

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

[2022] SGHC(A) 28

Civil Appeal No 39 of 2022 (Summons No 15 of 2022)

Between

- (1) Grassland Express & Tours Pte Ltd
- (2) Grassland Express Pte Ltd

... Appellants / Respondents

And

- (1) M Priyatharsini
- (2) R Manokaran
- (3) Muniandy Barvathi
- (4) Navindran s/o Manokaran
- (5) Xie Lianzhu @ Ye Lianzhu
- (6) Wee Chye Hee

... Respondents / Applicants

In the matter of Suit No 1044 of 2018

Between

- (1) R Manokaran
- (2) Muniandy Barvathi
- (3) M Priyatharsini
- (4) Navindran s/o Manokaran

... Plaintiffs

And

- (1) Chuah Ah Leng
- (2) Zenwan (M) Sdn Bhd
- (3) Grassland Express & Tours Pte
Ltd

... Defendants

And

MMIP Services Sdn Bhd

... Third Party

In the matter of Suit No 1307 of 2018

Between

- (1) Wee Chye Hee
- (2) Xie Lianzhu @ Ye Lianzhu

... Plaintiffs

And

- (1) Chuah Ah Leng
- (2) Zenwan (M) Sdn Bhd
- (3) Grassland Express Pte Ltd

... Defendants

And

MMIP Services Sdn Bhd

... Third Party

JUDGMENT

[Civil Procedure — Striking out]

[Civil Procedure — Appeals — Leave]

[Civil Procedure — Appeals — Notice]

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Grassland Express & Tours Pte Ltd and another
v
M Priyatharsini and others

[2022] SGHC(A) 28

Appellate Division of the High Court — Civil Appeal No 39 of 2022
(Summons No 15 of 2022)

Woo Bih Li JAD, Kannan Ramesh J and Hoo Sheau Peng J
1 June 2022

19 July 2022

Woo Bih Li JAD (delivering the judgment of the court):

Introduction

1 On 12 April 2022, the appellants in the main appeal in AD/CA 39/2022 (“CA 39”) filed a Notice of Appeal (“NA 39”) against the “whole of the decision” of the High Court Judge (the “Judge”) “given on 16-03-2022” in HC/S 1044/2018 and HC/S 1307/2018 respectively (collectively, the “Suits”). On 22 April 2022, the respondents in CA 39 filed the present AD/SUM 15/2022 (“SUM 15”) to strike out NA 39. To avoid confusion, we refer to the parties who filed SUM 15 collectively as the “Customers” and the parties opposing SUM 15 collectively as the “Companies” in this judgment.

2 Having considered the parties’ submissions, we allow the application in SUM 15 and accordingly strike out NA 39. These are our reasons for doing so.

Background facts

3 The Customers were holiday makers who were travelling from Genting Highlands back to Singapore on 31 August 2016. They were on board a double decker luxury coach (the “Bus”). En route to Singapore, the Bus was involved in a road accident. The Customers sustained injuries and filed an action to claim damages. The Companies are incorporated in Singapore and were found to have undertaken to transport the Customers from Singapore to Genting Highlands and back, by bus, under the relevant contracts and to do so with reasonable care.

4 On 24 February 2022, the Judge gave interlocutory judgment on liability in favour of the Customers with damages to be assessed (including damages in relation to the Companies’ contractual liability to all the Customers for failing to provide the transportation service with reasonable care) and costs to be heard separately in *R Manokaran and others v Chuah Ah Leng and others and another suit* [2022] SGHC 39 (the “Main Judgment”).

5 The Judge also directed parties to file submissions on costs by 3 March 2022 by way of correspondence from the Court over eLitigation. Notably, the first paragraph of that correspondence referred to “the Judgment dated 24 February 2022”.¹ On 28 February 2022, the Customers requested an extension of time of a week to file such submissions which the Judge granted on 1 March 2022.² The Companies filed their submissions on costs on 9 March 2022 and the Customers filed their submissions on the same on 10 March 2022. On 16 March 2022, the Judge made orders on costs and disbursements against the Companies in respect of each of the two Suits by way of correspondence

¹ Customers’ Supporting Affidavit at pp 9–12 and 15–18.

