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

[2024] SGHCR 1

Originating Claim No 222 of 2023 (Summons No 3365 of 2023)

Between

(1) Selvaraj s/o Packirisamy

… *Claimant*

And

(1) Yap Chee Mun
(2) Hoi Wai Han
(3) Sanaullah Khan
(4) Tan Tock Seng Hospital

… *Defendants*

JUDGMENT

[Civil Procedure — Striking out — Whether the claimant's claim in medical negligence for personal injuries should be struck out for being an abuse of process]
[Civil Procedure — Striking out — Whether the claimant's claim in medical negligence for personal injuries should be struck out in the interests of justice]
[Limitation of Actions — Particular causes of action — Tort — Whether the claimant's claim in medical negligence for personal injuries is time-barred]

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Selvaraj s/o Packirisamy
v
Yap Chee Mun and others

[2024] SGHCR 1

General Division of the High Court — Originating Claim No 222 of 2023
(Summons No 3365 of 2023)
AR Gerome Goh Teng Jun
13 December 2023, 15 January 2024

15 January 2024 Judgment reserved.

AR Gerome Goh Teng Jun:

1 HC/OC 222/2023 ("this Suit") is a claim in medical negligence by the claimant, Mr Selvaraj s/o Packirisamy, against the first defendant, Dr Yap Chee Mun, the second defendant, Dr Hoi Wai Han, the third defendant, Dr Sanaullah Khan, and the fourth defendant, Tan Tock Seng Hospital. This Suit arose out of the defendants' diagnosis of the claimant with Type 2 Diabetes Mellitus ("T2DM") and their treatment (or alleged treatment) of the claimant for T2DM and a fall in 2015. The claimant claims that, as a result, he suffers several side effects and is permanently unable to seek gainful employment.[1]

2 The application before me, HC/SUM 3365/2023 ("SUM 3365"), is the defendants' application for the claimant's statement of claim filed on 13 April

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[1] Statement of Claim filed on 13 April 2023 ("SOC") at para 16 to 18.

2023 to be struck out and for this Suit to be dismissed under O 9 r 16(1) of the Rules of Court 2021 ("ROC 2021").

3 The defendants advance two main grounds in support of their application. They submit that the claimant's claim is: (a) time-barred; and (b) without factual basis and obviously unsustainable.

4 Having carefully considered the affidavits filed and the submissions made by the parties, I agree with the defendants on both grounds and allow SUM 3365. I strike out the claimant's statement of claim and dismiss this Suit.

Background facts

Diagnosis of T2DM

5 The claimant was first informed that he had been diagnosed with T2DM and hyperlipidemia on 2 September 2010 at Geylang Polyclinic.[2] His result on a test measuring average blood sugar level ("HbA1c test") was 8.7 and his fasting glucose level was 11.0. He was prescribed with metformin and simvastatin and advised to start treatment and watch his diet.[3]

6 On 12 June 2015, the claimant consulted at Geylang Polyclinic and complained of an upper back lump that had been present for a few days. He was diagnosed with a skin infection. The claimant reported that he did not have T2DM because he experienced no symptoms. The attending doctor ordered a

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2 Claimant's Other Supporting Document filed on 21 July 2023 at p 26.

3 Affidavit of Hoi Wai Han filed on 31 October 2023 ("Hoi's affidavit") at para 5 and pp 27 and 28.

HbA1c test and blood glucose test to measure the claimant's average blood sugar level and fixed a review appointment for the claimant in a few days' time.[4]

7 At the subsequent review on 16 June 2015, the claimant consulted the first defendant at Geylang Polyclinic. The claimant's result on the HbA1c test was 14.0% and his random glucose was 22.9. The claimant was informed by the first defendant that he was diagnosed with T2DM. However, the claimant rejected the diagnosis and insisted on the tests being redone. After the tests were done again, his result on the HbA1c test was 13.4% and his random glucose was 26.5 which confirmed his diagnosis of T2DM. The first defendant reiterated the diagnosis of T2DM to the claimant and referred the claimant to the fourth defendant for management of the claimant's "large abscess over back" and "newly diagnosed [T2DM] with uncontrolled hyperglycemia". The first defendant did not prescribe any medication to the claimant.[5]

8 On 17 June 2015, the claimant attended at the Department of Emergency Medicine of the fourth defendant.[6] Upon his request, he was referred to the Department of Endocrinology in view of "poorly controlled [T2DM] … and abnormal thyroid function tests".[7]

9 On 12 October 2015, the claimant attended at the Department of Endocrinology of the fourth defendant. During this visit, the HbA1c test was repeated and the result was recorded at 13.1%.[8] The claimant was educated and

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4 Hoi's affidavit at para 6 and pp 29 and 30.

