Ten Leu Jiun Jeanne-Marie *v* The National University of Singapore [2014] SGHC 247

Case Number : Originating Summons No 699 of 2014

Decision Date : 21 November 2014

Tribunal/Court : High Court

Coram : Tan Siong Thye J

Counsel Name(s) : Violet Netto and Colin Phan (L F Violet Netto) for the plaintiff; Chia Voon Jiet and Kelly Lua (Drew & Napier LLC) for the defendant.

Parties : Ten Leu Jiun Jeanne-Marie — The National University of Singapore

Civil procedure – judgments and orders

Constitutional law – equal protection of the law

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 177 of 2014 was dismissed by the Court of Appeal on 26 May 2015. See [2015] SGCA 41.]

21 November 2014

Tan Siong Thye J:

Introduction

1 The plaintiff, Ten Leu Jiun Jeanne-Marie, was a Masters of Arts (Architecture) ("the MA degree") candidate at the National University of Singapore's ("the defendant") School of Design and Environment. The crux of her complaint was that the defendant refused to award her the MA degree despite her meeting the academic requirements. As a result, the plaintiff sued the defendant for loss and damage. She alleged that the defendant had wrongly terminated her candidature and her claim was grounded in the following:

(a) breach of contract;

(b) the tort of misfeasance in public office;

(c) the tort of intimidation; and

(d) the tort of negligence.

2 In the course of the proceedings, the plaintiff lodged a discovery application, Summons No 3299 of 2013 ("SUM 3299"), against the defendant for a large number of documents. The interlocutory application was heard by the Assistant Registrar ("AR") who dismissed it. The plaintiff was dissatisfied with the AR's decision and appealed against it. I dismissed the plaintiff's appeal, Registrar's Appeal No 320 of 2013 ("RA 320"), and also dismissed her application for leave to appeal to the Court of Appeal, Summons No 5875 of 2013 ("SUM 5875").

3 Subsequently, in Originating Summons No 699 of 2014 ("OS 699"), the plaintiff applied for my written grounds for RA 320 and SUM 5875. I dismissed her application as the parties were fully aware

of the arguments. I had orally explained my decision to the parties in the course of their submissions in both RA 320 and SUM 5875 although these were not reflected in my notes. Nevertheless, she insisted on having my written grounds. Now, dissatisfied with my decision in OS 699, she seeks to appeal against it.

4 I shall first summarise the events leading up to OS 699, because they are important for a full appreciation of this case, before addressing the main issue at hand.

RA 320

5 RA 320 was an appeal by the plaintiff against the order of the AR who disallowed her discovery application for many documents. The AR had released his written grounds of decision to explain why he refused to allow the plaintiff to have access to those documents. His reason was that she had not satisfied the threshold of relevance and necessity. At the appeal, I reminded the parties during oral submissions that it was trite law that the test for the discovery of documents was for the plaintiff to show relevance and necessity. This test depended on the issues and pleadings of the case. In the circumstances, I ruled that the plaintiff had not satisfied this test. This was explained to the parties although it was not recorded in my written notes.

SUM 5875

6 The plaintiff was dissatisfied with my decision to dismiss her appeal in RA 320. Accordingly she sought leave to appeal to the Court of Appeal in SUM 5875.

7 Before the parties began their submissions, the plaintiff's counsel made a preliminary application for her to be present at the hearing. The defendant's counsel strenuously objected to the application as in normal practice, chamber proceedings were conducted in the absence of the parties' respective clients. The plaintiff's counsel did not provide any compelling reason that warranted a deviation from the norm. Nevertheless, I allowed the plaintiff to be present. This was for two reasons. First, I realised that the plaintiff had taken a very keen personal interest in the case and in the interest of transparency, I allowed her to be present. Second, she would be given a first-hand opportunity to observe and hear the arguments presented to the court. This would perhaps give her a better understanding of the court's decision and the reasons the court decided in a particular manner.

8 In deciding whether to grant her leave to appeal, I considered the following three criteria (see *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 at [16]):

(a) whether there was a *prima facie* factual error made;

(b) whether there was a question of general principle to be decided for the first time; and

(c) whether there was a question of importance on which the public interest would be served by having further arguments presented and a decision rendered by a higher tribunal.

9 The plaintiff's case failed to satisfy any of the three criteria. Accordingly, I did not grant leave to the plaintiff.

The plaintiff's request for my written grounds

10 The plaintiff wrote in to the Supreme Court Registry ("the Registry") on 31 December 2013 to request my written grounds of decision for RA 320 and SUM 5875. Subsequently, the Registry replied

on 23 April 2014 that there was "no need for Grounds of Decision for this case".

