Lam Hwa Engineering & Trading Pte Ltd *v* Yang Qiang
[2014] SGCA 3

Case Number	: Civil Appeal No 73 of 2013
Decision Date	: 14 January 2014
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Niru Pillai and Priya Dharshini Pillay (Global Law Alliance LLC) for the appellant; N Srinivasan and Belinder Kaur Nijar (Hoh Law Corporation) for the respondent.
Parties	: Lam Hwa Engineering & Trading Pte Ltd — Yang Qiang

Civil Procedure – Costs

Legal Profession – Duties

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2013] 2 SLR 524.]

14 January 2014

Sundaresh Menon CJ (delivering the grounds of decision of the court):

1 By the time this case reached us, it had been through three earlier tiers of hearing. The only issue that had fallen for determination before each of the three courts that had heard the matter before we did was whether travel expenses amounting to $1,208 were properly claimable by the respondent as disbursements. There was nothing remarkable about these expenses. The respondent, a foreign national who had been working in Singapore, had suffered a workplace injury as a result of which he could not remain here. He had been repatriated but brought a claim in respect of his injury. He was made to pursue his claim against his employer to the very doorstep of the courthouse by which time he had returned to Singapore, among other things, to present himself before the court and to give evidence. The case was settled on the first day of the trial with the appellant agreeing to pay 80% of the respondent's claim plus costs and disbursements. This was hardly the hallmark of sensible litigation strategy but those who are being sued are entitled to time their surrender. It struck us as odd however, that having done this, the appellant would then make an issue out of the respondent's claim for $1,208 in respect of his travel costs and see it fit to pursue this all the way to this court.

2 It was held by the taxing registrar at first instance that such expenses were not claimable. This decision was reversed by the District Judge ("DJ") upon the respondent's appeal. The appellant pursued the matter to the High Court which dismissed the appeal and affirmed the DJ's decision that the travel expenses were claimable. Not content, the appellant sought and obtained leave to pursue a further appeal to us.

3 In the appeal before us, the issue was dressed up as a novel point of law on costs. This was misconceived. Notwithstanding the many authorities that were tendered by the appellant, we dismissed the appeal, finding it wholly unmeritorious for the reasons that we set out below. But we found the conduct of this case troubling at several levels. Aside from the utter lack of merit in the appeal, there had evidently been a complete failure to consider the element of proportionality having regard to the sum at issue. The appellant's counsel, Mr Niru Pillai ("Mr Pillai"), suggested that this was a point of wide interest to his real clients, namely the appellant's insurers. We were not told who the

insurers were; but we were not aware of any controversy raging in the insurance industry over this issue. We were also troubled because the respondent, who was to receive a sum by way of damages to compensate him for his injury, had to use a part of that to pay his own lawyers in order to resist the appellant's challenge. It seems to us that it was only the lawyers who stood to benefit from this. In all the circumstances, we thought it appropriate and timely to take this opportunity to make some observations on the professional and ethical responsibilities of an advocate and solicitor to avoid running up unnecessary costs.

Background facts

4 The facts were straightforward and the essence has already been stated. The respondent, a Chinese foreign worker employed by the appellant, was injured in the course of his work in July 2010. He commenced an action against the appellant in February 2011 seeking compensation. In the meantime, as the respondent was unable to work and maintain his Singapore work pass, he returned to China. Some time in July 2011, he flew back to Singapore for the purpose of attending and giving evidence at the trial. On 25 July 2011, which was the very first day of the trial, the parties reached a settlement. The appellant agreed to bear 80% liability. Final judgment was entered against the appellant for damages of $75,000, and costs and disbursements to be agreed or taxed.

5 The parties later agreed on the costs due to the respondent but they were unable to agree on the disbursements. As we have noted, the appellant took issue with the respondent's claim for travel expenses of $1,208. Out of this, a sum of $1,113 was for the respondent's return air tickets for travel between Shanghai and Singapore and the remainder of $95 was for land transport expenses incurred in China to travel to and from the airport. The appellant did not dispute that the itemised amounts were reasonable. The appellant's case was that it was not obliged to pay these expenses *as a matter of legal principle*. The respondent eventually filed an application for the taxation of the disbursements.