5 Hoi's affidavit at para 7 and pp 31 to 34.

6 Hoi's affidavit at para 7.

7 Hoi's affidavit at p 40.

8 Claimant's Other Supporting Document filed on 21 July 2023 at p 20.

counselled on his T2DM diagnosis and started on metformin and glipizide. An appointment with a diabetes nurse educator was given for two months later and he was planned to be screened for diabetes related complications.[9]

Complaints of headache resulting in a fall

10 On 6 December 2015, the claimant attended at the Department of Emergency medicine of the fourth defendant with symptoms of headache and muscle pain. No neurological deficit was documented and he scored 15 on the Glasgow Coma Scale ("GSC"). He was discharged with medication to treat his symptoms.[10]

11 Two days later, on 8 December 2015, the claimant returned to the Department of Emergency Medicine of the fourth defendant with complaints of headaches and giddiness after sustaining a fall at home ("the 2015 Fall").[11] No external scalp injury or focal neurological deficit was documented and he again scored 15 on the GCS. A computed tomography ("CT") scan was performed and revealed "mixed subdural haematoma with acute bleeding causing mass effect over the brain stem from uncal herniation". A subdural haematoma ("SDH") is a collection of blood between the skull and the surface of the brain.[12] He was then admitted to the Neurological Intensive Care Unit of the fourth defendant for close monitoring. He remained neurologically stable with no evolving neurological deficit and thereafter was transferred to the general ward under the fourth defendant's Department of Neurosurgery.

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9 Hoi's affidavit at paras 9 and 10 and p 40.

10 Hoi's affidavit at para 11 and p 41.

11 Hoi's affidavit at para 12 and p 41.

12 Hoi's affidavit at p 43.

12 On 11 December 2015, a CT angiogram of brain was performed and the result was reported as:[13]

> 1. Bilateral acute SDH of note, there is marginal increased in density and depth on the right
>
> 2. Diffuse cerebral edema and mass effect is largely unchanged, with stable bilateral uncal herniation
>
> 3. No aneurysm/AVM on CT angiography

Worsening of the left SDH

13 On 20 December 2015, whilst being observed in the general ward, the claimant became drowsy. He scored 11 on the GCS which was a deterioration of his previous score of 15. An urgent CT scan of his brain was performed which revealed a worsening of the claimant's left SDH.[14] The result was reported as:[15]

> 1. Temporal evolution of acute bleed in bilateral SDH is noted; however the SDH remains stable in its thickness and mass effect
>
> 2. Stable acute SDH in the interhemispheric fissure and tentorial leaves
>
> 3. No new acute intracranial hemorrhage or territorial infarct

14 The medical team of the fourth defendant considered urgent surgical intervention necessary to save the claimant's life and prevent permanent brain damage.[16] Due to the drop in the claimant's GCS, the claimant lacked clear decision-making capacity and was drowsy and incompetent.[17] The medical team

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13 Hoi's affidavit at p 41.

14 Hoi's affidavit at para 13.

15 Hoi's affidavit at p 41.

16 Hoi's affidavit at paras 14 and 15 and page 42.

17 Hoi's affidavit at pp 42 and 43; Claimant's Other Supporting Document filed on 21 July 2023 at p 7.

obtained consent from the claimant's mother on a phone call and performed an "emergency bilateral burr hole drainage of acute on chronic subdural haematoma" ("the Surgery").[18] The medical team included the third defendant but the third defendant did not perform the Surgery.[19]

15 The claimant's post-operation recovery was smooth and his GCS improved to 15. A CT scan of his brain was repeated on 28 December 2015. He was ambulatory and stable on 30 December 2015 and was finally discharged on that date.[20]

Post-operation impact

16 Dr Lee Keng Thiam ("Dr Lee") from the Department of Orthopaedic Surgery of the fourth defendant, in a report dated 13 August 2020, opined that the brain injury may have caused the claimant some degree of permanent cognitive impairment. This, coupled with his right shoulder disability arising from a fall on a bus that hit a bus-stop in 2010, makes it difficult for him to seek any gainful employment permanently. Given that the tear in his right shoulder has progressed in the ten years since his injury, surgical repair is likely to be too late although muscle transfer may be a possible option.[21]

17 He was admitted to the Department of Neurosurgery of the fourth defendant from 12 to 13 January 2016 for the management of generalised weakness associated with nausea and abdominal discomfort and bloatedness. The repeat CT brain scan performed then showed improvement of the right

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18 Hoi's affidavit at pp 42 and 43.