The plaintiff's complaint to the Chief Justice and V K Rajah JA

11 On 22 April 2014 the plaintiff then sent an email to the Chief Justice. The contents of the email are set out as follows:

> Dear Honourable Chief Justice Menon,
>
> I am the Plaintiff in Suit No. 667/2012/W.
>
> It is with great reluctance that I write this letter to you. However I do not know what else I could do. I believe that Judicial Commissioner Tan Siong Thye did not give me a fair hearing on 15 January 2014. This hearing was for my application for leave to appeal to the Court of Appeal against the Judicial Commissioner's decision, following a hearing on 5 November 2013, to dismiss my appeal against an Assistant Registrar's decision to deny my application for discovery in my lawsuit.
>
> The hearing for leave to appeal to the Court of Appeal on 15 January 2014 was not a fair hearing because the Judicial Commissioner did not provide me with the reasons for his decision in the appeal hearing on 5 November 2013. Without knowing these reasons, my lawyer could not properly prepare arguments for the application for leave to appeal to the Court of Appeal on 15 January 2014.
>
> My lawyers have formally requested for Judicial Commissioner Tan Siong Thye's reasons for his Grounds of Decision on the hearing on 5 November 2013 at least three times, both in writing (three letters to the Court) and orally during Pre-Trial Conferences, but the Judicial Commissioner has still not provided his reasons as of today, over five months after the hearing last November. The last two letters also contained requests for the Grounds of Decision of the 15 January 2014 hearing. However, I have not received the Grounds of Decision of either hearing so far.
>
> Even if Judicial Commissioner Tan Siong Thye does provide his reasons someday, it will not change the fact that the hearing for my application for leave to appeal to the Court of Appeal on 15 January 2014 was not a fair hearing, since I did not have the benefit of knowing the Judicial Commissioner's reasons regarding my hearing on 5 November 2013, when he turned down my appeal against the Assistant Registrar's decision.
>
> I believe that Judicial Commissioner Tan Siong Thye's failure to provide reasons for his decision regarding my hearing on 5 November 2013 is contrary to the decision of the Court of Appeal in *Thong Ah Fat v Public Prosecutor* [2011] SGCA 65. In this decision, the Court of Appeal ruled (at [14]) that judges have a "*crucial judicial duty to give reasons*" and that this duty "*prevails in both civil and criminal cases*." The Court of Appeal also stated (at [22]) that: "*The duty ordinarily applies even where there can be no appeal against that decision.*" The Court of Appeal stressed that the judicial duty to state reasons applies even to decisions for which there is no possibility of appeal, stating (at [44]) that: "*… The need for justice to be done and seen to be done should not be dampened by the absence of an avenue for appeal. On the contrary, the inability to alter the decision may make it all the more compelling for the parties to understand how it was reached …*"
>
> While the Court of Appeal in *Thong Ah Fat* acknowledged that there are exceptions to the judicial duty to provide reasons for decisions (at [32]-[33] and [45]), these exceptions (as defined by

the Court of Appeal) clearly do not apply in my case.

In addition to not giving me a fair hearing on 15 January 2014, I believe that Judicial Commissioner Tan Siong Thye's failure to provide reasons for his decision regarding my hearing on 5 November 2013 also violated my Constitutional rights under Article 12 of the Constitution, which says that "*All persons are equal before the law and entitled to the equal protection of the law.*" If all persons are "equal before the law," then I should enjoy the benefit of being informed about the reasons for the judge's decisions, just like other plaintiffs. I know that other plaintiffs have had the benefit of being informed about the reasons for decisions of the High Court regarding appeals against decisions of Assistant Registrars regarding applications for discovery. Two recent examples are: *Elbow Holdings Pte Ltd v Marina Bay Sands Pte Ltd* [2014] SGHC 26 and *Koh Chong Chiah and others v Treasure Resort Pte Ltd and another* [2014] SGHC 51. In both of those cases, an Assistant Registrar made a decision regarding an application for discovery; in both cases, the decision was appealed to the High Court; and in both cases, the High Court judge provided written grounds of decision. I do not see why the Court should treat me unequally to the plaintiffs in those cases, who were informed about the Court's reasons for its decisions in their appeals against Assistant Registrars' decisions concerning their applications for discovery.

My lawyer has advised me that: "*(1) there is no further appeal to the Court of Appeal possible from the dismissal of your application for specific discovery, (2) there is no further appeal possible to the Court of Appeal from the refusal to grant you leave to appeal to the Court of Appeal against the dismissal of your application for specific discovery, and (3) there is no possible application to the Court of Appeal for leave to appeal to it against the dismissal of your application for specific discovery.*"

My lawyer has also advised me that: "*I can confirm that Tan Siong Thye JC's refusal to grant you leave to appeal to the Court of Appeal from the dismissal of your specific discovery application is final. There is no further application to the Court of Appeal for leave to appeal to the Court of Appeal possible, and there is no further right to appeal to the Court of Appeal against this refusal. This follows clearly from sections 34 (1), (2), and (2B) of the Supreme Court of Judicature Act (Cap. 322, 2007 Rev. Ed.)*"

Since my lawyer has told me that there is nothing else that I can do, I have decided to write directly to Your Honour. I would like to highlight to Your Honour that I am writing this letter of my own volition since my lawyer has told me that there are no further applications to the Court to appeal to the Court of Appeal.

In *Thong Ah Fat v Public Prosecutor*, the Court of Appeal stated at [47] that it did not think that "the judicial duty to state reasons has been satisfied in the present case" and ordered a retrial. Similarly, I believe that there should be a new hearing in my case. If there is indeed a new hearing, I respectfully request this hearing be heard before a different High Court judge (not Judicial Commissioner Tan Siong Thye).