The decisions below

First instance decision

6 The Deputy Registrar of the Subordinate Courts heard the taxation and held that the travel expenses were not claimable. He awarded $1,000 by way of costs of the taxation. No written grounds were issued and so we remain in the dark as to the Deputy Registrar's reasons. Dissatisfied, the respondent appealed to the District Court.

Second instance decision

7 The DJ allowed the respondent's appeal. In his decision, *Yang Qiang v Lam Hwa Engineering & Trading Pte Ltd* [2012] SGDC 31 ("the GD"), he considered the following passage from *Rajabali Jumabhoy and others v Ameerali R Jumabhoy and others* [1998] 2 SLR(R) 576 ("*Jumabhoy*") at [5], which had been the primary authority relied on by the appellant for the proposition that a litigant is not entitled to the costs in respect of its own attendance:

> Although SIS was not represented by counsel before us at the hearing, it is a party to the appeal, and it has through its solicitors at the material time filed its case. It should be entitled to the costs of the appeal, although ***it should not be entitled to any costs for attendance before us.*** We therefore order the appellants to pay to SIS the costs of the appeal, and direct that on taxation of costs there should be allowed only the costs relating to the issue of constructive trust and that no costs should be allowed for attendance before us. [emphasis added in bold italics]

The DJ drew a distinction between *travelling to attend court in Singapore* and *attendance in court* and concluded that *Jumabhoy* did not preclude the former (see the GD at [17]–[18]).

8 The DJ also considered and distinguished two other cases relied on by the appellant. He explained that in his previous unreported decision in DC 3227/2008, he had disallowed the plaintiff's claim for his air fare from Australia to Singapore because the plaintiff was a Singaporean and there was no indication that he was permanently residing in Australia (see the GD at [30]–[31]). He also rejected the appellant's reliance on *The London Scottish Benefit Society v Chorley, Crawford and Chester* (1884) 13 QBD 872 ("*London Scottish*"), as that case involved the issue of whether a lawyer acting in person should be compensated in respect of his own time spent on the matter as if he had engaged a lawyer (see the GD at [32]).

9 The DJ then turned to the ordinary taxation principles under O 59 r 27(2) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("ROC"). He held that the travel expenses were reasonably incurred (see the GD at [25]). He further noted that was no dispute as to the reasonableness of the amount claimed (see the GD at [26]). The DJ thus concluded that the travel expenses sought by the respondent were claimable. He accordingly allowed the appeal but ordered that each party bear its own costs.

10 Dissatisfied with the DJ's decision, the appellant sought and obtained leave to appeal to the High Court. No order as to costs was made in respect of this leave application.

Third instance decision

11 The High Court Judge ("the Judge") dismissed the appellant's appeal. Her decision is reported at *Lam Hwa Engineering & Trading Pte Ltd v Yang Qiang* [2013] 2 SLR 524 ("the Judgment").

12 The first ground advanced by the appellant before the Judge was that the combined effect of O 35 r 1 and O 38 r 22 of the ROC precluded a litigant but not a witness from recovering travel expenses. These two provisions read as follows:

> **Failure to appear by both parties or one of them (O. 35, r. 1)**
>
> **1.**—(1) If, when the trial of an action is called on, neither party appears, the Judge may dismiss the action or make any other order as he thinks fit.
>
> (2) If, when the trial of an action is called on, one party does not appear, the Judge may proceed with the trial of the action or any counterclaim in the absence of that party, or may without trial give judgment or dismiss the action, or make any other order as he thinks fit.
>
> **Tender of expenses (O. 38, r. 22)**
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> **22**. A witness shall not be compelled to attend on a subpoena unless a reasonable sum to cover his expenses of going to, remaining at, and returning from, Court is extended to him.

The appellant submitted that a litigant who does not attend court runs the risk that his action (or defence) may be dismissed entirely pursuant to O 35 r 1. On this basis, it was submitted that a litigant has an obligation to attend court and any travel expenses incurred simply to meet this obligation should not be recoverable. The appellant also submitted that whereas a witness is entitled to be paid reasonable costs for his court attendance (on the basis of O 38 r 22), a litigant has no similar entitlement.

