 (est)
2013	$127,836
2014	$129,529
2015	$44,134.36

14 Save for the years 2012 and 2015, the figures in this table were based on Notice of Assessments ("NOAs") of the plaintiff's income from the Inland Revenue Authority of Singapore ("IRAS") which were exhibited in the plaintiff's first affidavit. In an affidavit dated 1 June 2017, the plaintiff explained that IRAS had yet to provide its final assessment on his income in 2012. However, he provided a table which he stated to be "what [he] understood to be IRAS's interim reply" in relation to the income he earned in 2012. Based on these documents, he estimated his claim for loss of pre-trial earnings in excess of $200,000 and for loss of future earnings exceeding $250,000 (based on a multiplier of between seven to ten years).

15 The defendant resisted the application on the following grounds. First, the plaintiff had not shown that his claim was likely to exceed $250,000. As can be seen from Dr James Lee's report, the plaintiff had been involved in at least two accidents prior to the December 2012 accident involving the defendant which caused similar injuries in his neck and back. Counsel for the defendant, Mrs Kwok-Chern Yew Tee ("Mrs Kwok"), submitted that given the multiple accidents that the plaintiff had been involved in, the quantum of the plaintiff's claim for the accident in December 2012 was likely to be substantially reduced. Apart from the injuries, it was also pointed out that the plaintiff had not provided any official IRAS documents in respect of his income for 2012. This led to the defendant's second ground for resisting the application, which was that as the plaintiff did not provide all the relevant evidence, the court should not exercise its discretion in his favour. Third, a transfer would cause prejudice to the

defendant which could not be compensated by costs. In this regard, the defendant stated he had not taken steps to conduct medical re-examination on the plaintiff because he was of the view that the maximum exposure would be limited to $60,000. Given that the accident had occurred almost five years ago, the defendant was no longer in a position to engage medical experts to investigate the plaintiff's injuries and to determine which of the plaintiff's injuries could be attributed to the December 2012 accident.

16 At the first hearing of the application on 9 June 2017, Mr Lee produced a NOA from IRAS for the year 2015 which showed that the plaintiff's total income earned in 2015 was $50,169. He stated that this had been inadvertently left out of the plaintiff's first affidavit. I found that the document was relevant to the disposal of the application and allowed the plaintiff to file a further affidavit exhibiting this document. A further hearing was fixed for 30 June 2017 for the parties to raise any new matters arising from the further affidavits. The plaintiff filed this affidavit on 12 June 2017.

17 Subsequently, on 29 June 2017, one day prior to the hearing on 30 June 2017, the plaintiff filed another affidavit. This new affidavit contained the NOAs in respect of the plaintiff's income for the years 2012 and 2013 in the sum of $99,839 and $418,000, respectively. As this was vastly different from the plaintiff's original estimate (see the table at [13] above), the plaintiff included an explanation for the discrepancy. Essentially, the plaintiff said that his initial estimate of $285,000 was based on the commission he earned as a housing agent for deals closed in 2012 and that the income reflected in the NOA for 2012 was "unique" as a large part of his commission for deals closed in 2012 were only paid in 2013. To support this, the plaintiff also exhibited his commission statements for the years 2012 to 2015.

18 The defendant did not object to the plaintiff's filing of this affidavit because of the materiality of the contents. Directions were therefore given for reply affidavits to be filed. In his reply affidavit, the defendant pointed out that the plaintiff had not exhibited his commission statements for the years 2010 and 2011. The defendant also raised the issue of the property "cooling measures" that had been implemented by the Singapore Government and stated that this was a probable explanation for the plaintiff's drop in income. In his reply affidavit filed on 12 July 2017, the plaintiff exhibited his commission statements from 2007 to 2011 and 2016. In the result, the plaintiff's claim for loss of earnings and/or earning capacity had shifted from being premised on the NOAs issued by IRAS to the commission he earned as a housing agent.

The decision

Whether the plaintiff demonstrated a prima facie *case that his damages was likely exceed $250,000*

19 I begin by considering whether the plaintiff demonstrated a *prima facie* case that his claim would exceed the jurisdictional limit of the State Courts. Mr Lee repeatedly highlighted in his submissions to the court that all his client had to demonstrate was a *possibility* that his damages would exceed $250,000. He submitted that the court hearing a transfer application was not the appropriate forum for an assessment of damages and that issues such as the link between the plaintiff's injury and losses, the impact of the plaintiff's previous accidents and pre-existing ailments on the damages to be awarded, and the integrity of the various NOAs and commission statements are issues to be dealt with at the stage of the assessment of damages.

