

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

[2022] SGHC 54

Suit No 636 of 2020 (Summons No 5185 of 2021)

Between

Wang Xiaopu

... Plaintiff

And

(1) Koh Mui Lee
(2) Goh Ming Yi, Melissa (Wu
Mingyi)
(3) Goh Keng Meng, Jeremy
(Wu Qingming)

... Defendants

FOUNDATIONS OF DECISION

[Evidence — Witnesses — Video Link]

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Wang Xiaopu
v
Koh Mui Lee and others

[2022] SGHC 54

General Division of the High Court — Suit No 636 of 2020
(Summons No 5185 of 2021)
Lee Seiu Kin J
8 February 2022

11 March 2022

Lee Seiu Kin J:

Introduction

1 While remote hearings have become common during the COVID-19 pandemic, it is important that we do not lose sight of a fundamental tenet of any judicial proceeding, that “justice should not only be done, but should manifestly and undoubtedly be seen to be done”: *R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256 at 259. In that light, notwithstanding the many advantages that a remote hearing presents, there are often situations that call for a physical hearing to be held. The present summons before me, which was an application for leave under s 62A of the Evidence Act (Cap 97, 1997 Rev Ed) (“EA”) for a witness to give evidence via video-link, is one such case.

Background

2 The plaintiff in the present action is Wang Xiaopu (“Wang”). She is a Chinese national who is ordinarily resident in Guangzhou where she is the director of Guangdong Marubi Biotechnology Co Ltd (“Marubi”), a China-incorporated company that is in the business of manufacturing, marketing and selling facial and skincare products in China. While she has held the status of a Permanent Resident of Singapore since October 2013, she has never resided in Singapore.¹

3 Wang had previously sued, and obtained judgment against, a Dr Goh Seng Heng (“Dr Goh”): *Wang Xiaopu v Goh Seng Heng and another* [2019] SGHC 284. When the judgment debt remained unpaid, she commenced the present action against the three defendants, who are Dr Goh’s family members. She alleged that Dr Goh had transferred and/or acquired various assets or properties in their names so as to put them out of reach of his creditors.²

4 On 12 November 2021, Wang filed the present application for leave to give evidence by way of video link. She argued that the application should be granted for the following reasons:

- (a) She was unable to travel to Singapore because of the uncertain travel climate, the real and substantial risk of contracting COVID-19 that she would be exposed to if required to travel to Singapore, and the

¹ Plaintiff’s Submissions dated 31 January 2022 (“Plaintiff’s Submissions”) at para 3.

² Plaintiff’s Submissions at para 5.

onerous requirements she had to fulfil in order to travel from Guangzhou to Singapore.³

(b) She would be severely prejudiced if she was made to travel to Singapore to give evidence.⁴

(c) The defendants would not suffer any prejudice if she were to give evidence via video-link as they would not be deprived of an opportunity to cross-examine her and she was, in any case, not a material witness.

5 In response, the defendants argued that the application should be dismissed for the following reasons:

(a) Wang was not unable, but rather, unwilling to travel to Singapore to testify in person.⁵

(b) The defendants would suffer substantial prejudice if Wang was not present in court for their counsel to cross-examine her.⁶

(c) Wang had not proved that there were adequate and sufficient technical arrangements for her to give evidence via video link from Guangzhou.⁷

³ Plaintiff's Submissions at paras 13–35.

⁴ Plaintiff's Submissions at paras 36–46.

⁵ 1st, 2nd and 3rd Defendants' Written Submissions for HC/SUM 5185/2021 dated 31 January 2022 ("Defendants' Submissions") at paras 20–34.

⁶ Defendants' Submissions at paras 35–45.

⁷ Defendants' Submissions at paras 46–48.

6 Having heard parties on 8 February 2022, I dismissed the application. I now provide written grounds for my decision.

The law on giving evidence via video-link

7 The general principle is that a witness must physically be in court to testify: *Anil Singh Gurm v JS Yeh & Co and another* [2020] 1 SLR 555 (“*Anil Singh*”) at [2]. An exception, however, can be found in s 62A of the EA which allows the court to grant leave for evidence to be given via video link in certain situations:

Evidence through live video or live television links

62A.—(1) Notwithstanding any other provision of this Act, a person may, with leave of the court, give evidence through a live video or live television link in any proceedings, other than proceedings in a criminal matter, if —

- (a) the witness is below the age of 18 years;
- (b) it is expressly agreed between the parties to the proceedings that evidence may be so given;
- (c) the witness is outside Singapore; or
- (d) the court is satisfied that it is expedient in the interests of justice to do so.