13 The Judge rejected these arguments. She held, contrary to the appellant's submissions, that O 35 r 1 of the ROC did not make it mandatory for a litigant to attend court in person because he could always instruct counsel to appear on his behalf (see the Judgment at [19]). Even if O 35 r 1 did compel a litigant-in-person to appear in court, it just did not follow that his travel expenses would therefore not be recoverable (see the Judgment at [20]). Furthermore, O 38 r 22 merely stipulated the rights and duties of a witness as against the litigant who had subpoenaed him to attend court; it was not a provision that had any bearing on the question of the entitlement of the parties to a matter that was being litigated to claim disbursements against one another (see the Judgment at [20]).

14 The second ground advanced by the appellant was that based on the case law, there is ostensibly no right for a litigant to claim travel expenses. The Judge rejected this and agreed with the DJ's interpretation of *Jumabhoy* (see [7] above) and found that there was no general prohibition in Singapore law against the recovery of a litigant's travel expenses as "costs reasonably incurred" under O 59 r 27(2) of the ROC (see the Judgment at [22]–[25]). The Judge further surveyed the authorities in England, Australia and Canada and concluded that the law in these jurisdictions allowed a litigant to recover travel expenses which were necessarily incurred to attend court *as a witness* (see the Judgment at [31], [34], [37] and [45]).

15 The Judge held that since the respondent's sole reason for incurring the travel expenses in issue was to attend the trial as a key witness, he should be entitled to recover them. Accordingly, she dismissed the appeal and awarded costs of the appeal to the respondent on the standard basis to be taxed unless otherwise agreed.

16 Dissatisfied with the Judge's decision, the appellant sought and obtained leave to further appeal to us. The Judge made no order as to costs in respect of the leave application.

The parties' cases on appeal before us

17 Before us, the appellant contended, in the main, that:

(a) the travel expenses of a litigant *qua* a litigant are not recoverable as a matter of principle pursuant to the rule purportedly laid down in *London Scottish*;

(b) no distinction should be drawn between the capacity of the litigant as a party and as a witness. Such travel expenses are therefore not recoverable whether or not the litigant is also going to appear as a witness; and

(c) where a plaintiff partially succeeds in his claim, justice and considerations of proportionality require that as a general rule, only a corresponding proportion of his disbursements should be recoverable.

18 In response, the respondent submitted that:

(a) the travel expenses of a litigant are recoverable in principle because the rule in *London Scottish* has no application;

(b) there is case law support for the proposition that the travel expenses of a litigant *qua* a witness are recoverable; and

(c) the overriding consideration for claims for disbursements is that of reasonableness, not

proportionality.

Our decision on the merits of the appeal

19 We were surprised that Mr Pillai placed at the forefront of his argument the 19th century case of *London Scottish*. We would have thought it obvious that the first port of call should have been O 59 of the ROC as the key piece of subsidiary legislation governing all matters of civil procedure, including (and especially) costs. This seems trite, and in our judgment, Mr Pillai's case started off on the wrong footing.

20 A few preliminaries bear restating, even at the risk of being pedantic. The general rule under O 59 r 2(2) of the ROC is that costs (defined in O 59 r 1(1) as also including disbursements) are "in the discretion of the Court, and the Court shall have full power to determine by whom and to what extent the costs are to be paid". However, the court's discretion is not unfettered. Order 59 r 27(2) provides that where taxation of party and party costs is on the standard basis (as in the present case), "there shall be allowed a *reasonable amount* in respect of all costs *reasonably incurred*" [emphasis added]. In 2010, the Rules of Court (Amendment No 3) Rules 2010 (S 504/2010) ("the 2010 Amendments") came into effect, thereby amending para 1(2) of Appendix 1 of O 59 to now read as follows:

> **Amount of costs**
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> **1.**—(1) The amount of costs to be allowed shall (subject to any order of the Court) be in the discretion of the Registrar.
>
> …
>
> (2) In exercising his discretion the Registrar shall have regard to ***the principle of proportionality*** and all the relevant circumstances and, in particular***, to the following matters*** :
>
> (*a*) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
>
> (*b*) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor;
>
> (*c*) the number and importance of the documents (however brief) prepared or perused;
>
> (*d*) the place and circumstances in which the business involved is transacted;
>
> (*e*) the urgency and importance of the cause or matter to the client; and
>
> (*f*) where money or property is involved, its amount or value.
>
> [amendment reflected in bold italics, emphasis added in underline]