20 I agreed with the broad thrust of Mr Lee's submissions. Where there was a dispute as to the facts, I agreed that these were points to be decided at the trial

or at an assessment of damages. In the context of the application for transfer, all the plaintiff had to show was a possibility or likelihood that his damages would exceed the jurisdictional limit of the State Courts. At the same time, a mere assertion on the plaintiff's part that his damages are likely to exceed $250,000 would not satisfy this threshold. In my view, the plaintiff was required to provide some evidence or basis upon which it could be said, on a *prima facie* review, that his damages would be in excess of $250,000.

21 In my assessment, the plaintiff had not done so. As the plaintiff relied principally on his claims for medical expenses as well as for loss of earnings and/or earning capacity to support his position that his damages would be likely to exceed $250,000, I focus mainly on these two heads of claim in the discussion below.

The claim for loss of earnings and/or earning capacity

22 A claim for loss of earnings and/or earning capacity essentially requires a plaintiff to prove that he had lost income and/or the ability to earn income as a result of the accident. As set out at [18] above, the evidence on which the plaintiff relied for his likely damages for loss of earnings and/or earning capacity shifted during the course of the various hearings before me. Whilst the plaintiff's case was initially based on the NOAs issued by IRAS, the NOAs were subsequently abandoned because they contradicted the plaintiff's position that he had suffered a loss in income subsequent to the December 2012 accident. Indeed, the NOAs suggested that the plaintiff earned a sum of $418,000 in 2013, *more than four times* the amount he earned in the year of accident (*ie*, 2012). In my view, this was *prima facie* evidence that the plaintiff *did not* suffer a loss of earnings or earning capacity.

23 The plaintiff recognised as much and therefore chose to then disclose his commission statements for the years 2007 to 2016 to support his position on damages for his claim for loss of earnings and/or earning capacity. The table below sets out the plaintiff's income from 2007 to 2016 as shown in the NOAs and commission statements:

Year	Income assessed by IRAS in NOAs	Income in Commission Statements
2007	$59,904	$128,830.21
2008	$75,172	$111,757.59
2009	$116,631	$354,645.41
2010	$114,713	$260,869.69
2011	$208,704	$369,382.65
2012	$99,839	$440,150.27
2013	$418,000	$299,485.69
2014	$129,529	$65,055.70
2015	$50,169	$80,372.65
2016	$34,190	$44,996.66

24 As may be seen from the above table, the plaintiff earned about $140,000 less in commission in 2013 as compared to 2012. Thereafter, there was a significant drop in the plaintiff's commission from 2014 onwards. As for the lower income assessed in the NOA for 2012, the plaintiff said that "this was an exception in the sense that most of the [commission] earned in 2012 was paid in 2013". Based on the above, Mr Lee argued that the plaintiff clearly suffered a drop in income from the time of the accident and there was therefore a "real possibility if not probability that the [p]laintiff's future losses including loss of earnings or earning capacity … would exceed S$200,000 in damages".

25 Besides the fact that the NOAs issued by IRAS suggested otherwise, and focussing exclusively on the commission statements as evidence of the plaintiff's income, I found that there were a number of other problems with the

plaintiff's evidence even assessed on a *prima facie* review. First, it is clear that despite the accident in 2012, the plaintiff earned a significant amount of commission in 2013. The average annual commission the plaintiff earned over 2007 to 2012 is approximately $280,000. This is comparable to the commission which the plaintiff earned in 2013 of approximately $300,000. Taken together with the NOAs, this suggest that there was no loss of earning or earning capacity in the year immediately after the accident.