² Customers’ Supporting Affidavit at pp 13–15.

from the Court (the “Costs Orders”). Thereafter, on 17 March 2022, the Judge directed parties to write in by 21 March 2022 “if there are any objections to the Court having made the orders on costs and disbursements by way of the letter dated 16 March 2022”.³

6 On 12 April 2022, the Companies filed NA 39 to this Court stating:

Take Notice that an appeal under Order 19 of the Rules of Court 2021 has been filed by the 3rd Defendant (s) in HC/S 1044/2018 and 3rd Defendant(s) in HC/S 1307/2018 to the Appellate Division of the High Court.

The appeal is against the whole of the decision of [the Judge] in HC/S 1044/2018 given on 16-03-2022, [the Judge] in HC/S 1307/2018 given on 16-03-2022.

7 The Notice of Appeal before us was not the Companies’ first attempt to file an appeal against the Main Judgment. On 24 March 2022, counsel for the Companies first attempted to file a purported “appeal”. However, this was filed under “All Other Summons” in the underlying casefile. Counsel for the Companies was informed that there were two issues with such a filing. First, nothing on the face of that document stated that it was an appeal and it did not comply with the relevant form applicable then for a notice of appeal. Second, the document was filed in the underlying casefile. Accordingly, that filing was rejected by the General Division of the High Court.

8 On 25 March 2022, the Companies filed a Notice of Appeal to the Court of Appeal.⁴ That was also procedurally deficient for three reasons. First, it was filed out of time as 24 March 2022 was the last day for filing an appeal. However, when filing the Notice of Appeal, counsel for the Companies

³ Customers’ Supporting Affidavit at pp 21–22.

⁴ Customers’ Supporting Affidavit at p 147.

indicated that an extension of time was not required. Second, it was filed to the Court of Appeal instead of the Appellate Division of the High Court. Third, there was no accompanying Certificate for Security for Costs.

9 On 29 and 30 March 2022, the Registry of the Supreme Court attempted to contact counsel for the Companies on his mobile line and office line but to no avail. He, however, did write in on 29 March 2022 (again, in the underlying casefile) to inquire about the filing of the Notice of Appeal. On 30 March 2022, the Registry responded, asking counsel for the Companies to confirm whether the Notice of Appeal to the Court of Appeal was filed out of time as that appeared to be the case. On 31 March 2022, he wrote to the Registry, stating that the appeal was “not out of time”.⁵

10 In those circumstances, an Assistant Registrar (“AR”) convened an urgent case management conference (“CMC”) on the matter on 4 April 2022. However, counsel for the Companies was absent as neither he nor his staff allegedly had notice of the CMC. The CMC was thus refixed to 7 April 2022. At the CMC on 7 April 2022, the AR set out the background which led to the CMC and the issues faced by the initial filing on 24 March 2022 as well as the subsequent filing on 25 March 2022 which we have mentioned at [7] and [8] above. The AR said that the Notice of Appeal would be rejected due to numerous deficiencies. The AR also mentioned that counsel for the Companies ought to consider whether an application for an extension of time to appeal should be filed. The Customers had indicated they might apply to strike out the appeal, if he sought to file an appeal without an extension of time. Eventually,

⁵ Customers’ Supporting Affidavit at pp 147 and 148.

the Companies filed NA 39 on 12 April 2022 before the Appellate Division of the High Court without seeking an extension of time to do so.

The parties' cases

11 The Customers contend that because NA 39 refers only to the decision of the Judge on 16 March 2022, it is an appeal against the Costs Orders only. As such, it may be filed only with the court's permission to do so. If the Companies wished to appeal against the Main Judgment on *liability*, which was pronounced on 24 February 2022, they might do so only if an extension of time to appeal was obtained. As neither permission to appeal against the Costs Orders nor an extension of time to appeal against the Main Judgment was sought, NA 39 should be struck out.