19 Hoi's affidavit at para 67.

20 Hoi's affidavit at para 16 and pp 42 and 43.

21 Claimant's Other Supporting Document filed on 21 July 2023 at pp 18 and 19.

chronic SDH, and resolution of the left SDH. No new bleed was noted. He was thereafter discharged well and stable on 13 January 2016.[22]

18 Thereafter, the claimant sought medical reports from the defendants in March 2016, applied for legal aid from the Legal Aid Bureau to commence a negligence claim against the second and fourth defendants sometime before May 2016, made further requests to Geylang Polyclinic and the fourth defendant for medical reports from October 2016 to July 2017, complained to the Ministry of Health about the defendants in November 2017, and appealed to Legal Aid Bureau in May 2018 regarding the latter's decision to refuse aid to him.[23]

The claimant's statement of claim

19 The claimant commenced this Suit against the defendants on 13 April 2023, more than seven years after he was discharged from the fourth defendant following the Surgery. I summarise the claimant's claims made in his Statement of Claim as against each defendant as follows:

> (a) As against the first defendant, the claimant alleges that the first defendant had failed to ensure that he had fasted before doing a blood glucose test which resulted in the wrongful diagnosis that he suffered from T2DM.[24] The first defendant also wrongfully prescribed the claimant with metformin which led to a variety of side effects such as weakness in the limbs and body, lack of awareness and difficulty concentrating, trembling and/or shaking, tiredness, slurring of speech and confusion/inability to express thoughts in words ("Side Effects").

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22 Claimant's Other Supporting Document filed on 21 July 2023 at pp 2 and 21.

23 Hoi's affidavit at paras 18 to 38.

24 SOC at para 4.

These affected the claimant's day-to-day living activities. Given that his mobility was severely impaired since his accident in 2010, the consumption of metformin made performing day-to-day living activities almost impossible.[25]

(b) As regards the second defendant, the claimant alleges that the second defendant wrongfully prescribed metformin to him which caused him to suffer the Side Effects and the 2015 Fall, whereby he suddenly lost consciousness and collapsed after having gotten out of bed and hit the floor head-first.[26]

(c) As regards the third defendant, the claimant alleges that the third defendant had ordered the Surgery to be performed on him without his consent which caused him to be unable to speak and/or communicate coherently, suffer impairment of his brain functions, become unable to seek gainful employment and reliant on financial assistance to sustain his basic needs ("Permanent Disability").[27] The claimant also alleges that the third defendant had negligently treated him following the 2015 Fall.

(d) As regards the fourth defendant, the claimant alleges that the fourth defendant was negligent in diagnosing him with T2DM, prescribing metformin which caused the Side Effects and the 2015 Fall, treating him after the 2015 Fall which caused the Permanent Disability.[28]

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25 SOC at paras 5 to 7.

26 SOC at paras 12 to 14.

27 SOC at paras 15 to 16.

28 SOC at paras 17 to 18.

20 As apparent from the summary above, some of the claimant's claims against the defendants overlaps. As against the first, second and fourth defendants, the claimant claims that they negligently diagnosed him with T2DM and negligently prescribed metformin to him. As regards the third and fourth defendants, the claimant claims that they were negligent in his treatment following the 2015 Fall which includes proceeding with the Surgery without his consent.

The claimant's expert report

21 A medical negligence claim is expected to be supported by expert opinion. Practice Direction 163(1) of the Supreme Court Practice Directions 2021 ("SCPD") states that parties in medical negligence claims are to comply with the Protocol for Medical Negligence Cases in the General Division of the High Court ("the Medical Negligence Protocol") at Appendix H of the SCPD. The Medical Negligence Protocol explains that a medical report and medical records of the patient are often essential for a claimant to consider whether he or she has a viable claim or cause of action against his or her doctor and/or hospital (at para 1). Thus, claimants are expected to file and serve the main documents relied on in support of the claim including expert reports (at para 4).

22 The claimant did not file and serve any expert report in support of his claim when this Suit was commenced. However, he was later given permission in a case conference to obtain and submit an expert report. On 23 August 2023, he submitted a specialist medicolegal report for "court purposes" from Dr Yeo Poh Teck ("Dr Yeo") dated 14 August 2023.[29]

[29] Claimant's Other Supporting Document filed 23 August 2023 at p 1.