(2) In considering whether to grant leave for a witness outside Singapore to give evidence by live video or live television link under this section, the court shall have regard to all the circumstances of the case including the following:

- (a) the reasons for the witness being unable to give evidence in Singapore;
- (b) the administrative and technical facilities and arrangements made at the place where the witness is to give his evidence; and
- (c) whether any party to the proceedings would be unfairly prejudiced.

...

(5) The court shall not make an order under this section, or include a particular provision in such an order, if to do so would

be inconsistent with the court's duty to ensure that the proceedings are conducted fairly to the parties to the proceedings.

8 In the present case, s 62A(1)(c) of the EA was satisfied as Wang made the application on grounds that she was outside of Singapore. In considering whether leave should be granted, I was required by s 62A(2) of the EA to take into account all the circumstances of the case. It is to that inquiry that I now turn.

Whether Wang was unable to travel to Singapore to give evidence

9 Two reasons were advanced in support of the argument that Wang was unable to travel to Singapore to give evidence. First, the uncertain travel climate meant that it was uncertain whether she would be able to travel to Singapore to give evidence at the trial. Second, that requiring her to come to Singapore to testify would expose her to the substantial risk of catching COVID-19.

10 It was held by the Court of Appeal in *Anil Singh*, at [30], that s 62A(2)(a) of the EA does not cover situations where the witness is able to, but unwilling to, attend proceedings in Singapore. The use of the word “unable” implies a lack of choice on the witness's part. Therefore, the reasons given by Wang for not travelling to Singapore must have related to circumstances outside her control.

11 I was not satisfied that there were circumstances outside of Wang's control that prevented her from travelling to Singapore. While Wang stated in her affidavit that there were no direct flights between Guangzhou and Singapore scheduled for late February to early March 2022,⁸ which was when the trial was to be held, in her written submissions, she noted that “indirect travel appears to be possible, but in unideal conditions, such as requiring 2 stopovers ranging from

⁸ Wang's 16th Affidavit dated 6 December 2021 (“Wang's Affidavit”) at para 6.

14 to 25 hours” in contrast to the significantly shorter direct flight.⁹ However, the fact that there was the option of an indirect flight, as Wang herself pointed out, meant that she was indeed able to travel to Singapore. While it may have been inconvenient, she was not unable to do so: see *Bachmeer Capital Ltd v Ong Chih Ching and others* [2018] 4 SLR 29 (“*Bachmeer Capital*”) at [19]; *Anil Singh* at [39].

12 Similarly, I was not persuaded by the argument that the uncertain travel climate created by the COVID-19 pandemic meant that Wang was unable to travel to Singapore. Wang pointed out that flights may be delayed or cancelled if passengers exhibit symptoms of COVID-19, or if travel restrictions between China and Singapore were varied.¹⁰ But even accepting that there were dynamic and evolving travel conditions due to the COVID-19 pandemic, this simply meant that travel to Singapore from Guangzhou was difficult, but not impossible.

13 While the COVID-19 pandemic has indeed caused disruptions, especially where hearings are concerned, I would caution against blindly citing the COVID-19 pandemic as reason as to why a witness is unable to testify physically at trial. For one, the world has battled the pandemic for over two years. Gone are the days of uncertainty when people did not know what COVID-19 was, and how it affected us as people and the community at large. Although air travel was indeed hit during the early stages of the pandemic, it is safe to say that the situation appears to have stabilised. Close attention must be paid to the precise facts explaining exactly why the witness is unable to travel – mere

⁹ Plaintiff’s Submissions at para 17.

¹⁰ Plaintiff’s Submissions at para 18.

generalisations about travel disruptions brought on by the pandemic are simply insufficient.

14 In a similar vein, I did not see how the substantial risk of Wang contracting COVID-19 related to her inability to travel to Singapore. It may have been relevant if it was shown that she had health-related issues that put her at risk of serious complications if she contracted COVID-19. However, there was simply no evidence of that before me. Therefore, the substantial risk of contracting COVID-19 simply meant that she was unwilling, but not unable to, make the trip.