If there is some procedure that I (or my lawyer) should follow in order to request that the Court consider my application for a new hearing, I would be very grateful if Your Honour would let me know what this procedure is, since my lawyer has already told me that there is nothing that I can do.

Thank you very much for your kind consideration of the issues.

Sincerely,

Ten Leu-Jiun

Plaintiff in Suit No. 667/2012/W.

[emphasis added]

12 On 28 April 2014, the plaintiff sent a letter to the Chief Justice, which enclosed a copy of the email cited above.

13 On 8 May 2014, the plaintiff sent an email to V K Rajah JA as follows:

Dear Honourable Justice V K Rajah,

Congratulations on your appointment as Attorney-General. I'm sure that you will be an excellent Attorney-General, although I am going to miss your well-reasoned judgments delivered from the bench, such as your landmark decision in *Thong Ah Fat v Public Prosecutor*.

It is in relation to *Thong Ah Fat v Public Prosecutor* that I write to you now. I am the Plaintiff in Suit 667/2012. I have been unsuccessful in my attempts to obtain Judicial Commissioner Tan Siong Thye's Grounds of Decisions related to my application in Specific Discovery. My lawyers made three requests for these Grounds of Decisions, and specifically reminded the Registrar about the judicial duty to provide reasoned judgments in *Thong Ah Fat v Public Prosecutor*, only to have the Court's Lee Kwee Ngor respond finally that "there is no need for Grounds of Decision for this case." Isn't this response contrary to your reasoning regarding the judicial duty to provide reasoned judgments in *Thong Ah Fat v Public Prosecutor*?

Judicial Commissioner Tan Siong Thye first rejected my appeal against an Assistant Registrar's decision, and then rejected my application for leave to appeal to the Court of Appeal. I feel that I was not given a fair hearing for my application for leave to appeal to the Court of Appeal, since I did not know then (and still don't know today) what the Judicial Commissioner's reasons were for rejecting my appeal against the Assistant Registrar's decision. The Court has provided me with the Notes of Evidence, but the Notes of Evidence do not show the Judicial Commissioner's reasons for his decisions in my case.

To prevent any misunderstandings, I must explain that I have already written to Chief Justice Sundaresh Menon on 22 and 28 April 2014 regarding the issue of not being given the Grounds of Decisions. This was after my lawyer told me that there was nothing more that he could do. I have received an acknowledgement from the Supreme Court's Quality Service Manager Ms Lee May Lin stating that the matters I have raised are being looked into. I am awaiting a substantive response. I thought that I should write to you as well, since you delivered the judgment of the Court in *Thong Ah Fat v Public Prosecutor*, and since I do not know when I will receive a substantive response from the Court – I am afraid that you might leave the bench before that happens.

I append my letter to the Chief Justice regarding this issue.

Thank you for reading my letter.

Yours Sincerely,

Ten Leu-Jiun

14 On 21 May 2014, the Supreme Court replied to the plaintiff as follows:

> Dear Ms Ten,
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> We refer to your email and letter dated 22 April 2014 and 28 April 2014 to the Honourable Chief Justice as well as your email dated 8 May 2014 to the Honourable Judge of Appeal Justice VK Rajah, the contents of all have been noted by the respective addressees. The Honourable Chief Justice has reviewed the matter and has requested me to respond to you on his behalf.
>
> 2 *We note that the reasons behind the dismissal of your original application (SUM 3299/2013) before Assistant Registrar Shaun Leong have been explained in writing.* On appeal, your solicitors would have been fully aware of the need to make out a case to rebut the grounds articulated by the Assistant Registrar. The governing legal principle for your interlocutory application requesting the discovery of the documents that you sought is that of necessity and relevance. *The Assistant Registrar explained that you had not satisfied this threshold. In your appeal before JC Tan, he had reiterated the same legal principle to your counsel and the counsel for NUS.* Both counsel addressed the issue and in the final analysis it was evident that your counsel had not persuaded JC Tan that the decision of the Assistant Registrar should not be upheld. Accordingly, your appeal was dismissed.
>
> 3 Before the commencement of the hearing of your application for leave to appeal to the Court of Appeal, *your counsel applied to JC Tan to allow you to be present*. As you might be aware, parties who are legally represented are not generally allowed to be present at hearings in chambers. Indeed, this was why an application for leave had to be made and the counsel for NUS strenuously objected to the application. *Nevertheless, JC Tan allowed you to be present so that you could listen to the arguments presented by both counsel. Thus you were able to appreciate the outcome of your application although the decision was not in your favour.*
>
> 4 We are therefore satisfied that due process has been observed and the applications have been decided in accordance with the law. Your solicitors have already advised you on your legal position on this issue. As such, in accordance with the provisions of the Supreme Court Judicature Act, we regret that we are unable to accede to your request for a new hearing.
>
> [emphasis added]

OS 699

15 The plaintiff was dissatisfied with the reply and she took out OS 699 with the following application:

> Written Grounds of Decision shall be provided in respect of interlocutory hearings before this Honourable Court.