23 I briefly summarise Dr Yeo's report. Dr Yeo chronicled the claimant's history of complaints from April 2010 and referred to the medical reports written by all the other doctors who treated the claimant. He also noted that the claimant did not agree with the diagnosis made by the defendants that he had T2DM and the Surgery conducted. He also refused to return to follow-up with the fourth defendant.[30]

24 Dr Yeo made the following findings in his report:

(a) The claimant passed an abbreviated mental test on all counts. His mentation appeared to be intact although he was sometimes a little bit incoherent in time and place.[31]

(b) The laboratory investigations confirmed that the claimant had grossly elevated HbA1c (with the results at 8.7% in 2010, 24.0% in 2015 and 7.1% in 2020) and blood sugar of 16.5 mmol/L in 2015. These results were consistent with the World Health Organization's criteria of the diagnosis of T2DM. His grossly elevated HBA1c of 8.7% in 2010 indicated that the claimant had T2DM for about one year before he presented to doctors in 2010.[32]

(c) The defendants' decision to treat T2DM with oral diabetic agents was correct. Unfortunately, the medications allegedly gave the claimant Side Effects from June 2015 to December 2015.[33]

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30 Claimant's Other Supporting Document filed 23 August 2023 at p 8.

31 Claimant's Other Supporting Document filed 23 August 2023 at pp 7 and 8.

32 Claimant's Other Supporting Document filed 23 August 2023 at p 8.

33 Claimant's Other Supporting Document filed 23 August 2023 at p 8.

(d) The claimant's "constellation of symptoms" including giddiness, memory disturbance, foggy thinking, temper, dyscontrol particularly with easy anger and general lethargy were consistent with the diagnosis of post concessional syndrome, a consequence of serious head injury and SDH.[34]

(e) The various treatments given to him were appropriate.[35]

The parties' cases

25 The defendants' application to strike out the claimant's claim is based on O 9 r 16 of the ROC 2021. Order 9 r 16(1) and O 9 r 16(2) state as follows:

> 16.—(1) The Court may order any or part of any pleading to be struck out or amended, on the ground that —
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> (*a*) it discloses no reasonable cause of action or defence;
>
> (*b*) it is an abuse of process of the Court; or
>
> (*c*) it is in the interests of justice to do so,
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly.
>
> (2) No evidence is admissible on an application under paragraph (1)(*a*).

26 The defendants submit that the claimant's statement of claim ought to be struck out and this Suit ought to be dismissed for two reasons.

27 First, the claimant's claim is time-barred as more than three years have passed since the claimant's cause of action accrued and since he acquired the

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34 Claimant's Other Supporting Document filed 23 August 2023 at pp 8 and 9.

35 Claimant's Other Supporting Document filed 23 August 2023 at p 9.

requisite knowledge to bring an action. It would therefore be an abuse of process and in the interests of justice to strike out the claimant's claim.[36]

28 Second, the claimant's claim is without factual basis or substance, contradicted by the claimant's medical reports and obviously unsustainable. Even Dr Yeo's expert report submitted by the claimant (see [22]–[24(e)] above) does not support his claim.[37]

29 I note that while the defendants reference all three grounds under O 9 r 16(1) in their submissions,[38] they do not explicitly submit that the claimant's claim did not disclose a reasonable cause of action *without consideration of any admissible evidence* as required pursuant to O 9 r 16(2). The reason why no affidavit can be filed in support of an application to strike out under this ground is because "it is essentially a question of law and the pleaded facts are presumed to be true in favour of the claimant" (see *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 18/19/5). For clarity, an applicant seeking to strike out pleadings on this ground ought to specifically address the court of its case on the presumption that the pleaded facts are true in the favour of the respondent. I thus proceed on the basis that the defendants rely on O 9 r 16(1)(*b*) and O 9 r 16(1)(*c*) in the main.

30 The claimant filed a reply affidavit contesting SUM 3365 but did not file any written submissions. His reply affidavit comprises various complaints

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36 Defendants' written submissions ("DWS") at para 19.

37 DWS at para 36.

38 DWS at para 2.

against the defendants' diagnosis and treatment of him.[39] Amongst the points raised in his reply affidavit, he also alleges that there was fabrication of the details in the medical reports and conspiracy between the defendants.[40] During the hearing before me, the claimant repeated his assertions that the defendants were negligent in diagnosing him with T2DM, prescribing metformin to him and performing the Surgery on him without his consent. In response to the defendants' submission on the time-bar, he alleges that the defendants colluded and used tricks to cause the time bar. He also denies that his claims have no factual basis because all the relevant documentation of his claims has been put before the court.

Issues to be determined

31 The central issue in SUM 3365 is whether the claimant's claim ought to be struck out pursuant to O 9 r 16 of the ROC 2021. Two subsidiary issues arise for my decision:

(a) whether the claimant's claim is time-barred; and

(b) whether the claimant's claim is plainly and obviously unsustainable.