21 In *Lin Jian Wei and another v Lim Eng Hock Peter* [2011] 3 SLR 1052 ("*Lin Jian Wei*"), this court undertook a careful analysis of O 59 r 27(2) and para 1(2) of Appendix 1 as amended by the 2010 Amendments. We concluded there that "in assessing whether costs incurred are reasonable, it needs to be shown that the costs incurred were not just reasonable and necessary for the disposal of the matter, but also, in the entire context of that matter, proportionately incurred" (at [56]). We also

took pains to clarify that proportionality should be considered both on an item by item basis and on a global basis (at [78]):

> *The approach that should be adopted in taxation is that the Court should first assess the relative complexity of the matter, the work supposedly done against what was reasonably required in the prevailing circumstances, the reasonableness and proportionality of the amounts claimed on an item by item basis and thereafter, assess the proportionality of the resulting aggregate costs. In this exercise, all the Appendix 1 considerations are relevant.* In the general scheme of things, no single consideration ordinarily ought to take precedence. In every matter, this calls for careful judgment by reference to existing precedents and guidelines. A taxing officer should consider the complexity of the issues of fact and law which arose in the matter against the backdrop of the statements as to the amount of time spent by the solicitors and also the seniority of the counsel involved in order to determine whether the costs claimed for the amount of time spent is reasonable and proportionate. … [emphasis added]

22 We note that *Lin Jian Wei* was (one of the many cases) cited by Mr Pillai in his submissions. However, it appears that several points arising from that case were not picked up. If the legal framework in O 59 of the ROC as interpreted in *Lin Jian Wei* had been properly considered, it would have been obvious that the matter was entirely straightforward. The respondent, injured by the appellant's tort, could not remain in Singapore. He *had* to return to China; and subsequently *had* to return to Singapore for the trial where he was both the plaintiff and a key witness. Moreover, it was the appellant that had caused the proceedings to continue *until* the very first day of the trial when it decided to settle. This resulted in the obvious need for the respondent to fly back to Singapore in anticipation of the trial which he had every reason to think would be proceeded with. In all the circumstances, we had absolutely no doubt that the travel expenses incurred by the respondent were both reasonable and reasonably incurred. The quantum of these expenses was proportionate when considered on an item by item basis as well as in the aggregate. There was simply no reason at all why the travel expenses should not be allowed under O 59 of the ROC.

23 Instead of focusing on the direct and, in our judgment, wholly straightforward application of the relevant law to the present facts, the courts that had to hear this matter before us appeared to have been side-tracked by Mr Pillai's reliance on *London Scottish*. Mr Pillai claimed that the following extract from the judgment of Bowen LJ in that case laid down a general principle of law precluding the recovery of a successful litigant's travel expenses (*London Scottish* at 876–877):

> … There is a passage in Lord Coke's Commentary, 2 Inst. 288, which it is worth while to examine, as it affords a key to the true view of the law of costs. That passage is as follows: "Here is express mention made but of the costs of his writ, *but it extendeth to all the legal cost of the suit, but not to the costs and expenses of his* ***travel*** *and loss of time ...*" What does Lord Coke mean by these words? His meaning seems to be that only legal costs which the Court can measure are to be allowed, and that such legal costs are to be treated as expenses necessarily arising from the litigation and necessarily caused by the course which it takes. … [emphasis added in italics and in bold italics]

24 Serious consideration might have been given to what relevance the 19th century English case of *London Scottish*, and the 17th century commentary of Lord Coke, could possibly have to the law of Singapore in the 21st century in relation to an issue governed by a legislative provision. Of course, old cases are not necessarily bound to be irrelevant. Certain legal principles are universal, and in that sense, perhaps also timeless. However, where the subject-matter concerned is ultimately shaped by prevailing policy considerations and societal conditions, archaic materials are often likely to be

irrelevant. This is especially so where there are statutory provisions to address the very question.

25 In any case, had the selected portion of *London Scottish* (reproduced at [23] above) been carefully read against its contextual backdrop, it should have been evident that the word "travel" in Bowen LJ's citation of Lord Coke's commentary was very likely the result of a transcribing or recording error. The issue in *London Scottish* was whether a solicitor who successfully defended an action in person was entitled to the same costs as he would have been if he had employed a solicitor to represent him. Travel expenses were *never* in issue in the case. Furthermore, it made no sense to speak of "travel and loss of time" in the same breath. Travel expenses, being out-of-pocket expenses, are of a wholly different category from recovery for loss of time.