12 The Companies contend that NA 39 was “against the whole of” the Judge's decision in respect of *liability and costs*. Such appeal was filed within time as the relevant time began running only when the Judge had resolved *all issues, including costs*. As such, the relevant time only ran from 16 March 2022 when the Costs Orders were made. SUM 15 should accordingly be dismissed.

Issues to be determined

13 The first issue that arises before us is whether NA 39 is an appeal against the Costs Orders *only* such that permission to appeal is required. If that is so, then it must be struck out as permission has not been obtained. But, if it is against the Main Judgment *in addition* to the Costs Orders, then a second issue arises as to whether it is filed out of time.

The decisions appealed against in NA 39

The parties' cases

14 The Customers argue that the Companies have “mischievously and inaccurately” sought to characterise NA 39 as an appeal against the Judge’s decision on *liability and costs* and, in so doing, have filed it as a “backdoor appeal” against the Judge’s decision on liability (*ie*, the Main Judgment).⁶ The significance of the Customers’ argument, as alluded to above, is that pursuant to s 29A of the Supreme Court Judicature Act 1969 (2020 Rev Ed) (“SCJA”) read with para 3(f) of the Fifth Schedule to the SCJA (the “Fifth Schedule”), permission of the appellate court is required:⁷

Permission required to appeal in certain cases

29A.—(1) In the following cases, permission is required before an appeal may be brought against a decision of the General Division made in the exercise of its original or appellate civil jurisdiction:

...

- (c) subject to any exception specified in the Fifth Schedule, a case specified in paragraphs 3, 4(1) and 5(1) of that Schedule.

...

FIFTH SCHEDULE

DECISIONS OF GENERAL DIVISION THAT ARE APPEALABLE ONLY WITH PERMISSION, AND CERTAIN EXCEPTIONS

Interlocutory decisions, etc.

3. Subject to paragraph 4(2), the permission of the appellate court is required to appeal against a decision of the General Division in any of the following cases:

...

⁶ Customers’ Written Submissions at paras 2–3.

⁷ Customers’ Written Submissions at paras 19–21 and 23–25.

- (f) where the only issue in the appeal relates to costs or fees for hearing dates; ...

15 The Companies do not dispute that an appeal which is confined to costs may be filed only with the permission of the appellate court. What they contend, however, was that the *scope of the appeal* in NA 39 is against the “whole decision with regard to the judgment which was delivered” by the Judge “in chambers” and not against the decision on *costs only*. Hence, they do not need permission to file the appeal.⁸

16 The Companies rely on three arguments. First, that NA 39 is “against the whole judgment of” the Judge.⁹ Second, the judgment “extracted by [the Customers] dated 16 March 2022 deals with the issue of liability and costs”.¹⁰ Third, the trial was a “bifurcated” one “on the issue of liability and costs and not as alleged by the [Customers] only on the issue of costs”.¹¹ The Companies also submit that it would be “odd” if they had to file two separate notices of appeal “which would only incur more costs” and “also waste the resources” of the appellate court.¹²

Analysis

The extracted judgments

17 On the facts of the present case, it is clear that *two different decisions* were rendered on *two different dates*. The first is the Main Judgment, which was

⁸ Companies’ Written Submissions at paras 5–6, 12, 13 and 19.

⁹ Companies’ Written Submissions at para 11.

¹⁰ Companies’ Written Submissions at para 17.

¹¹ Companies’ Written Submissions at para 18.

¹² Companies’ Written Submissions at para 9.

pronounced on 24 February 2022, in respect of the Companies' liability. The second is the Costs Orders which were made on 16 March 2022.