My decision

The law on striking out

32 I begin with the law on striking out. O 9 r 16(1) of the ROC 2021 is identical in effect to O 18 r 19(1) of the Rules of Court 2014 ("ROC 2014"),

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39 Claimant's reply affidavit filed on 21 November 2023.

40 Claimant's reply affidavit filed on 21 November 2023 at pp 4, 5, 6.

except that O 9 r 16(1)(*c*) of the ROC 2021 replaces O 18 r 19(1)(*b*) and O 18 r 19(1)(*c*) of the ROC 2014 to build in the Ideals set out in O 3 r 1 of the ROC 2021, *ie*, to do what the interests of justice requires (*Tiger Pictures Entertainment Ltd v Encore Films Pte Ltd* [2023] SGHC 255 at [16] citing *Singapore Rules of Court: A Practice Guide* (Chua Lee Ming *et al* eds) (Academy Publishing, 2023) at para 09.051).

33 The General Division of the High Court, in *Leong Quee Ching Karen v Lim Soon Huat and others* [2022] SGHC 309 ("*Leong Quee Ching Karen*") at [25]–[26], set out the following general guidance on the law on striking out:

> (a) First, it is trite that the bar for succeeding in a striking out application is a high one. The power to strike out is "very sparingly exercised, and only [applied] in very exceptional cases" and would not be justified "merely because the story told in the pleadings was highly improbable, and one which it was difficult to believe could be proved" (*Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd and another and another appeal* [2009] 2 SLR(R) 814 at [172]).
>
> (b) Second, the applicant in a striking out application bears the burden of proving that the claim is "obviously unsustainable, the pleadings [are] unarguably bad and it must be impossible, not just improbable, for the claim to succeed before the court will strike it out" (*Koh Kim Teck v Credit Suisse AG, Singapore Branch* [2015] SGHC 52 at [21] and *Bank of China Ltd, Singapore Branch v BP Singapore Pte Ltd and others* [2021] 5 SLR 738 at [21]).

34 The tests for establishing each ground of O 9 r 16(1) of the ROC 2021 are as follows:

(a) Under O 9 r 16(1)(*a*), the test is whether the action has some chance of success when only the allegations in the pleadings are concerned (*Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 ("*Iskandar bin Rahmat*") at [17]).

(b) Under O 9 r 16(1)(*b*), the test is whether the pleadings constitute an abuse of process of the court. The court will consider whether the process of the court has been used properly, the good faith of the parties, public policy and the interests of justice to prevent improper use of its machinery and the judicial process as a means of vexation and oppression (*Iskandar bin Rahmat* at [18]). For instance, if a claimant knowingly pursues a case that is "doomed to fail", the claimant would be wasting the court's time and this would amount to an abuse of process as the proceedings serve no useful purpose (*Leong Quee Ching Karen* at [27] citing *Kim Hok Yung and others v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank) (Lee Mon Sun, third party)* [2000] 2 SLR(R) 455 at [17]).

(c) Under O 9 r 16(1)(*c*), the test is whether it is in the interests of justice to strike out the pleadings. This gives effect to the court's inherent jurisdiction to prevent injustice, such as where the claim is plainly or obviously unsustainable (*Iskandar bin Rahmat* at [19]). This provision is residuary in nature and intended to empower the court to terminate an action or dismiss a defence or make any other appropriate order if this outcome is necessary to achieve the interests of justice. If there are circumstances which do not fall within O 9 r 16(1)(*a*) or

O 9 r 16(1)(*b*), they may be caught by this ground (*Leong Quee Ching Karen* at [27]).

35 Having regard to the authorities on the law on striking out, I am of the view that the claimant's case ought to be struck out as it is plainly or obviously unsustainable.

The claimant's claim is time-barred

36 I agree with the defendants that the claimant's claim is time-barred as more than three years have passed since the claimant's cause of action accrued and he acquired the requisite knowledge to bring an action against the defendants.

37 The starting point for bringing an action founded on tort is six years from the date on which the cause of action accrued as stated in s 6(1) of the Limitation Act (Cap 163, Rev Ed 1996) ("Limitation Act"). However, s 24A(2) of the Limitation Act sets out the time limits applicable to actions for negligence, nuisance or beach of duty in respect of latent injuries and damage. It provides as follows:

> **24A.**—(1) This section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision).
>
> (2) An action to which this section applies, where the damages claimed consist of or include damages in respect of personal

injuries to the plaintiff or any other person, shall not be brought after the expiration of —

(*a*) 3 years from the date on which the cause of action accrued; or

(*b*) 3 years from the earliest date on which the plaintiff has the knowledge required for bringing an action for damages in respect of the relevant injury, if that period expires later than the period mentioned in paragraph (*a*).