The plaintiff's preliminary application for the presiding judge to recuse himself

16 On 29 September 2014, before the substantive hearing of OS 699, the plaintiff's counsel made a preliminary objection to my hearing of the application and asked that I recuse myself from hearing the matter. I dismissed the application. The plaintiff's counsel then applied for an adjournment to ascertain whether the plaintiff could appeal against this ruling. I granted the adjournment.

17 Parties appeared before me on 20 October 2014. The plaintiff's counsel sought a further

adjournment so as to take instructions from the plaintiff on whether to seek leave to appeal against my decision not to recuse myself. I granted this adjournment too. Parties next appeared before me on 27 October 2014. At the hearing, the plaintiff's counsel informed me that the plaintiff was not seeking leave to appeal against my decision not to recuse myself. However, in a letter sent by the plaintiff's counsel to the Supreme Court on 24 October 2014, the plaintiff's position was stated as such:

> … [the plaintiff's] agreement to proceed with the OS hearing must not be construed to imply that she had not abandoned her original objections to Justice Tan Siong Thye's hearing of this matter.

18 At the hearing on 27 October 2014, the plaintiff's counsel applied for her to be present although her counsel had advised her that this was not the usual practice. The defendant objected as she had not provided any reason for this application. Again, I allowed her to be present.

The plaintiff's submissions

19 In OS 699, the plaintiff sought written grounds for RA 320 and SUM 5875. She cited extensive portions of *Thong Ah Fat v Public Prosecutor* [2012] 1 SLR 676 ("*Thong Ah Fat*") to support her application for written grounds. One of the many references that the plaintiff made to this case was from paragraph 14 of the judgment, which read:

> 14 We emphasise that this crucial judicial duty to give reasons prevails in both civil and criminal cases. Although this duty is not expressly stated under the Criminal Procedure Code 2010 … it is a duty which is inherent in our common law …

20 Having highlighted this judicial duty to give reasons, the plaintiff made four submissions. First, she submitted that the failure to provide written judgments for RA 320 and SUM 5875 was a violation of Art 12 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution"). Her argument was that as other plaintiffs had been given written grounds, she too should be given written grounds. [note: 1] In support of her submission, she cited *Elbow Holdings Pte Ltd v Marina Bay Sands Pte Ltd* [2014] SGHC 26 and *Koh Chong Chian and others v Treasure Resort Pte Ltd and another* [2014] SGHC 51 as instances in which the High Court furnished written grounds with respect to appeals against decisions of ARs in relation to discovery applications. [note: 2] On the basis of those cases, the plaintiff sought my written judgments for RA 320 and SUM 5875.

21 Second, the plaintiff submitted that because there was no written judgment for RA 320, she was unable to make proper submissions for her leave application in SUM 5875. [note: 3] Thus, she was deprived of a fair hearing and her interests were prejudiced.

22 Third, the plaintiff submitted that written grounds would be beneficial to the local jurisprudence as they would create more consistency in judicial decisions and provide both counsel and litigants with the benefit of the court's reasoning. [note: 4]

23 Fourth, the plaintiff submitted that written judgments would save the court's time and resources as retrials would be avoided. In support of her submission, she pointed to *Thong Ah Fat* as an example where the Court of Appeal had ordered a retrial on the basis of inadequate reasoning in the written judgment of the trial judge. [note: 5]

The defendant's submissions

24 The defendant's counsel made very brief oral submissions. First, he submitted that the court

had the discretion to decide whether to issue written grounds. For this, he relied on *Thong Ah Fat*. Second, he noted that even the Court of Appeal did not issue written grounds in every case. Third, he argued that the plaintiff had suffered no prejudice, as neither the defendant nor the plaintiff had the benefit of any written grounds. Moreover, the plaintiff was represented by counsel in all her applications and her counsel must have been familiar with the issues and arguments.

My decision

Should I recuse myself from hearing OS 699?

25 I shall first deal with the plaintiff's preliminary application for me to recuse myself from hearing of OS 699. The basis for this application was that I had disallowed her two previous applications, namely RA 320 and SUM 5875. She further alleged in the letter dated 24 October 2014 sent by her counsel to the Supreme Court Registry that I was "clearly tainted by apparent bias" and that if I proceeded to hear OS 699 it would be a violation of natural justice as it was a case that was essentially a complaint against the judge.

26 In the recent case of *Manjit Singh s/o Kirpal Singh and another v Attorney-General* [2013] 2 SLR 1108 ("*Manjit*"), the applicants similarly applied for the judge to recuse himself on grounds of apparent bias. The judge declined to recuse himself because he found no circumstances that gave rise to a reasonable suspicion or apprehension in a fair-minded person with knowledge of the relevant facts that he, the decision maker, was biased (citing, and applying, the test laid out in *Re Shankar Alan s/o Anant Kulkarni* [2007] 1 SLR(R) 85 at [91]). He noted, at [34], a few principles on recusal which are of relevance to this case, namely:

(a) An application to a judge to recuse himself must be based on credible grounds (citing *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [148]);

(b) A claim that there is apparent bias on the part of a judge must be based on facts that are substantially true and accurate. The fact that an allegation of bias has been made against a judge is not enough; otherwise, a party could secure a judge of his choice by merely alleging bias on the part of other judges (citing *Tang Liang Hong v Lee Kuan Yew* [1997] 3 SLR(R) 576 at [51]); and

(c) In determining the application, the judge must have regard to the quality of the allegation. A judge would be as wrong as to yield to a tenuous or frivolous objection as he would to ignore an objection of substance (citing *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 at [55]).