18 The Customers, as the successful parties, only extracted *a single judgment in respect of liability and costs* in each of the Suits without mentioning the two different dates. The extracted judgment in each of the Suits was the same in all material aspects, save for the respective sums of moneys reflected therein:

Before: [The Judge] in Chambers

Date of Judgment: 16-March-2022

This Action having been tried before the [Judge] on 3 August 2021 and 5 August 2021, against the 2nd Defendant, and on 11 December 2019, 12 December 2019 and 25 November 2020, against the 3rd Defendant, and upon hearing counsel for the Plaintiffs and counsel for the 2nd Defendant and 3rd Defendant, respectively, IT IS THIS DAY ADJUDGED THAT:

1. Judgment is awarded for the Plaintiffs against the 2nd and 3rd Defendants for general damages to be assessed, special damages to be assessed, interest on damages at the rate of 5.33% per annum from the date of the Writ to the date of full payment, and:

(a) The 2nd Defendant is to pay the Plaintiffs \$... in costs and \$... in disbursements, in relation to the trial on liability; and

(b) The 3rd Defendant is to pay the Plaintiffs \$... in costs and \$... in disbursements, in relation to the trial on liability.

2. In relation to the Judgment obtained against the 1st Defendant dated 3 August 2021, the 1st Defendant is to pay the Plaintiffs \$... in costs and \$... in disbursements, in relation to the trial on liability.

With respect, the Customers were wrong to have done so.

19 Where there are *multiple* decisions rendered on *different* dates in relation to the same case (eg, the first on liability and the second on costs), the extracted judgment ought to reflect accurately *each* of the dates on which the respective decisions were made. If the Customers wished to extract the Main Judgment and the Costs Orders in one judgment together, and assuming that this was permissible, it was incumbent upon them to correctly reflect the “Date of Judgment” in respect of liability as 24 February 2022 and the “Date of Order” in respect of costs as 16 March 2022. If that was not permissible, then two orders for each of the Suits should have been extracted.

20 The Customers’ error, however, does not and cannot change the relevant date for the purposes of determining the time within which a notice of appeal may be filed. Nor may the Companies rely upon the Customers’ error to argue that NA 39 ought to be construed as an appeal against the Main Judgment as well as the Costs Orders. We return to this point at [23] below.

Construction of NA 39

21 Whether NA 39 is an appeal against the Costs Orders *only* (as the Customers contend) or against the Main Judgment *in addition to* the Costs Orders (as the Companies contend) is a matter of construction. In our view, none of the three arguments by the Companies, mentioned above, advanced their case. We address each in turn.

22 First, the phrase “against the whole of the decision” in NA 39 in itself is ambiguous and is insufficient to determine whether the appeal is against the Judge’s decision in respect of *liability in addition to costs* or costs only. Further, the phrase “against the whole of the decision” is not to be read in isolation. It is to be read in its proper *context* – which, in this case, is the Judge’s decision

“given on 16-03-2022”. In this regard, it is clear based on the Court’s correspondence dated 16 March 2022, that the Judge’s decisions in each of the Suits on that date related to *costs only*.¹³ Read in totality, NA 39 is an appeal against the *whole of the Judge’s decision on costs only* (*ie*, on every aspect of the Costs Orders) but not on the Judge’s decision in respect of liability.

23 Second, the fact that the Customers’ extracted judgments filed on 4 April 2022 state that the “Date of Judgment” is “16-March-2022” is immaterial. Rather, it is the actual date on which the judgment or order appealed against was *pronounced* that is material. To this end, the extracted judgment does not change the date on which the judgment in respect of liability was in fact pronounced by the Judge (*ie*, 24 February 2022). As the Customers correctly emphasised, the relevant date for the purpose of determining the time for filing an appeal is the date when the judgment or order is *pronounced, and not when it is extracted*.¹⁴

24 Third, the fact that the trial was bifurcated does not change the foregoing analysis. The Companies’ submission on this point is misconceived as the Customers are not, contrary to their submission, alleging that the *trial itself* was on the issue of costs only. Rather, the pertinent issue is what decision of the Judge was appealed against in NA 39.

25 We make one final point in respect of the Companies’ submission that filing two separate notices of appeal (*ie*, the first against the Main Judgment and the second against the Costs Orders) would result in unnecessary costs. This

¹³ Customers’ Supporting Affidavit at pp 134–139.