(3) An action to which this section applies, other than one referred to in subsection (2), shall not be brought after the expiration of the period of —

(*a*) 6 years from the date on which the cause of action accrued; or

(*b*) 3 years from the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action, if that period expires later than the period mentioned in paragraph (*a*).

(4) In subsections (2) and (3), the knowledge required for bringing an action for damages in respect of the relevant injury or damage (as the case may be) means knowledge —

(*a*) that the injury or damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;

(*b*) of the identity of the defendant;

(*c*) if it is alleged that the act or omission was that of a person other than the defendant, of the identity of that person and the additional facts supporting the bringing of an action against the defendant; and

(*d*) of material facts about the injury or damage which would lead a reasonable person who had suffered such injury or damage to consider it sufficiently serious to justify his instituting proceedings for damages

> against a defendant who did not dispute liability and was able to satisfy a judgment.
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> (5) Knowledge that any act or omission did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant for the purposes of subsections (2) and (3).
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> (6) For the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to acquire —
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> (*a*) from facts observable or ascertainable by him; or
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> (*b*) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek.
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> (7) A person shall not be taken by virtue of subsection (6) to have knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

38 As the claimant's negligence claim against the defendants is in respect of personal injuries to himself, s 24A(2) provides that the action shall not be brought (*a*) after three years from the date on which the cause of action accrued; or (*b*) three years from the earliest date on which the claimant has the knowledge required for bringing an action for damages in respect of the relevant injury, if that period expires later than the period mentioned in s 24A(2)(*a*).

39 The date on which the cause of action accrued for the allegations made by the claimant against the defendants are as follows:

> (a) In respect of the claimant's action against the first defendant as summarised at [19(a) above], the cause of action would have accrued on 16 June 2015 when the claimant consulted the first defendant at Geylang Polyclinic.[41]

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41 SOC at para 2.

(b) In respect of the claimant's action against the second defendant as summarised at [19(b) above], this arises out of an alleged consultation with the second defendant towards the end of 2015. I note that the second defendant denies that she treated or managed the claimant.[42] That said, according to the claimant's own case, the cause of action would have accrued by the end of 2015.

(c) In respect of the claimant's action against the third defendant as summarised at [19(c) above], the medical records show that the claimant was discharged on 30 December 2015 and there was no evidence of any follow up with the third defendant since then (see [0]–[15] above). The cause of action for the alleged negligence in his treatment following the 2015 Fall and the Surgery would have accrued by 30 December 2015.

(d) In respect of the claimant's action against the fourth defendant as summarised at [19(d) above], the allegations pertaining to the diagnosis of T2DM and prescription of metformin arose out of the claimant's consultations at the fourth defendant on 17 June 2015, 12 October 2015 and 6 December 2015 (see [8]–[10] above). The cause of action for these allegations would have accrued on those dates respectively. The cause of action for the alleged negligence in his treatment following the 2015 Fall and the Surgery would have accrued by 30 December 2015.

As this Suit was commenced by the claimant on 13 April 2023, more than three years from the date on which any of the causes of action alleged by the claimant accrued, the claimant's claim is time-barred.

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42 Hoi's affidavit at para 52.

40 The claimant does not assert in his statement of claim or reply affidavit that he only had knowledge required for the bringing of any of these actions at a later date. The claimant also does not identify any specific time by which he had the knowledge required to bring this Suit. The defendants submit that, in any case, the claimant had the requisite knowledge to bring an action more than three years before this Suit was filed.[43] In view of the claimant's position, it is strictly not necessary for me to go on to consider whether the three-year limitation ought to run from a later date pursuant to s 24A(2)(*b*) of the Limitation Act. However, since the defendants have made submissions on the point, I proceed to consider this issue for completeness.

41 In this regard, I note that s 24A(4) of the Limitation Act defines the knowledge required to bring an action for damages in respect of the relevant injury or damage as knowledge:

> (*a*) that injury or damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;
>
> (*b*) of the identity of the defendant;
>
> (*c*) if it is alleged that the act or omission was that of a person other than the defendant, of the identity of that person and the additional facts supporting the bringing of an action against the defendant; and
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> (*d*) of material facts about the injury or damage which would lead a reasonable person who had suffered such injury or damage to consider it sufficiently serious to justify his instituting proceedings for damages

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[43] DWS at para 25.

against a defendant who did not dispute liability and was able to satisfy a judgment.

Section 24A(6) of the Limitation Act further states that a person's knowledge includes knowledge which he might reasonably have been expected to acquire:

(*a*) from facts observable or ascertainable by him; or

(*b*) from facts ascertainable by him with the appropriate expert advice which it is reasonable for him to seek.