15 Wang further cited the case of *Chua Eng Kok (Cai Rongguo) v Douglas Chew Kai Pi* [2021] SGDC 159 at [21] where the court said:

21 Uppermost in the Court's mind when this application was heard, was the fact that we were – and still are – in the midst of a pandemic. The call out to businesses by the Singapore government is for work-from-home to be the default work arrangement. These had not changed even as Singapore transited through different phases of this pandemic. Social interactions had also been heavily restricted. There are also the travel bans in place. It would appear to be the sensible and safer course of action for the defendant to be granted leave to testify from outside Singapore ...

16 I would observe that this passage appears to have been cited out of context if one looks at the district judge's subsequent remarks:

21 ...Yet, the defendant's application was dismissed and the defendant expected to physically attend at the hearing to testify.

22 As it was not raised at the hearing before me, the Court was therefore not accurately apprised of the extent of the travel restrictions between Singapore and China or of the travel bubble between the two countries. However, there was the suspicion even at the point in time of the hearing, that the travel bubble was already in place. It appears that border restrictions between the two countries were lifted sometime in early November 2020.

23 Although mindful of the safety issues, the Court considers it important that safety must be properly balanced with the justice and equity of the case. Parties must not be allowed to manipulate the present situation and compromise a fair hearing ...

17 The proposition which Wang cited, that the sensible and safer course of action would be to allow the witness to testify remotely because of the COVID-19 pandemic, must be read in its proper context. It is clear that safety issues, on their own, are not determinative of the issue as to whether leave should be granted. On the other side of the equation is the need to ensure justice, and the equity of the case. The court will not countenance any attempt by parties to manipulate the prevailing situation to their advantage and compromise a fair hearing.

18 In the present case, while there was no evidence suggesting that Wang was attempting to manipulate the present situation to her advantage, I would point out that she is the plaintiff in the present suit. She has chosen to institute this action against the defendants, involving a very large sum of money, in Singapore. The trial dates, from the end of February to early March, were known well in advance; at the very latest, they were known by the pre-trial conference on 16 December 2021. In that light, Wang's argument that responsibilities at work meant that she would be unable to travel overseas due to the long quarantine period carried little weight.¹¹ There was sufficient time to make travel and work arrangements to be present at the trial.

19 In my view, a plaintiff's unwillingness to travel would carry little weight in the consideration of an application for leave under s 62A of the EA, unlike in an application involving a witness over whom the plaintiff has little control.

¹¹ Plaintiff's Submissions at paras 33–34.

Ultimately, of course, there must be a holistic assessment of all the circumstances of the case. I turn now to examine the other factors Wang raised in support of her application to testify via video link.

Whether any party would be substantially prejudiced

20 The reasons Wang gave in support of her argument that she would be substantially prejudiced if made to travel to Singapore for the trial were the same reasons she gave above for being unable to travel to Singapore.¹²

21 In response, the defendants argued that it was them, and not Wang, who would suffer substantial prejudice if Wang was allowed to testify remotely as they would have to cross-examine Wang remotely, which would deprive them of the opportunity to assess her demeanour and credibility in person. The defendants further argued that their disadvantage of cross-examining a witness by video link was magnified by the fact that Wang was her only witness.¹³

22 Under s 62A(2)(c) of the EA, the court must consider whether any party to the proceedings would be unfairly prejudiced in a manner that cannot be compensated by an appropriate costs order. This question of unfair prejudice is an overriding concern when determining if leave should be granted under s 62A of the EA: *Anil Singh* at [64] citing *Sonica Industries Ltd v Fu Yu Manufacturing Ltd* [1999] 3 SLR(R) 119 (“*Sonica Industries*”) at [15].

23 In *Anil Singh*, the court ruled (at [65]) that the appellant would have suffered serious prejudice if leave was refused. This was because denying a party who sought to call an overseas witness would almost always result in the

¹² Plaintiff’s Submissions at para 37.

¹³ Koh Mui Lee’s 15th Affidavit dated 26 November 21 at para 21.

overseas witness's evidence being inadmissible which would, in turn, have grave consequences on the litigant's ability to put its best case forward.