¹⁴ Customers’ Written Submissions at para 36.

argument is also unpersuasive. This Court had recently given guidance on this point in *Ser Kim Koi v GTMS Construction Pte Ltd and others* [2021] 1 SLR 1319. In particular, where a judgment on costs was issued within the time for filing an appeal against the judgment on liability, a party should file a *single* notice of appeal in respect of *both* judgments against liability and costs (at [12]). The Court of Appeal in *The “Luna” and another appeal* [2021] 2 SLR 1054 likewise confirmed that the correct procedure is that where a costs decision is delivered *before* a notice of appeal has been filed in respect of the substantive decision, the appellant should file a *single* notice of appeal against *both* the substantive decision and the costs decision (at [103]). Naturally, the notice of appeal must be appropriately worded to refer to both decisions and the appropriate dates thereof.

26 That is precisely the case here, where the Costs Orders were made both (a) *before* a notice of appeal was filed and (b) *prior* to the expiry of the period limited for filing a notice of appeal against the Main Judgment. Had the Companies followed the correct procedure, permission to appeal would not be required since the Notice of Appeal would relate to *both* the Main Judgment and the Costs Orders and thus it could not be said that the “only issue in the appeal relates to costs” under para 3(f) of the Fifth Schedule. Such procedure would thus not result in any unnecessary costs and ensure that appeals are appropriately filed within time. Yet, this was not done here.

27 In conclusion, we agree with the Customers that NA 39 relates *only* to the Costs Orders made on 16 March 2022. That being so, it is uncontroversial that the Companies would require permission to appeal. Given that they have not obtained permission, this Court is not seised with the requisite jurisdiction to hear and determine the appeal.

The relevant time period for filing an appeal

28 The foregoing is sufficient to determine SUM 15. For completeness, we address the relevant time period within which one may file an appeal in view of the relatively new Rules of Court 2021 (the “Rules of Court 2021”). This part addresses the second issue which would arise if the Companies’ case was taken at its highest, which is that, NA 39 was against the Main Judgment *in addition to* the Costs Orders.

The parties’ cases

29 The Customers’ position is that NA 39 is a “backdoor appeal” against the Main Judgment as the Companies failed to appeal against the same within the prescribed time.¹⁵ Under both the Rules of Court (2014 Rev Ed) (the “Revoked ROC”) and the Rules of Court 2021, the applicable timeline for the filing of appeals is that such appeal is to be “filed and served within one month after” the “date on which the judgment or order appealed against was *pronounced*” [emphasis added].¹⁶ Accordingly, the Companies should have filed any appeal against the Main Judgment by 24 March 2022; this was not done. Nor have the Companies filed any application for an extension of time to file the same.¹⁷ The Customers thus submit in the alternative, that even if NA 39 is an appeal against the Main Judgment and the Costs Orders, it should nonetheless be struck out on the basis that the appeal against the Main Judgment was filed out of time.¹⁸

¹⁵ Customers’ Written Submissions at paras 3 and 29.

¹⁶ Customers’ Written Submissions at paras 21–22.

¹⁷ Customers’ Written Submissions at paras 31–35.

¹⁸ Customers’ Written Submissions at paras 30 and 37.

30 The Companies submit that time for filing the Notice of Appeal “does not start to run until the Judge has heard and determined all matters including costs”.¹⁹ In support of its submission, the Companies rely on O 19 r 4(1) of the Rules of Court 2021. Since the Judge only determined the issue of costs on 16 March 2022, “time runs from 16th March 2022, for any Notice of Appeal to be filed”.²⁰

Analysis

31 We disagree with the Companies’ contention. In our view, an appeal against the Main Judgment ought to have been filed within one month from the date on which that judgment was pronounced. Hence, even if the NA 39 purportedly included such an appeal, the Companies were well out of time when they filed the Notice of Appeal on 12 April 2022.

32 Order 56A r 6(d) of the Revoked ROC clearly stipulates that a notice of appeal must be filed and served “within one month after” the “date on which the judgment or order appealed against was *pronounced*” [emphasis added]. Pertinently, the position remains the same under the applicable rules under the Rules of Court 2021 (see O 1 r 2) which we reproduce:

Revocation, transitional provisions and application (O. 1, r. 2)

2.—...

...

(3) Subject to this Rule, these Rules —

...

