IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 8

Originating Summons No 29 of 2021

In the matter of Section 29D(2)(c)(ii) of the Supreme Court of Judicature Act (Cap 322)

And

In the matter of Order 56A, Rule 12(1) of the Rules of Court (Cap 322, R 5)

Between

Choo Cheng Tong Wilfred

… *Applicant*

And

(1) Phua Swee Khiang
(2) Ding Pei Chai

… *Respondents*

JUDGMENT

[Courts and Jurisdiction] — [Judges] — [Transfer of cases]

Choo Cheng Tong Wilfred
v
Phua Swee Khiang and another

[2022] SGCA 8

Court of Appeal — Originating Summons No 29 of 2021
Andrew Phang Boon Leong JCA
16 December 2021

25 January 2022

Andrew Phang Boon Leong JCA:

1 As the old adage goes, one must be careful lest one misses the wood for the trees. Another guiding principle is that one must look to the substance – rather than merely the form – of the proceedings concerned.

2 In an application for the transfer of an appeal from the Appellate Division of the High Court ("AD") to the Court of Appeal, the "overarching inquiry" is whether it is more appropriate for the Court of Appeal to hear the appeal (see *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd* [2021] 2 SLR 440 ("*Noor Azlin*") at [45]). The present application is one such application. The applicant, who seeks remuneration for work done in relation to legal disputes which his clients were involved in, argues that legal issues raised by his appeal against the judgment of the General Division of the High Court in *Choo Cheng Tong Wilfred v Phua Swee Khiang*

and another [2021] SGHC 154 would be more appropriately heard by the Court of Appeal.

3 In support of his application, the applicant raises numerous arguments pursuant to the matters set out in O 56A r 12(3), read with O 56A r 12(1) of the Rules of Court (2014 Rev Ed) ("ROC") and s 29D(2)(*c*)(ii) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed). However, at bottom, his case really concerns the *interpretation as well as application* of certain provisions of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("Act"). The fundamental issue he raises relates to what constitutes acting "as an advocate and solicitor" within the meaning of the Act. At trial, the judge, applying the tests in *Turner (East Asia) Pte Ltd v Builders Federal (Hong Kong) Ltd and another* [1988] 1 SLR(R) 281 ("*Turner*"), found that the applicant's work consisted of acting "as an advocate and solicitor" within the meaning of the Act; therefore, he was barred by the Act from claiming remuneration for any such work done while he was an unauthorised person within the meaning of the Act. The applicant now argues, amongst other ancillary issues relating to the interpretation and application of the Act, that the judge had erred by applying the tests in *Turner*, and that a new understanding of what constitutes acting "as an advocate and solicitor" should be fashioned from developments in *other jurisdictions*.

4 It is important at this juncture to draw a distinction between what the existing law *is* and what the law *ought* to be. What the existing law *is* is well-established: see *Turner*. The applicant identifies *Turner* as a decision of some age, but age is a neutral point; indeed, there are many established decisions that are of very considerable vintage and which often constitute the foundation in relation to their respective areas of the law.

5 The applicant sets his sights higher, and pitches his arguments in the realm of what the law *ought* to be. However, in general, in an area governed principally by legislation, any submission that the law ought to be different must be effected with regard to the proper interpretation of that legislation, bearing in mind the existing case law. As I have just observed, the principles governing the relevant provisions of the Act were established in *Turner*. The applicant has not pointed to any amendments to the Act since which warrant a further examination of those principles. The applicant's case is based instead solely on developments in *other jurisdictions*, in which different legislation prevails. The reform in the law which the applicant is arguing for therefore engages *policy* issues that are more appropriately within the purview of *the Legislature*, and not the courts (whether the AD or the Court of Appeal).

6 What is left then of the issues raised by the applicant concerns primarily the *application and interpretation* of *well-established* law. These are areas for which the *AD* is *quintessentially* the appropriate forum, and where *it is* ***not*** *more appropriate for the Court of Appeal to hear the appeal*.

7 Bearing this fundamental point in mind, I turn now to deal with the specific arguments raised by the applicant pursuant to the various grounds set out under O 56A r 12(3) of the ROC.