24 Similarly, in *Sonica Industries*, it was held (at [17]) that if the plaintiffs were refused leave to have their witness testify via video link, they would be unable to adduce critical evidence pertaining to their case. The court took the view (at [16]) that the defendants would not be prejudiced if leave was granted as the plaintiffs had identified the particular facts and issues which would be provided by the witness's testimony, and furnished the witness's statement of evidence.

25 In my view, the present facts are readily distinguishable from those in *Anil Singh* and *Sonica Industries*. In those cases, the witness was not a party to the suit. As litigators know all too well, witnesses are not in any way, obliged to give evidence: see *Sonica Industries* at [12]. This may, on occasion, present difficulties for parties seeking to call witnesses who are living or working abroad to testify on their behalf. However, the present case is different because Wang is the plaintiff. As I noted at [18] above, this means that Wang would have known about the trial dates and have been able to make the proper arrangements to be present for the trial. I would further add that Wang is choosing to give evidence in support of her case. It would therefore be all the more incumbent upon her to make the necessary arrangements to testify at trial.

26 I turn now to the defendants' argument that they would be prejudiced from having Wang testify remotely as it would be harder to assess her demeanour and credibility. In *Anil Singh*, the court noted at [71]:

71 Second, although there was a real likelihood that the trial court's decision in Suit 580 would turn on the trial judge's assessment of the witnesses' credibility, this would not have resulted in unfair prejudice to the respondents if leave were

granted. As this court observed in *Sandz Solutions (Singapore) Pte Ltd and others v Strategic Worldwide Assets Ltd and others* [2014] 3 SLR 562 at [42], **a court’s assessment of a witness’s credibility would, and should, seldom hinge on that witness’s demeanour on the stand** (*ie*, behavioural patterns that are not reflected on the transcript, see Thomas Bingham, *The Business of Judging* (Oxford University Press, 2000) at p 8). As such, **we were not persuaded that a trial judge’s assessment of a witness’s credibility would be hindered if that witness was not some “ten feet away in the witness box”** (see, *eg*, *Asia-Pac Infrastructure Development Ltd v Ing Yim Leung, Alexander and others* [2011] 1 HKLRD 587 (“*Asia-Pac Infrastructure*”) at [62]; *Polanski* (CA) ([51] *supra*), per Simon Brown LJ at [29]; *Bachmeer Capital* ([47] *supra*) at [18]). In any case, trial judges can take into account any particular deficiencies arising from the use of video link testimony when deciding on the weight to be assigned to a witness’s evidence (*McGlenn v Waltham Contractors Ltd and others (No 2)* [2006] EWHC 2322 (TCC) at [11]). We noted that it has been observed that “the solemnity of the court atmosphere and the threat of immediate sanction” was conducive to obtaining truthful testimony from a witness (*Re Chow Kam Fai ex parte Rambas Marketing Co LLC* [2004] 1 HKLRD 161 (“*Re Chow Kam Fai (CFI)*”) at [28]; *Erceg v Erceg* ([66] *supra*) at [14]). In our view, however, questions about a *particular* witness’s truthfulness would be a matter for a trial judge to determine based on all the evidence before the court. It is, therefore, unhelpful for us to speculate as to whether, generally speaking, testifying in court necessarily encourages witnesses to be more truthful than when testifying via video link.

[emphasis in original in italics; emphasis added in bold]

27 What can be gleaned from the above passage is that because the court’s assessment of a witness’s credibility seldom hinges on their demeanour when on the stand, whether the witness testifies remotely or in person, makes little difference as to the court’s assessment of their credibility: see Aaron Yoong, “Zooming into a New Age of Court Proceedings: Perspectives from the Court, Counsel and Witnesses” [2020] SAL Prac 19 (“Zooming into a New Age of Court Proceedings”) at paras 44–47; *Auken Animal Husbandry Pty Ltd v 3RD Solution Investment Pty Ltd* [2020] FCA 1153 at [48]–[51]. Further, it is also unclear whether witnesses are necessarily more inclined to tell the truth when testifying in person than when testifying via video link.