26 Second, whilst the plaintiff's commission dropped significantly from 2014 onwards, it is not clear whether this drop in commission can be said on a *prima facie* review to be attributable to, or caused by, the December 2012 accident. In this regard, in order for the plaintiff to show a likelihood that his damages would exceed the jurisdictional limit of the State Courts for the purpose of this transfer application, causation of such damages should also be established on a *prima facie* basis. In my view, this involves the plaintiff placing forward some evidence to support his case that the loss claimed was caused by, or could be attributed to, the injury for which the defendant is *prima facie* liable. For instance, in *Tan Kee Huat*, the plaintiff's position was that the accident had caused him to suffer a back injury and that as a result, he was no longer able to work as a taxi driver. This position was supported by a report from a consultant anaesthesiologist. However, the defendant's expert, an orthopaedic and trauma surgeon, opined that the plaintiff could be gainfully employed in any sedentary position, which included driving a taxi. Despite the conflicting medical reports, Prakash J held that an application for transfer was not the correct forum to determine which doctor's evidence was more credible and that there was *prima facie* "credible evidence to support the plaintiff's assertion of continuing disability leadings to an inability to return to work and a substantial loss of earnings" (at [34]). Clearly, what was important was that the plaintiff had

presented some credible evidence to support his case the loss of earnings was caused by the accident.

27 In the present case, the medical evidence put forth by the plaintiff was unchallenged. There was no claim in the medical reports that the plaintiff's condition that his injury worsened in 2014 as a result of the December 2012 accident which caused him to be unable to, or hindered in, his work as a housing agent. In fact, it is clear from the extract from Dr James Lee's report quoted at [12] above that prior to the December 2012 accident, the plaintiff was already suffering from a back ailment that affected his work as a housing agent. According to Dr James Lee, the neck and back contusions suffered by the plaintiff which affected his job as a housing agent was sustained in three separate accidents. In his report, Dr James Lee also recorded the following in relation to a visit by the plaintiff to his clinic on 26 July 2012:

> **Clinic visit on 26/7/12**
>
> The patient complained of persistent backache. … He complained of insomnia. … The backache affects his job as a housing agent with DTZ Realtors. He has to take his Arcoxia if he has to do any showing of the properties. The backache and neck ache is worse with prolonged standing and walking and climbing of stairs as required in his job. …

28 Clearly, the plaintiff's injury was one that was already afflicting him and affecting his job in a serious way prior to the December 2012 accident. Based on the above, it was not clear on the face of the medical evidence that the drop in income and commission from 2014 could be said to have been due *solely* to the December 2012 accident, and indeed, there was no claim by Dr James Lee to that effect.

29 Importantly, had the drop in income and commission in 2014 been due to a deterioration of the plaintiff's medical condition, one would have expected the plaintiff to seek medical assistance and treatment. Yet, based on the medical reports and the plaintiff's tabulation of his medical receipts, and as Mrs Kwok pointed out in submissions, it appeared that the plaintiff did not seek medical treatment between 24 January 2014 and 19 November 2015. There has been no explanation for this period of quiet. The absence of an explanation is significant especially because the plaintiff was seeking medical treatment twice a month on average prior to January 2014. That the plaintiff did not require medical treatment over this period almost two years suggests that he was well; it also indicates that there was no worsening of his back injury *in 2014* that led to the substantial drop in commission in that year.

30 Finally, it was also the plaintiff's evidence that his commission as a housing agent was not his only source of income. At para 13(a) of his affidavit dated 29 June 2014, the plaintiff stated that "in 2014, I managed to secure other income". However, despite the defendant's inquiries as to what such "other income was", the plaintiff remained silent as to the source of this "other income". It was therefore not possible to assess whether the plaintiff could be said to have lost this source of income or his ability to earn such an income as a result of the accident. This lack of full disclosure on the plaintiff's part cast further doubt on his claim that he had suffered either a loss in earnings and/or earning capacity.

The claim for medical expenses

31 The plaintiff quantified his claim for medical expenses at $182,944 which comprised medical expenses that had been incurred, future medical

expenses and the costs of a potential back surgery. I set out below a number of concerns I had in respect of the plaintiff's quantification.

32 In relation to the back surgery, Dr James Lee had stated in his report that "[n]o surgical intervention is needed for [the plaintiff's] cervical or lumbar spine [or] is planned for the present moment" and that surgery would only be required *if* medication and therapy did not work. Given that there was no necessity for the surgery at present, and that the accident had occurred 3.5 years prior to the date of Dr James Lee's report, the plaintiff's claim for $90,000 for the cost of the surgery and follow-up struck me as speculative and, in any case, provisional.