27 In this case, the plaintiff's application for me to recuse myself was not based on any credible grounds, and was frivolous. This applied equally to her allegations of apparent bias and natural justice. In fact, it would have been inappropriate for any other judge to have dealt with this application, OS 699. This was because OS 699 was an application specifically demanding that I issue written judgments for RA 320 and SUM 5875. Therefore it was incumbent on me to hear this application because the plaintiff was insistent that the judge who heard her previous applications write the judgments. Applying the principles laid out in *Manjit*, I therefore dismissed the plaintiff's application for me to recuse myself. With this, I turn now to address the plaintiff's submissions.

Did the failure to provide the plaintiff with written grounds violate Article 12 of the Constitution?

28 In the proceedings, the plaintiff first submitted that Art 12 of the Constitution was the provision on equality before the law. Her case was that Art 12 was violated when I failed to provide my written grounds to her with respect to RA 320 and SUM 5878. Specifically, she relied on Art 12(1) which reads as follows:

> **12.**—(1) All persons are equal before the law and entitled to the equal protection of the law.

29 I disagreed with the plaintiff's interpretation of Art 12. The objective of Art 12 was made clear in *Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR(R) 489 (at [54], citing *Ong Ah Chuan and another v Public Prosecutor* [1979–1980] SLR(R) 710) where it was held that:

> Equality before the law and equal protection of the law require that like should be compared with like. *What Art 12(1) of the Constitution assures to the individual is the right to equal treatment with other individuals in similar circumstances.* It prohibits laws which require that some individuals within a single class should be treated by way of punishment more harshly than others … [emphasis added]

30 The issue of whether a person is unequally treated under the law was ventilated before the Court of Appeal in *Eng Foong Ho and others v Attorney-General* [2009] 2 SLR(R) 542 ("*Eng Foong Ho*"). The salient facts of that case are as follows.

31 In *Eng Foong Ho*, the Government invoked its powers under the Land Acquisition Act (Cap 152, 1985 Rev Ed) to acquire land belonging to the Jin Long Si Temple ("the Temple"). Next to the temple stood the Ramakrishna Mission ("the Mission") and the Bartley Christian Church ("the Church"). The appellants were temple devotees and they brought an action on the basis of Art 12(1), claiming that they had been unfairly treated since the Temple's land had been acquired but neither the Mission nor the Church's land had been acquired.

32 The appellant's case in *Eng Foong Ho* was similar to this case. In that case, the Mission, the Church and the Temple belonged to the same class as they were religious institutions located in a predominantly residential area in close proximity to the Bartley MRT station. However, only the Temple's land had been acquired. Furthermore, the Mission and the Church would have derived benefit from having a proximate MRT station. Therefore, it was argued that the Government had treated the Temple unequally (at [23]–[24]). The Temple's action was dismissed.

33 In this case, the plaintiff was afforded the opportunity to attend the chamber hearings. However, she could not show that she had any normative right or an entitlement to a *written* decision by the court. In her submissions, she could not show anywhere in the Constitution, the rules of natural justice or the Rules of Court (Cap 322, R 5, 2006 Rev Ed) that judges have a duty to deliver *written* grounds in *every* case and that litigants correspondingly have a legal right in every case to *written* grounds. The premise of her claim was based on a specious comparison with other decisions in which other judges had delivered written decisions to the parties. Her argument was grounded on consequential reasoning and could not give rise to any *normative* right to written decisions by the court. I hence dismissed her first submission.

Was the plaintiff prejudiced in her preparation for SUM 5875?

34 Second, the plaintiff alleged that she was prejudiced because she had not been given written grounds in RA 320. As a result, she was unable to adequately prepare for SUM 5875. I did not agree, as her claim was not supported by the evidence.

35 The plaintiff was represented by the same law firm, Peter Low LLC, in all the proceedings relating to her discovery application, namely, SUM 3299, RA 320, and SUM 5875. Her counsel in RA 320 must have known of the reasons her appeal against the AR's decision was dismissed. This was because her counsel argued the appeal, as well as the application before the AR. He must have explained to her the reasons she was unsuccessful at both hearings. Later, the same counsel represented her in SUM 5875 when she applied for leave to appeal. In the lead up to each application or appeal, her counsel would have had to apprise her of all the arguments that took place in the previous proceedings, as well as why each court arrived at its ultimate decision. Therefore, I did not see how the plaintiff would have been prejudiced due to the lack of written grounds for RA 320.

36 In any event, it was evident from the plaintiff's written submissions for SUM 5875 that she was aware of the relevant issues for the purpose of the application for leave to the Court of Appeal. The submissions were comprehensive and apposite. All the material issues were addressed and there was no hint that she was prejudiced in any way. In the circumstances, I found that she was not prejudiced.

Would written grounds benefit the local jurisprudence?

37 Third, the plaintiff submitted that written judgments would enrich the local jurisprudence. In my view, although written judgments generally benefit the local jurisprudence, it is the quality and not quantity of the written judgments that ultimately matters.