28 That said, court proceedings do not revolve entirely around the judge. Parties too, have an important role to play in proceedings, and their perception of how the trial unfolds is also important. As Snaden J observed in *Rooney v AGL Energy Limited (No 2)* [2020] FCA 942 at [17]–[19]:

17 A more significant factor warranting vacation of the existing trial dates is the need to expose key witnesses to the processes of in-person examination and cross-examination. Plainly, there are aspects of the trial—openings, closings and secondary witnesses, for example—in respect of which remote hearing technology will likely suffice. Other aspects, however—principally, the oral evidence of the applicant and the key decision makers within the respondent—don’t as easily qualify in that regard. As all parties rightly appreciate, the present matter will turn largely upon contested questions of fact. As with most general protections matters, the court’s assessment of the witnesses who are called to give evidence (or at least the key witnesses amongst them) will be paramount.

18 I acknowledge that some judges of this court have expressed the view that such assessments can be made as well by remote means as by traditional in-court examination: see, for example, *ASIC v Wilson* [2020] FCA 873, [35] (Lee J); *Tetley v Goldmate Group Pty Ltd* [2020] FCA 913, [16] (Bromwich J); and *Capic v Ford Motor Company of Australia Limited* [2020] FCA 486, [19] (Perram J). Those conclusions are, of course, personal to those who have drawn them. My own experience of present-day remote hearing technology is slightly less positive (although, I stress, not negative). I consider it a good and, in many instances, necessary “Plan B”. However, the available technology cannot fully replicate the court room environment that is so often central to an adversarial system of civil justice. In my experience, the technology inhibits (if not *prohibits*) the cadence and chemistry—both as between bar and bench, and bar and witness box—that personify well-run causes. Those are traditional forensic benefits of which litigants ought not too lightly be deprived: *Campaign Master (UK) Ltd v Forty Two International Pty Ltd (No 3)* (2009) 181 FCR 152, 171 [78] (Buchanan J). Further, the technology often begets delay, particularly when documents are to be supplied remotely. Although broadly reliable, it is not uncommon for connections to be momentarily of poor quality, occasionally to the point that they are unusable. **All of these factors influence the user experience of a justice system from which all litigants are entitled to benefit.**

19 **Moreover, there is a sense of solemnity—perhaps even intimidation—that attaches to the receipt of oral evidence from a courtroom witness box that not even the best technology can replicate. When all witnesses (or crucial witnesses) in a matter are subjected to that same stage, the truth is less easily spun, and unsuccessful parties are less inclined or less able to find fault with the process that delivered their defeat.** That is especially important in cases such as this one, where serious allegations of statutory contravention are advanced, and the outcome of the cause turns upon contested facts and the credit of those who recount them: see, in that vein, *Roberts-Smith v Fairfax Media Publications Pty Limited* (No 4) [2020] FCA 614, [22] (Besanko J). Appreciating that there should be no one-size-fits-all approach and that, as Lee J put it in *Wilson*, care should be taken to ensure that the perfect does not become the enemy of the good, the circumstances that currently present in this matter favour-, in my view, an orthodox approach to the receipt of crucial witness evidence.

[emphasis in original in italics; emphasis added in bold]

29 Indeed, while judges are able to conduct trials remotely, the perspective of the litigants, who come to court seeking justice, should not be forgotten. As I alluded to in the introduction above (at [1]), it is not only important that justice be done, but that the litigants themselves see that justice has indeed been done. Often, the vindication litigants receive may not necessarily come from a favourable outcome, but rather, from having had the opportunity of confronting the opposing party physically in court. In that sense, the perception of litigants as to how the trial is conducted is also a consideration that can, and should, in my view, be taken into account in deciding whether leave should be granted.

30 In the present case, I was of the view that Wang would not be unfairly prejudiced if required to travel to Singapore to testify. In cases such as *Sonica Industries* and *Anil Singh*, the unfair prejudice was in relation to the parties' ability to present their case. In the present application, the reasons Wang gave as to why she would be unfairly prejudiced did not relate to the presentation of her case, but rather, the inconvenience and potential health risk she would face.

31 In contrast, however, the defendants would, in my view, be unfairly prejudiced if Wang was allowed to testify remotely. Notwithstanding the fact that most of Wang's evidence relates to matters that are not disputed, there are at least two matters which the defendants wish to cross-examine her on. The defendants, being the parties sued by Wang, should not be deprived of the opportunity to respond to Wang's claims by cross-examining her in person.