8 First, the applicant suggests that the appellate court's holdings as to the interpretation and the application of the Act would affect all manner of people with some form of learning of the law (but do not hold practising certificates) who wish to apply their multi-disciplinary skills across a wide range of industries, as well as anyone who would hire such people. He submits that his appeal therefore engages both O 56A rr 12(3)(*a*) and (*b*) of the ROC, *ie*, that his appeal relates to a matter of national or public importance and/or raises a point

of law of public importance. However, as pointed out by the respondents, this demographic identified by the applicant comprises only a small segment of society. Nor is it apparent that this small segment of society has an outsized role to play, such that a decision delineating the fine edges of what they can and cannot do will have the potential to impact Singapore on a macro-level, as this court put it in *Noor Azlin* at [49]. Further, as already highlighted above, the points of law involved in the applicant's appeal are more appropriately dealt with by the AD.

9 Next, the applicant invokes O 56A r 12(3)(*c*) of the ROC, arguing that his appeal is both factually and legally novel and complex. However, the Appellant's Case he has filed indicates that the factual scope of his case has been dramatically reduced on appeal. Nor does this matter disclose any particular degree of legal complexity. This appeal therefore does not satisfy the requirement that "both *complexity* ***and*** *novelty* must be present" (see *Noor Azlin* at [67] [emphasis in original]).

10 Third, the applicant argues that there are conflicting judicial decisions, and that O 56A r 12(3)(*e*) of the ROC is therefore satisfied. The conflicting judicial decisions he speaks of are simply *Turner* on the one hand and certain English authorities on the other. However, the mere fact that the courts in Singapore have taken a different approach on a particular issue as compared to other jurisdictions cannot be taken to satisfy O 56A r 12(3)(*e*) of the ROC. There is probably no legal issue on which every single court in the world agrees. A dedicated enough appellant would most likely be able to find a case differing from Singaporean jurisprudence on virtually any issue. If this were to be taken as sufficient, O 56A r 12(3)(*e*) of the ROC would be deprived of meaning.

11 Finally, the applicant submits that, *per* O 56A r 12(3)(*f*) of the ROC, the results of his appeal are significant, both generally (in respect of which he repeats his arguments in relation to O 56A rr 12(3)(*a*) and (*b*) of the ROC) and personally. I have already addressed those arguments made in relation to O 56A rr 12(3)(*a*) and (*b*) of the ROC, and so I turn to the issue of personal significance. This court observed in *Noor Azlin* at [73] that "a high and exceptional degree of personal consequence (*ie*, substantial and critical) would have to be demonstrated for the matter to even be considered as potentially coming within the rule". The only personal consequence cited by the applicant is that the Judge's finding paves the way for him to be prosecuted under s 33 of the Act. Without more, I do not consider that even a successful prosecution would bring the applicant beyond the threshold outlined in *Noor Azlin*.

12 In short, the issues raised in the appeal which the applicant has highlighted for this application concern simply the interpretation and application of the Act. There are no other facets of the appeal which surmount this fundamental observation. The appeal is more appropriately heard in the AD, and I dismiss this application.

13 Each party is to bear their own costs for this application. This is in accordance with an agreement between the parties, whereby the respondents agreed not to object to the application. The first respondent submits that that agreement was made before the court called for written submissions; having incurred costs in the preparation of his submissions, which would not have been incurred but for this application, he is entitled to those costs. I note, however, that the first respondent had acknowledged (correctly, in my view) that he would be duty-bound to address the court on his position and that that acknowledgment formed part of the above agreement. Significantly, the second respondent acknowledged in its written submissions to the court that, in accordance with

the above agreement, each party was to bear their own costs for the present application. The usual consequential orders apply.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Salem bin Mohamed Ibrahim, Charlene Wee Swee Ting and
Hoon Wei Yang Benedict (Salem Ibrahim LLC) for the applicant;
Chan Wai Kit Darren Dominic and Ng Yi Ming Daniel
(Characterist LLC) for the first respondent;
Chow Chao Wu Jansen, Ang Leong Hao and Sasha Gonsalves
(Rajah & Tann Singapore LLP) for the second respondent.