38 In this case, I observed that the plaintiff was motivated more by the fact that she had not been given written judgments for RA 320 and SUM 5875 and her insistence that these be given as of right. Her interest in enriching the local jurisprudence was furthest away from her consideration in bringing this OS. Even if that were her primary motivation, the discovery proceedings involved largely routine matters that turned primarily on the facts. There were no unique points of law. Any contribution to the local jurisprudence would have been of minimal significance. Consequently, this submission also failed.

Would the issuing of written grounds save judicial time and resources?

39 The plaintiff's last submission was that time and resources would be saved if written grounds were issued. She relied on *Thong Ah Fat*, where the Court of Appeal directed a retrial of an accused facing a capital charge as it found the written judgment of the trial judge lacking in material consideration. In my view, the facts of *Thong Ah Fat* were materially different from this case.

40 In *Thong Ah Fat*, the Court of Appeal dealt with the final order of the trial judge, namely, he found the accused guilty and sentenced him to death. The fact-finding process of the trial judge was important to the Court of Appeal for it to understand and appreciate how the trial judge arrived at his finding of guilt.

41 In contrast, the plaintiff's case concerned an interlocutory application for the discovery of documents. The AR had already applied the test of relevance and necessity and adequately explained why the plaintiff had failed to satisfy the threshold test. As I agreed with the AR's decision, I dismissed RA 320. Hence there was no justification for a rehearing of this case as stated in the Supreme Court's reply to the plaintiff dated 21 May 2014.

42 The plaintiff was thus misconceived that there would be a saving of time and resources if I released my written grounds for RA 320 and SUM 5875. In fact, time and resources could have been saved had the plaintiff and her counsel not brought the present application, as there would then have

been no necessity to deliver this written judgement as this case was unmeritorious. Therefore the plaintiff's last submission also failed.

Should I issue my written grounds in this case?

43 Having dealt with the points raised in the plaintiff's submissions, I shall now address the situations in which a judge should release his written grounds and when written grounds are not necessary. *Thong Ah Fat* is instructive in this regard.

44 The starting point is that a judge should always give the reasons for his decision. This can be done either orally or in writing. As the Court of Appeal in *Thong Ah Fat* noted, judges must appreciate that they are judicially accountable for their decisions and it is important that justice must not only be done but seen to be done. This was expressed by the Court of Appeal (at [24]) as follows:

> 24 Judicial accountability is associated with the notion of open justice. Hence, another foundation of the duty to give reasons is the principle that *justice must not only be done but it must be seen to be done*: see [*Soulemezis v Dudley (Holdings) Pty Ltd (1987) 10 NSWLR 247]* at 278 (*per* McHugh JA). Where the reasons for an adverse ruling are not revealed, the litigant may think that the judge has not really understood his case, and the public may form the same opinion. The withholding of reasons may therefore affect the legitimacy of the decision. In our view, *the requirement to give reasons beneficially increases the transparency of the judicial system*.
>
> [emphasis added]

45 With this starting point in mind, I now revisit the key facets of the proceedings relating to RA 320, and consider whether written grounds were necessary for that case.

Why was the plaintiff allowed to be present at SUM 5875 and OS 699?

46 I am conscious of the notion that justice must not only be done but must be seen to be done. It was for this reason that I allowed the plaintiff to be present at SUM 5875 and OS 699 even though the general practice for chamber hearings was that they were conducted in the presence of counsel only but not the parties themselves, unless there are good reasons for the parties to be present. Both the plaintiff's counsel in SUM 5875, from Peter Low LLC, and her present counsel, from L F Violet Netto, knew of this practice. That was why both her counsel in the two different chamber hearings had to seek the court's permission to allow her to be present. Despite the defendant's counsel's objection to her presence on both occasions and her failure to provide good reasons for wanting to be present, I allowed her to be present during OS 699 and for the same reasons I allowed her to be present at SUM 5875 (see above at [7]).

47 The plaintiff's first application to be present was made in SUM 5875 when she sought leave to appeal against my decision in RA 320. The second was in OS 699, where she applied for my written grounds in RA 320 and SUM 5875. When I allowed her to be present at both proceedings, it was for several reasons.

48 First, it is my view that justice must be transparent. That cause would have been served by her presence at the proceedings as she was deeply interested in her case. Disallowing her presence might have given her the impression that justice was only done behind closed doors. She might have thought that her interests were not being well advanced in the best possible way. She might also have been susceptible to all sorts of negative impressions of the justice system should the decision

be adverse to her.

49 Second, justice must not only be done but must be seen to be done. This could not have been achieved had I denied her application to be present at the chamber hearings. Had I done so, she would not have been able to see how counsel delivered their arguments or how the court arrived at its decision. Furthermore, if the proceedings yielded a result that was not in her favour, she may have been even more disgruntled.

50 Third, I wanted her to listen to the arguments of counsel, my oral interventions, as well as my oral reasons which unfortunately I had not fully recorded in my notes. Despite the above, she was still dissatisfied and demanded that I provide my written judgments.

Are written judgments necessary in every instance?