32 For completeness, I would add that it made no difference that Wang's counsel offered to remove the portions of her affidavit evidence-in-chief that the defendants wished to cross-examine her on. It was, to my mind, more important that the defendants be allowed to confront Wang in person, and be allowed to put questions to her physically in cross-examination. Depriving them of the opportunity to do so could leave them, and a neutral observer, with the impression that they were not fairly treated compared to the plaintiff.

Availability of technology and administrative facilities for remote testimony

33 I turn now to examine the arguments relating to the availability of technology and administrative facilities for remote hearing. The defendants argued in written submissions that while Wang stated that she would make the necessary technical and administrative arrangements to give evidence via video link,¹⁴ there was no evidence of the same.¹⁵

34 Pursuant to s 62(2)(b) of the EA, the court must have regard to the administrative and technical facilities made at the place where the witness is to give evidence. In *Bachmeer Capital* for example, the Singapore International

¹⁴ Wang's Affidavit at paras 19–20.

¹⁵ Defendants' Submissions at para 46.

Commercial Court was satisfied (at [11] – [12]) that because of efforts taken by the applicant’s solicitors and the court’s information technology staff to test the video link set up before trial, there was a video link of sufficient quality that would enable the witness to testify.

35 However, in *Hi-Tech Rubbers v Dai Ichi Intertrade Pte Ltd* [2018] SGDC 133, which the defendant cited, the court was of the view that the applicant in that case had not satisfied the court that the necessary administrative and technical facilities had been made. This was because it was simply stated in the affidavit filed in support of the application, and in the reply affidavit (reproduced at [18] of the judgment) that:

...“[t]he Plaintiff is able to make arrangements for my evidence to be adduced by live video-link from India at our office, and would be able to arrange for a video conference to adduce my evidence”...

“The Plaintiff is able to make arrangements for my evidence to be adduced via video-link using platforms such as Skype from our office in India, or if need be, from the office of our solicitors in India”...

36 There was therefore no evidence that the necessary administrative and technical facilities were in place for the witness to testify remotely. To compound matters, when the applicant’s counsel was questioned on this, the response was that while it was ideal for arrangements to be made before trial, any technical issues could be sorted out on the day of trial itself. Consequently, given the lack of evidence of the administrative or technical facilities and arrangements made for the witness to give evidence in India, and the fact that the witness’s evidence was not material, the court declined to grant leave.

37 The question then is what is the level of detail that must be provided in the supporting affidavit to satisfy the court that the necessary administrative and

technical arrangements have been made to facilitate the witness’s remote testimony? In my view, while it is sufficient to state that the witness would testify from a venue “equipped with the necessary video conferencing facilities, such as a web-camera, microphone, speakers and a stable internet connection”,¹⁶ given how ubiquitous remote hearings have become, I do not think it would not be unduly burdensome on parties to provide more evidence. However, if this is an issue in the application, then the applicant would have to provide evidence to persuade the court that those arrangements are adequate to ensure smooth conduct of the hearing.

38 I would state that this was not an issue in the application before me but even if I was satisfied that there were administrative and technical arrangements in place, it would not have affected the balance of the competing considerations in the present case.

Conclusion

39 I therefore found that that, considering all the circumstances, it would be inappropriate to grant leave in the present case. I would add that it is of utmost importance for any trial conducted in our courts to not only be fair, but be seen to be fair by all parties to the action. While much has been said and written as to the impact of remote testimony on the judge’s assessment of witnesses, we should not forget that the perceptions of litigants in the trial process are equally

¹⁶ Wang’s Affidavit at para 19.

important where the administration of justice is concerned, and should not be overlooked.

Lee Siu Kin
Judge of the High Court

Jimmy Yim Wing Kuen SC, Lee Soong Yan Kevin, Dierdre Grace Morgan, Yeow Ying Xin Madeline and Chloe Shobhana Ajit (Drew & Napier LLC) for the plaintiff.
Koh Swee Yen SC, Ang Shunli Alanna Suegene Uy, Dana Chang Kai Qi, Ayagari Srikari Sanjana, and Axl Rizqy (WongPartnership LLP) for the defendant.