33 The plaintiff computed his claim for medical expenses incurred at $22,944 and future medical expenses at $70,000. As I had alluded to above, the sum of $22,944 had not been incurred consistently over the 4.5 years after the December 2012 accident, and indeed, the plaintiff had not sought medical treatment over a period of almost two years. To my mind, the plaintiff's claim for medical expenses already incurred was therefore rather flimsy. This, in turn, affected the plaintiff's claim for future medical expenses. This was because the plaintiff arrived at a figure of $70,000 for future medical expenses by applying a multiplier of 14 years with a multiplicand of $5,000 (the average of the medical expenses incurred over the time post-accident, *ie*, $22,944 divided by 4.5 years).

34 In any case, even if I accepted the sum of $182,944 claimed as medical expenses and a sum of $25,000 claimed as damages for pain and suffering, this would not bring the plaintiff over the required threshold.

Conclusion

35 In sum, I was not satisfied, even on a *prima facie* basis, that the plaintiff's damages were likely to exceed $250,000. The evidence presented in respect of the plaintiff's claim, on its face, generated more questions than it did answers. For instance, the NOAs clearly contradicted the plaintiff's assertion that he had suffered a loss in earnings after the accident, causing him to disclose, belatedly, his commission statements as a housing agent. There were also unanswered questions in relation to the plaintiff's "other income" and the period between January 2014 and November 2015 when the plaintiff appeared to have not sought medical treatment at all. To my mind, all these militated against the plaintiff's case that his damages were likely to exceed $250,000.

Whether there would be prejudice to the defendant

36 Even if it could be said that there was a likelihood that the plaintiff's damages might exceed $250,000 (and I did not agree that this had been shown), I was also of the view that there would be irreparable prejudice to the defendant if the transfer application was allowed.

37 It has been more than 4.5 years since the accident in December 2012. Although the Writ had been filed in the Magistrate's Court in December 2015, the Writ and Statement of Claim was only *served* on the defendant in March 2017. Prior to this, two applications for the renewal of the Writ been made in June and November 2016. In the affidavit filed in support of the renewal of the Writ in November 2016, the plaintiff stated that the delay in the prosecution of the action was due to the fault of his previous solicitors. He also stated that he did not understand "why [his] former lawyers did not write to the insurers and the Defendant prior to the issuance of the writ". It is also in this affidavit filed

in respect of the renewal of the Writ that the plaintiff first gave an indication that his damages were likely to exceed the jurisdictional limit of the Magistrate's Court.

38 Based on the above chronology, for all intents and purposes, the defendant did *not* know prior to the issuance of the Writ that a claim for damages would be brought against him in respect of the accident. Subsequently, even though the Writ was issued in December 2015, no steps appeared to have been taken until sometime in November 2016 to quantify the claim. Neither is there any evidence that there was correspondence between the plaintiff and the defendant *prior* to November 2016 that would have put the defendant on notice that the plaintiff's claim would be in excess in the Magistrate's Court limit. Therefore, even assuming that the defendant was aware of the presence of a potential suit against him once the Writ had been filed (though it was not served), the fact that the Writ was filed in the Magistrate's Court would have given the defendant the impression that the claim would not be for more than $60,000 and this impression would have lasted until the Statement of Claim was finally served in March 2017, or at least until the plaintiff filed the application to renew the Writ in November 2016.

39 In my view, this lengthy delay in the prosecution of this claim has brought about practical difficulties to the defendant in the conduct of the litigation in two principal ways. First, it is not disputed that this is a case where the plaintiff has been involved in multiple accidents from 2005 to 2012 causing similar injuries. In order to defend the claim appropriately, the defendant would have to engage medical professionals to examine the plaintiff in order to take a position on the proportion of the plaintiff's injury and damages that could be attributed to the defendant's negligence.

40 However, as the impression conveyed to the defendant was that the plaintiff's claim would be within the jurisdictional limit of the Magistrate's Court, the defendant, to his detriment, did not undertake medical re-examination or further investigation of the plaintiff's claim. As the defendant stated in his affidavit dated 12 May 2017:

> It has been about 5 years since the accident took place. I am advised and verily believe that this case is unlike any other as the Plaintiff has been involved in numerous accidents which occurred within close range … Whatever the Plaintiff may say about his previous solicitors' advice, I am advised and verily believe that the fact remains that I have been greatly prejudiced, as I am not in a position now to engage medical experts to consider and investigate the Plaintiff's injuries.
>
> More importantly, I did not take any steps to expend money to conduct medical re-examination because the maximum exposure would be limited to $60,000. The loss of opportunity to subject the Plaintiff to earlier re-examination cannot be quantified by costs if the Plaintiff is allowed to take his own time to progress the case.