51 Written judgments are not necessary in every instance. In fact, requiring written grounds in every case would be impractical. This was observed by the Court of Appeal in *Thong Ah Fat* (at [29]–[30] and [43]):

> 29 This requirement to set out reasons may increase costs and result in delays. Such consequences are a real concern. The Supreme Court of Canada noted in *MacDonald v The Queen* (1976) 29 CCC (2d) 257 at 262-263 that "the volume of criminal work makes an indiscriminate requirement of reasons impractical". It would indeed be undesirable if considerations of form rather than of substance required unnecessary time to be spent in writing rather than in judging. Similarly, the Australian courts, which have imposed such a general duty, are aware of these concerns militating against it. Even while upholding the duty, they recognise the heavy court load and the constraints faced by first instance judges …
>
> 30 We think that the correct response to these concerns is to have a standard of explanation *which corresponds to the requirements of the case* rather than to reject the duty totally. The key is to strike an appropriate balance. While such anxieties do not warrant outright rejection of the duty altogether, they have been taken into account quite rightly in dispensing with reasons in certain cases and matters … in accepting the appropriateness of abbreviated oral reasons in some situations, and in adjusting the level of detail required of the statement of reasons to suit the circumstances in other cases.
>
> …
>
> 43 … we recognise that the duty to give reasons may increase costs and result in delays, and that judges are often expected to manage a heavy court list on a daily basis (see above at [29]). The extent of the duty to provide reasons must therefore always be tempered with the need to ensure that judicial time is used effectively and efficiently. This would entail achieving a balanced mix of time spent by a judge in hearings and in preparing reasons for his or her decisions.

52 The Court of Appeal in *Thong Ah Fat* explained that the duty to give reasons should not be equated to the duty to issue a written judgment or provide oral grounds of decision in every case (at [31]–[33]):

> 31 At this juncture, ***we would caution against equating the duty to give reasons with a duty to issue a written judgment or provide oral grounds of decision in every case*** . Where a judge hears a large number of cases during a sitting (for example, a sentencing court making

routine sentencing decisions based on benchmark sentences) *it would be impractical and unrealistic to expect him or her to issue written judgments or even give oral grounds of decision for every case that is dealt with*. In addition, we would echo Kirby P's pertinent reminder in *[Waterson v Batten (13 May 1988) (New South Wales Court of Appeal)]* that under the pressure of today's court lists, there is no time for fastidious precision in the drafting of reasons. He quite rightly cautioned against treating a judgment "as if its language had been honed in countless hours of reflection and revision", emphasising that a "*practical standard* must be adopted" [emphasis added]. Similarly, Nygh J in *In the Marriage Of: John Christopher Towns Appellant/Husband and Deborah Jane Towns Respondent/Wife* [1990] FamCA 129 stated that (at [18]):

> [the Full Court of the Family Court of Australia] has, on numerous occasions, displayed a considerable amount of latitude towards judges at first instance being mindful that they are often sitting in busy lists and have to deliver their judgments on an extemporary basis which may not make it possible for them to express themselves with the directness and clarity that an appellate tribunal and litigants might wish.

32 Additionally, there are exceptions to this duty to provide reasons. Thus, in certain instances, a judge may not be in error when he fails to state reasons. In *Sun Alliance Insurance Ltd v Massoud* [1989] VR 8 ("*Sun Alliance*"), Gray J pragmatically stated that (at 19):

> The simplicity of the context of the case or the state of the evidence may be such that a mere statement of the judge's conclusion will sufficiently indicate the basis of a decision ... In such cases, the foundation for the judge's conclusion will be indicated as a matter of necessary inference.
>
> The same was stated in *Brittingham v Williams* [1932] VLR 237 at 239 and [*Public Service Board of New South Wales v Osmond (1986) 63 ALR 559]* at 566. But this approach must be confined to very clear cases and in relation to specific and straightforward factual or legal issues. Otherwise, the exceptions would seriously undermine the duty to give reasons.

3 3 *We also note that the duty has been held not to apply to certain matters of lesser significance. For example, there are some types of interlocutory applications, mainly those with a procedural focus, which a judge can properly make an order without giving reasons*: see *Capital and Suburban Properties Ltd v Swycher* [1976] Ch 319 at 325-326 (*per* Buckley LJ) and *Knight v Clifton* [1971] Ch 700 at 721. *Buckley LJ had in mind instances where the judge is asked to exercise his discretion on relatively insignificant questions, such as whether a matter should be expedited or adjourned or extra time should be allowed for a party to take some procedural step, or possibly whether relief by way of injunction should be granted or refused. Neither are reasons normally to be expected when a judge exercises his discretion on costs, unless it involves an unusual award*: see *Eagil Trust Co Ltd v Pigott-Brown* [1985] 3 All ER 119 at 122. It appears that many of these exceptions involve a large element of discretion. However, we do not think that it is their discretionary nature *per se* which justifies the dispensation of any explanation. ***Rather, it seems that these exceptions are allowed because they are not decisions that bear directly on substantive matters. For example, even in matters of practice and procedure, where the decision will effectively decide the rights of the parties finally, reasons must be given*** : see *Glen Rees T/as Glynmar Pastoral Co v Walker* (13 December 1988) (New South Wales Court of Appeal) (*per* Kirby P). However, we would caution against equating non-substantive cases as being necessarily insignificant. The court's assessment of the significance of a decision should take into account the circumstances of the case, and its importance should not be judged simply by categorising the decision as being

substantive or procedural in nature. As a rule of thumb, *the more profound the consequences of a decision are, the greater the necessity for detailed reasoning*.