26 That the word "travel" was probably meant in fact to be "trouble" should have been apparent on a close and complete reading of *London Scottish*. In that case, the plaintiff's counsel had referred to Lord Coke's commentary in his argument. Notably, instead of "travel", the word used was "trouble" (*London Scottish* at 872–873):

> *Alfred Cock*, for the plaintiffs. The first question is whether any practice exists whereby solicitors, who are themselves parties to actions, are allowed different costs from those allowed to an ordinary litigant. The text-books shew that formerly, at least, the practice did not exist. The right to costs was created by the Statute of Gloucester, 6 Edw 1, c 1, and *in commenting upon this statute it is said in 2 Inst. 288, that the party to a suit is not entitled to the costs and expenses of his* ***trouble*** *and loss of time*. And it does not appear from Sayer's Law of Costs, 2nd ed (1777) that at the time of publishing that work any difference existed between an attorney and an ordinary litigant. … [emphasis added in italics and in bold italics]

27 In addition, Bowen LJ's other comments, both before and after citing Lord Coke's commentary, further support the view that he had in mind the "trouble" that a litigant takes to contest the case rather than the expenses of his "travel", the latter standing alone in a single reference without any other context to support the conclusion that it, in fact, was the intended term (*London Scottish* at 876–877):

> ***A great principle, which underlies the administration of the English law, is that the courts are open to everyone, and that no complaint can be entertained of trouble and anxiety caused by an action begun maliciously and without reasonable or probable cause; but as a guard and protection against unjust litigation costs are rendered recoverable from an unsuccessful opponent. Costs are the creation of statute. The first enactment is the Statute of Gloucester, 6 Edw. 1, c. 1 , which gave the costs of the "writ purchased."*** There is a passage in Lord Coke's Commentary, 2 Inst. 288, which it is worth while to examine, as it affords a key to the true view of the law of costs. That passage is as follows: 'Here is express mention made but of the costs of his writ, but it extendeth to all the legal cost of the suit, but not to the costs and expenses of his ***travel*** and loss of time, and therefore "costages" cometh of the verb "conster," and that again of the verb "constare," for these "costages" must "constare" to the court to be legal costs and expenses.' What does Lord Coke mean by these words? His meaning seems to be that only legal costs which the Court can measure are to be allowed, and that such legal costs are to be treated as expenses necessarily arising from the litigation and necessarily caused by the course which it takes. ***Professional skill and labour are recognised and can be measured by the law; private expenditure of labour and trouble by a layman cannot be measured.*** … [emphasis added in bold italics and in underline]

28 It should thus have been evident from this contextual analysis of *London Scottish* that it *could not* fairly be advanced in support of the proposition that Mr Pillai was contending for; much less

support the labour, expense and trouble involved in an appeal to this court where the subject-matter involved a sum of $1,208. If nothing else, our observations contained in the last three paragraphs might have the salutary effect of reminding lawyers of the dangers of relying on selective quotations from a case taken out of their context.

29 Even if there was some precedent where the recovery of a successful litigant's travel expenses had been disallowed, we cannot imagine any basis at all for contending that any such decision (which would have been decided on its facts) could stand for a normative principle of law of general application. In this regard, but for the misplaced reliance on *London Scottish*, it would have been clear to the Judge that the search across various jurisdictions for a general principle (see the Judgment at [26]–[45]) was unnecessary to resolve what, in essence, was a fact-specific inquiry before her. Aside from this, as it had not been established that the costs frameworks applicable in these other jurisdictions are *in pari materia* with our own framework, the weight to be placed on those authorities would in any case, necessarily, have been limited.

30 Before leaving this issue, we make a brief observation on Mr Pillai's submissions to the extent these rested on the dictum in *Jumabhoy* (cited at [7] above). This again seems to us to have arisen from a non-contextual and selective reading of that passage. The court had declined to award costs for attendance in that case, not on the basis of any general principle but rather, because the solicitors for the party in question, though they had filed a case on its behalf, it being a party to the appeal, had not in fact attended the actual hearing. Hence in relation to the order for costs that *was* made in its favour, it was expressly stated that it would *exclude* any costs for attendance for the simple reason that there had been no attendance by the solicitors in that case. That has nothing at all to do with the issue raised by the appellant here.