I agreed with the defendant that the loss of the opportunity to conduct earlier medical re-examination was prejudicial to him, especially given the unique circumstances of this case where the plaintiff already had a pre-existing medical condition. Furthermore, given the substantial lapse of time since the accident, it is not clear if any medical re-examination conducted at present will yield any useful result.

41 Second, the substantial lapse of time since the date of the accident in and of itself would lead to practical difficulties in the conduct of the litigation. Notably, as Mrs Kwok highlighted in submissions, had the applications for the renewal of the Writ *not* been allowed, the plaintiff would have been out of time to bring an action in negligence for damages for personal injuries against the defendant (see s 24A of the Limitation Act (Cap 163, 1996 Rev Ed)). There is

a reason why the limitation for negligence actions where damages for personal injuries is claimed is three years. This was explained by the Minister for Law and National Development in amending the law to provide for a limitation period of three years for such actions (see *Singapore Parliamentary Debates, Official Report* (21 April 1966) vol 25 at col 79):

> The effect of the amendment will be that in general actions for personal injuries, arising, for example, from motor-car accidents, may only be brought within three years of the accident. *It is desirable that such actions should be heard as soon as possible after the accident, as, if the action is instituted, say, after four or five years, it would be difficult for witnesses to testify about the accident with any degree of accuracy.* The Act will therefore *prevent the institution of stale proceedings*. Police investigation papers are normally destroyed by the Police two to three years after an accident and if actions are brought after that, police witnesses will be unable to refresh their memories from statement or plans made by them soon after the accident.
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> [emphasis added]

42 Although the plaintiff's claim is not time-barred, the considerations which led policymakers to impose a limitation period of three years for actions for personal injuries arising from negligence, such as the fading memory of witnesses and the destruction of documents, similarly apply in the present context. Not only may the plaintiff and the defendant have difficulties recalling the details of the accident, the plaintiff's doctor, Dr James Lee, who saw the plaintiff on the date of the accident, may also have difficulty recalling the details of the plaintiff's injuries.

43 It should also be highlighted that the circumstances in the present case differ from those in *Keppel Singmarine* and *Tan Kee Huat*. The delay in those cases concerned the time when the plaintiff applied to *transfer* the action from the State Courts to the High Court; there were no issues surrounding the plaintiff's delay in the *commencement of the claim*. For instance, the accident

in *Keppel Singmarine* occurred in November 2001. Consent interlocutory judgment was entered on 7 May 2004 where the defendant accepted 70% liability for the accident. In *Tan Kee Huat*, the accident occurred in October 2008 and a suit in the District Court was commenced in September 2009. In March 2010, interlocutory judgment was entered, with the defendant agreeing to bear liability for 85% of the damages to be assessed.

44 As may be seen from the short summary above, the plaintiffs in *Keppel Singmarine* and *Tan Kee Huat* had prosecuted their claims expeditiously. Indeed in both cases, the issue of liability had been determined within three years or less from the date of the accident. The defendants in both cases were not kept in the dark as to whether a claim would be brought, and could thus take the appropriate steps to investigate the claim, consolidate the evidence and obtain medical reports where necessary not too long after the accident had occurred. Additionally, in both cases, the claims were filed first in the District Court before an application to transfer to the High Court was made. Hence, the defendants were potentially liable to the plaintiffs up to $250,000. In the present case, however, the claim was first filed in Magistrate's Court, leading the defendant to gain the impression that his potential liability would be limited to a much lower sum of $60,000.

45 To conclude, the fact that the plaintiff has been involved in multiple accidents since 2005, coupled with the delay in the prosecution of the claim and the impression that may have been given to the defendant of his potential liability to the plaintiff in the lengthy interim period have collectively resulted in the defendant facing practical difficulties in the conduct of its defence on the issues of both liability and the assessment of damages in the present case. In these circumstances, I was of the view that a transfer of the proceedings from

the Magistrate's Court to the High Court at this stage would cause real prejudice to the defendant which weighed against a grant of an order to transfer.

Conclusion

46 For the reasons stated above, I dismissed the plaintiff's application with costs.

Zeslene Mao
Assistant Registrar

Lee Wei Yung (Pacific Law Corporation) for the plaintiff;
Kwok-Chern Yew Tee (Foo Kwok LLC) for the defendant.