[emphasis added in italics and in bold italics]

53 Two salient points can be noted from the preceding passage. First, although there is a general duty to give reasons for a decision, this duty does not extend to all cases especially the less significant ones. Second, the duty to give reasons does not equate to a duty to provide *written decisions*. The position at law is that when it is necessary or appropriate for the court to issue written grounds, it is the duty of the court to provide them, notwithstanding the pressures of time and resources or any administrative constraints. It may be necessary and appropriate to issue written grounds where any of the following are involved:

(a) complex issues of fact or law;

(b) matters of public importance; and

(c) the laying down of principles that are to be followed in subsequent cases.

54 The present case involved none of these. Let me elaborate.

(1) Why were written grounds unnecessary in RA 320?

55 I note that although the Court of Appeal in *Thong Ah Fat* commented on the duty of an appellate court to provide reasons for its decision, it also advised that if the appellate court affirms the decision of the lower court and agrees with the lower court's reasons, it is not obliged to reprise the reasons (at [44]):

Ordinarily, for an appellate court, it would be sufficient (when it is satisfied with the outcome and adequacy of the reasoning of the lower court) to simply state in affirming the earlier decision that it agrees with the reasons given in support of it. It is not obliged to reprise the reasons or give additional ones in a fresh judgment if it forms the view that this is not necessary. This must be a matter of judgment for the appellate court.

56 This observation is particularly pertinent as I heard the plaintiff's appeal against the decision of the AR in RA 320 in my appellate capacity. At the court below, the AR had issued his written grounds of decision explaining why the plaintiff had not satisfied the threshold of the test of relevance and necessity. It is trite that, unless privilege which is protected from discovery is alleged, relevance and necessity are the operative considerations in deciding whether discovery should be allowed. The satisfaction of these considerations is dependent on the issues in each case, which are in turn dependent on the pleadings of the parties.

57 Turning to RA 320, I had agreed fully with the AR's written grounds of decision. There were no complicated or novel points of law. Neither were there any issues of public interest or anything else that suggested that written grounds were warranted. It was a fact-finding exercise and the plaintiff was ably represented by her counsel, who would have undoubtedly explained to her why her appeal was disallowed. Furthermore, she was allowed to observe the proceedings in chambers despite not having provided any good reasons. For those reasons, I found that issuing written grounds was unnecessary.

(2) Why were written grounds unnecessary in SUM 5875?

58 In SUM 5875, the plaintiff applied for leave to appeal to the Court of Appeal against my decision in RA 320. She was represented by the same counsel who represented her in SUM 3299 and RA 320. Also, she was allowed to be present during the proceedings. There was thus no reason why she would not have known of the reasons for my decision.

59 In any event, the plaintiff had to satisfy the court that her case fell within one of the three criteria listed at [8] above. She failed, and I noted that her discovery application which was an interlocutory application had already gone through two levels of judicial consideration. There must be finality to such interlocutory proceedings or the trial would be delayed further. In my view, there were no special reasons for her case to proceed to the Court of Appeal. As such, I denied her leave.

Conclusion

60 When I dismissed the plaintiff's application on 27 October 2014, I made brief remarks which I find appropriate to be set out here: [note: 6]

> The court agrees with the principles in Thong Ah Fat. Parties should know the reasons for the court's decision. This can be oral or in writing. It is for this reason that despite the Defendant's objection to Plaintiff's presence in these proceedings the court had allowed her to be present on both occasions so that she understands what is going on despite being represented by lawyers.
>
> In the appeal against the order of [the AR], I have explained to parties that the fundamental consideration is whether these documents sought for were relevant and necessary. Parties knew that this is the pivotal determination for discovery application. I had orally explained to the parties that the Plaintiff had not satisfied this principle. And this was the reason for dismissing the appeal.
>
> It was therefore erroneous for Plaintiff to say that she did not know or that the court had not given any reason for that decision. The reasons were articulated but it was not reflected in the notes.
>
> It is because I believe that parties should know the reasons of the court decisions that I have written more than 25 full judgments for last year. More than 70% of those decisions were voluntarily written even before parties had filed any appeal. The court has to exercise its discretion whether or not to issue written judgment. This will depend on the merits of each case.

61 In summary, the plaintiff was aware of the reasons why her application for discovery and the subsequent appeal were dismissed. Throughout the court proceedings, she was ably represented by counsel who must have explained to her why she did not succeed at each stage. This was the case even after she changed her solicitors. For the above reasons, I dismissed OS 699 with costs fixed at $1,500.

[note: 1] Pf's skeletal submissions at para 43.

[note: 2] Pf's skeletal submissions at para 44.

[note: 3] Pf's skeletal submissions at para 54.

[note: 4] Pf's skeletal submissions at para 56.

[note: 5] Pf's skeletal submissions at para 57.

[note: 6] Minute sheet dated 27 October 2014 at pp 2–3.