31 We turn to the appellant's last argument before us. This, in a nutshell, was that where a plaintiff partially succeeds in his claim, justice and considerations of proportionality require that as a general rule, only a corresponding proportion of his disbursements should be recoverable. We found this a complete non-starter. The final judgment entered into *with the parties' consent* expressly stated that the appellant was to pay the respondent the latter's costs and disbursements to be agreed or taxed. It did not then lie in the appellant's mouth to argue that it should only be liable to pay 80% of the respondent's costs and disbursements just because it had accepted 80% liability.

32 We observe that the manner in which Mr Pillai ran this argument in his written submissions reflected an extremely strained approach to the concept of proportionality. By his submissions, he was effectively inviting the court to disregard the entire costs framework and substitute that with a precise percentage to be extracted by reference to the proportion of the final assessed liability to the amount claimed in each case. This was clearly *not* the intent of the 2010 Amendments. As was noted in *Lin Jian Wei* at [43], the introduction of the express proportionality rule did not fundamentally alter the approach to the assessment of costs. It merely functioned as a reminder of and a pointer to the importance of proportionality. And although proportionality is not defined under the ROC, it is clear that it does not envisage an *exact* ratio or apportionment. What the concept of proportionality is really concerned with is that the litigation is conducted "in a manner which *bears some correlation* to the amount or nature of the claim" [emphasis added] (*Lin Jian Wei* at [43]). Even in the UK, the concept of proportionality is expressed in r 44.3(5) of the English Civil Procedure Rules 1998 (SI 1998/3132) (UK) in terms of the costs bearing "a *reasonable* relationship" [emphasis added] to the sum in issue in the proceedings, among other things.

33 The issue of costs is fundamentally a matter of assessment based on the entire myriad of relevant facts and circumstances. It is not, and can never be, a precise science. To lay down a general rule that costs *must* be mathematically and precisely pegged to the final apportionment of

liability, would fail to ensure justice in each case. It is for this reason that the legal framework in O 59 of the ROC as interpreted by this court in *Lin Jian Wei* requires due consideration to be given to *all* the relevant facts and circumstances.

34 It is evident that there was absolutely no merit in the appeal and we therefore dismissed it. We now set out some observations about the manner in which this case was conducted.

Our observations on the conduct of this case

35 What was at stake in this appeal was a modest sum of $1,208 in disbursements. There was no dispute as to the reasonableness of the sum either in regard to the cost actually incurred for travel or in relation to the overall size of the claim. Yet, the appellant pursued this matter to this court, notwithstanding that full reasoned grounds had been given by the DJ and the Judge. In so doing, it was the appellant that had incurred and caused the respondent to incur costs *grossly* out of proportion to the sum at stake. There are three aspects to this which concerned us. First, on any basis, we could not see how it could reasonably have been thought to be advisable to pursue an appeal to this court given the amount at stake. Second, if the appellant had reasonably felt that there might be a point of principle to pursue, it was incumbent on it, in light of the disproportionate cost of bringing any appeal, to closely and carefully review the merits in the light of the two written judgments and the applicable authorities and be satisfied that there was *considerable force* in its position before filing and pursuing the appeal with vigour to this court. Thirdly, the amount of material that was advanced in the course of the appeal again had to be proportionate in the light of what was at stake. We develop each of these points.

36 Even if it was genuinely thought that there might be some legal merit in the appellant's case, this did not displace Mr Pillai's duty to conduct a proper risk-benefit evaluation at each significant stage of the proceedings. This important duty is enshrined in r 40 of the Legal Profession (Professional Conduct) Rules (Cap 161, R1, 2010 Rev Ed) ("PCR"), which expressly requires an advocate and solicitor in appropriate cases to "evaluate with a client whether the consequence of a matter justifies the expense or the risk involved". This rule was previously put under the spotlight in *Lock Han Chng Jonathan (Jonathan Luo Hancheng) v Goh Jessiline* [2008] 2 SLR(R) 455 ("*Jonathan Lock*") at [46]. In *Jonathan Lock*, the amount in dispute, which was about $60, escalated into a contest of wills between two solicitors, resulting in a waste of judicial time and unnecessary expenditure in terms of court fees and disbursements that exceeded $100,000 even before the hearing. We echo the sentiments that were expressed in *Jonathan Lock*. In the event, we accepted Mr Pillai's assurance at the hearing that his "real" client, the insurer for the appellant, had been duly advised of the appropriate considerations and had nonetheless, with the benefit of such advice, instructed him to pursue the matter at each stage. However, we sound a note of caution for future reference: lawyers pursuing a similar course would be well-advised to have their advice to their clients and their clients' instructions properly documented.