42 The Court of Appeal, in *Lian Kok Hong v Ow Wah Foong and another* [2008] 4 SLR(R) 165 ("*Lian Kok Hong*") at [36]–[38], elaborated on what constitutes knowledge under s 24A(4) of the Limitation Act. For the purposes of s 24A(4)(*a*), knowledge is to be interpreted in broad terms of the facts on which the plaintiff's claim is based and of the defendant's acts or omissions and knowing that there is a real possibility that those acts or omissions have been a cause of the damage. With regard to "attributability", the claimant need not know the details of what went wrong, and it is wholly irrelevant whether he appreciated that what went wrong amounted in law to negligence, as long as *he knows of the factual essence of his complaint*. For the purposes of s 24A(4)(*d*), a claimant is not required to know that he had a possible cause of action and the requirement for the injury or damage to be "sufficiently serious" means that the action considered must not be frivolous or wholly without merit, taking into account the effort required in instituting a court action.

43 As regards the degree of knowledge required, reasonable belief rather than absolute knowledge is enough to start the time running. For instance, knowing with sufficient confidence to embark on the preliminaries to the issue

of an originating claim, submitting a claim to the proposed defendant, taking legal and other advice and collecting evidence would constitute reasonable belief. However, mere suspicion, particularly if it is vague and unsupported, will normally not suffice (*Lian Kok Hong* at [41]).

44 In the present case, the evidence reveals that the claimant had the requisite knowledge to bring this Suit by May 2018 at the latest:

(a) On 15 March 2016, the claimant requested a specialist medical report from the Department of Neurosurgery of the fourth defendant and the purpose of the request was stated as "legal proceedings".[44]

(b) Sometime before 31 May 2016, the claimant sought legal aid to commence proceedings for medical negligence against the fourth defendant. In a letter dated 31 May 2016, Mr Ramasamy K Chettiar, one of the solicitors appointed by the Legal Aid Bureau to investigate the merits of the claimant's intended claim, wrote to the fourth defendant seeking information on whether the claimant's consent was obtained for the Surgery.[45]

(c) Between October 2016 and July 2017, the claimant requested for medical reports and clarifications from Geylang Polyclinic and the fourth defendant.[46] Geylang Polyclinic issued a medical report dated 20 October 2016.[47] The fourth defendant provided a medical report dated 5

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44 Hoi's affidavit at para 18 and p 46.

45 Hoi's affidavit at paras 20 to 22 and p 48.

46 Hoi's affidavit at paras 26 to 28.

47 Hoi's affidavit at pp 38 and 39.

December 2016.[48] The third defendant provided a specialist medical report setting out the treatment and management the claimant received at the Department of Neurosurgery of the fourth defendant from 8 December 2015 to 30 December 2015.[49] The fourth defendant's patient relations service department also engaged the claimant by speaking to him on 18 October 2016, 4 November 2016, 7 September 2016, 28 September 2017 and 16 October 2017.[50]

(d) On 15 November 2017, the claimant wrote to the Ministry of Health to complain about the second and fourth defendants' treatment of him and seek compensation or payment of his medical bills and expenses.[51]

(e) Around 2 May 2018, the claimant called the Legal Aid Bureau seeking an explanation as to why the Legal Aid Bureau refused aid for him to commence a medical negligence suit against the second and fourth defendants.[52] The Legal Aid Bureau thereafter responded that aid was refused because the Director of Legal Aid and three independent solicitors from private practice had reviewed his case carefully and decided that there was no evidence of malpractice or negligence on the part of the second and fourth defendants.[53]

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48 Hoi's affidavit at p 40.

49 Hoi's affidavit at pp 41 to 42.

50 Hoi's affidavit at p 43.

51 Hoi's affidavit at pp 43, 44, 56 to 58.

52 Hoi's affidavit at para 33.

53 Hoi's affidavit at pp 80 to 81.

(f) Before 8 May 2018, the claimant also sought assistance from Mr Lim Biow Chuan, member of parliament for Mountbatten, ("MP Lim") to seek a detailed report on the cause of the 2015 Fall and compensation for his daily expenses.[54]

45 It is manifestly obvious that the claimant must have had the requisite knowledge by latest May 2018 that any injury or damage he suffered from the diagnosis of T2DM, prescription of metformin, the treatment after the 2015 Fall including the Surgery was attributable at least in part to acts by the defendants which were alleged to constitute negligence for the following reasons:

(a) In relation to the claimant's claim pertaining to the alleged negligent diagnosis of T2DM and prescription of metformin, the claimant was aware as early as 16 June 2015 (at [7] above) of his diagnosis. He also claims to have taken the metformin prescribed on 16 June 2015 and experienced the Side Effects shortly after this date.[55] In his complaint to the Ministry of Health in November 2017, he stated that the prescription of metformin caused him various unnecessary injuries.[56]

(b) In relation to the claimant's claim pertaining to the alleged negligent treatment following the 2015 Fall which includes proceeding with the Surgery without his consent, the claimant must have been aware by 30 December 2015 when he was discharged after the Surgery that he had undergone the Surgery to which he did not consent. As early as 31 May 2016, he sought legal aid to commence a negligence suit against the second and fourth defendants specifically for the reason that the

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54 Hoi's affidavit at p 77.