¹⁹ Companies’ Written Submissions at para 20.

²⁰ Companies’ Written Submissions at paras 21–24.

(b) apply with the necessary modifications to and in relation to every appeal to ... the Appellate Division, ... which is *filed on or after 1 April 2022, relating to a decision of a lower Court made in proceedings to which the revoked Rules of Court apply ...*

(4) For the purposes of paragraph (3)(b) —

(a) subject to sub-paragraph (b), the notice of appeal against a judgment or order of the General Division ... **given or made before 1 April 2022** must be filed and served within one month after —

...

(iv) in any other case — *the date on which the judgment or order appealed against was pronounced; ...*

[emphasis added in italics and bold italics]

33 The rules of civil procedure are sufficiently clear on the applicable time to file an appeal. A party who wishes to appeal against a decision of a lower Court made in proceedings to which the Revoked ROC applies must, under the Rules of Court 2021, file the notice of appeal within one month after the date on which the judgment or order appealed against was pronounced. In the present circumstances, a notice of appeal against *liability* should have undoubtedly been filed and served within one month after the Judge’s judgment *on such liability*, which was pronounced on 24 February 2022.

34 The Companies’ reliance on O 19 r 4 of the Rules of Court 2021 is somewhat misplaced and arises from a misunderstanding of the transitional provisions and application of the Rules of Court 2021 as stipulated in O 1 r 2 which we have elaborated in the foregoing paragraphs. In contrast, O 19 r 4(1) of the Rules of Court 2021 provides as follows:

When time for appeal starts to run (O. 19, r. 4)

4.—(1) Unless the Court otherwise orders, the time for the filing of an appeal and for the filing of an application for permission

to appeal does not start to run until after the lower Court has heard and determined all matters in the trial, including costs.

35 As clearly stipulated in O 1 r 2(3)(b) of the Rules of Court 2021 (reproduced at [32] above), the relevant time that applies to a *judgment or order made before 1 April 2022* (such as the Main Judgment and the Costs Orders in the Suits) is one month from the date of such judgment or order. Simply put, although O 19 r 4 of the Rules of Court 2021 came into operation on 1 April 2022 (*ie*, was in operation by the time NA 39 was filed), it does not apply to appeals against the Judge’s decisions in the present case. Accordingly, the time to appeal against the Main Judgment starts to run from 24 February 2022 *and not 16 March 2022* as the Companies contend.

36 Therefore, even if NA 39 was against the Main Judgment in addition to the Costs Orders (as the Companies contend), it was filed out of time. The Companies thus required an extension of time to file the same. As no such extension of time was sought and obtained by the Companies, NA 39 ought to be struck out, even if it were the case – as the Companies contend – that the appeal was against *both* the Main Judgment and the Costs Orders.

Conclusion

37 For the foregoing reasons, we allow SUM 15 and strike out NA 39.

38 The present state of affairs is unsatisfactory because counsel for the Companies failed to appreciate the applicable rules of civil procedure which, in our view, have been clearly set out in the Rules of Court 2021. Furthermore, at the CMC of 7 April 2022, counsel’s attention was brought to the specific point that 24 March 2022 was the last day for filing an appeal against the Main Judgment. Counsel for the Companies was specifically informed to consider

whether to seek an extension of time to appeal. Yet he chose not to do so. It seems that this unfortunate state of affairs has arisen because of the intransigence of counsel for the Companies. In the circumstances, we reserve our judgment on costs. Parties are to file and serve written submissions (if any) on costs for SUM 15 and NA 39 within 14 days from the date of our judgment, limited to five pages. Counsel (and solicitors) for the Companies are to also address the question as to why costs should not be borne by him (and/or them) personally. As the Customers have already addressed costs in their earlier submissions, they should clarify within the same deadline whether they are filing and serving any further submission on costs.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the High Court

Hoo Sheau Peng
Judge of the High Court

Pillai Subbiah (Tan & Pillai) for the applicants;
Palaniappan Sundararaj and Ranita Yogeewaran (K&L Gates Straits
Law LLC) for the respondents.