37 Even on the basis that Mr Pillai had undertaken the necessary evaluation with his client, he should have been alive to the fact that taking the matter further was likely to be incompatible with his *higher* duty to the court as an officer entrusted to assist it in the administration of justice. Having had the benefit of the written grounds of the DJ and the Judge, and having regard to the patently disproportionate cost of any appeal, it would have been incumbent on any solicitor contemplating a further appeal to examine the issue afresh and be reasonably and objectively satisfied that there were *very strong grounds* for an appeal and thus that the decision being appealed was *clearly* wrong so as to warrant proceeding further. Had the matter been diligently and scrupulously reviewed, we are unable to see how it could have been missed that the appeal was wholly unmeritorious for the reasons we have earlier set out.

38 Aside from this, the appeal not only entailed substantial costs being incurred by Mr Pillai's client and the respondent, but also gave rise to wastage of precious and limited judicial time and resources. Just in the proceedings before us, Mr Pillai filed a 50-page Appellant's Case, a two-volume Bundle of Authorities (consisting of 31 case authorities) and a 13-page set of Skeletal Arguments, *for what was an extremely straightforward matter*. This struck us as the indiscriminate and ultimately ill-conceived use of a sledgehammer to try to crack a nut. Paragraph 87(4A) of Part XI of the Supreme Court Practice Directions provides that parties' cases in civil appeals before the Court of Appeal "shall not exceed 50 pages unless leave … is obtained". We would emphasise that this is an upper limit. It should not be taken as justifying the use of the whole of the prescribed page limit in every case. To do so *when the merits of the case plainly do not require it* would not only lead to unnecessary costs for the client, but would also be a breach of a solicitor's duty to the court. The same principles apply in relation to the indiscriminate citing of case authorities.

39 Rule 55 of the PCR is apposite:

> **Duty to Court**
>
> **55.** An advocate and solicitor shall at all times —
>
> …
>
> (*b*) use his best endeavours to avoid unnecessary adjournments, *expense and waste of the Court's time*; and
>
> (*c*) assist the Court in ensuring a *speedy and efficient trial* and in arriving at a just decision.
>
> [emphasis added]

40 We were aware that the appellant had been granted leave by the respective lower courts to appeal at each stage. This did little, in our judgment, to mitigate the solicitor's conduct in this case. The grant of leave to appeal by a lower court merely provides the opportunity to pursue a matter further. It does not displace the solicitor's duty to undertake a proper assessment as to proportionality under r 40 of the PCR (see [36] above). Neither does it displace counsel's duty to the administration of justice to see if it would *really* be in the overall interests of justice to proceed further (see [37]–[38] above).

41 Finally, we note that in the leave application made to the High Court, Mr Pillai had secured his client's undertaking not to pursue costs against the respondent if it succeeded in the appeal before us. This did not carry much mitigating weight with us at all. The fact remained that the respondent would still have to bear his own solicitor and client costs out of the settlement sum that he received from the appellant and unless he was indemnified, he would be out of pocket to some degree even if he succeeded. The respondent had been unnecessarily put to a great deal of trouble and expense for an unmeritorious appeal which should not have been brought. This is to say nothing of the waste of finite judicial time and resources.

42 At the conclusion of the hearing, we invited Mr Pillai to consider how the injustice suffered by the respondent could be addressed. Mr Pillai volunteered that his law firm would bear the respondent's costs of the present proceedings, and the proceedings before the High Court, both on an indemnity basis. We accordingly made those orders. Further, to the extent the appellant had collected any sum from the respondent in respect of the Deputy Registrar's costs order (see [6] above) this is to be returned.

Conclusion

43 In the result, we dismissed the appeal. We ordered that the respondent's costs of the proceedings here and in the High Court be borne by Mr Pillai's law firm on an indemnity basis. This order as to costs covered not just the substantive appeal heard by the High Court, but also the appellant's application for leave to appeal to us.

44 We conclude with a reminder to members of the legal profession of their solemn duty to discharge their professional obligations to their clients and to the court conscientiously.