55 SOC at para 6.

56 Hoi's affidavit at para 30 and p 56.

Surgery was conducted without his consent.[57] Although his Statement of Claim states that the discovery of his cognitive impairment was on or about 10 August 2020,[58] Dr Yeo reports that the claimant complained of difficulty in thinking, dizziness, memory disturbance and changes since the claimant's head injury in 2015.[59] Thus, he would have known the factual essence of his complaint in a reasonably short period of time after the Surgery, which could not have been later than May 2018.

46 As evident from his complaints to the fourth defendant, Ministry of Health, Legal Aid Bureau and MP Lim, the claimant not only knew the factual basis of his various complaints but even proceeded to prepare evidence in support of his claim by seeking the necessary medical reports. From the series of medical reports he requested, the claimant was made aware of the identities of the putative defendants. As explained in the preceding paragraph, the claimant also must have known the material facts about his injury or damage which would lead a reasonable person to consider it sufficiently serious to justify instituting proceedings against the defendants because he claimed to have suffered the Side Effects shortly after 16 June 2015 and Permanent Disability after the Surgery in 2015. Thus, by latest May 2018, he must have had the knowledge required to bring this Suit. Therefore, even if the three-year limitation period began from May 2018, the claimant's action would still be time-barred as this Suit was commenced on 13 April 2023.

47 I turn to address two ancillary points raised by the claimant. First, I wholly reject the claimant's argument that there was a ploy by the defendants

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57 Hoi's affidavit at para 20 to 23.

58 SOC at para 17.

59 Claimant's Other Supporting Document filed 23 August 2023 at p 2.

to cause the time bar. It suffices to say that this bare assertion is not even supported by a shred of evidence and appears to be a mere afterthought.

48 Second, the claimant asserted in the hearing before me that he suffers from cognitive impairment and is confused. While I note that Dr Lee opined that the claimant's brain injury may have caused him some degree of permanent cognitive impairment (at [16] above), Dr Lee's opinion is not clear as to what degree any such impairment would affect the claimant's ability to have the requisite knowledge to bring this Suit. Further, considering Dr Yeo's assessment that the claimant passed an abbreviated mental test on all counts and his mentation appeared intact (at [22] above) and the claimant's ability to take the necessary steps to institute this Suit (at [44] above), this assertion does not alter my conclusion.

49 In the premises, I agree with the defendants that the claimant's claim ought to be struck out since it is time-barred. The pre-existing position under the ROC 2014 was that the court would strike out the plaintiff's statement of claim if the limitation period expired on the basis that the claim was "frivolous or vexatious" or an "abuse of process" (Jeffrey Pinsler, *Singapore Court Practice* (LexisNexis, 2023) at paras [9.16.5] citing *People's Parkway Development v Akitek Tenggara* [1992] 2 SLR(R) 469; *Yan Jun v Attorney-General* [2014] 1 SLR 793 and *Liew Soon Fook Michael and Anor v Yi Kai Development Pte Ltd* [2017] SGHC 88 at [19]).

50 In my view, the same approach applies to ROC 2021. A claim which is time-barred is clearly unsustainable and would be an abuse of process if allowed to continue. Considering the Ideals of expeditious proceedings and efficient use of court resources stated in O 3 r 1 of the ROC 2021, it would also be in the

interests of justice to strike out such a claim. I therefore strike out the claimant's statement of claim and dismiss this Suit under O 9 r 16(1)(*b*) and O 9 r 16(1)(*c*).

The claimant's claim is plainly and obviously unsustainable

51 Even if I am wrong on striking out the claimant's statement of claim and dismissing this Suit on the basis that the claimant's claim has been time-barred, I would strike out the claimant's claim in any case on the basis that it is plainly and obviously unsustainable.

52 It is most telling that the claimant's expert report by Dr Yeo submitted pursuant to paragraph 4 of the Medical Negligence Protocol contradicts all of his allegations. Despite being told of the claimant's various complaints against the defendants (see [22]–[22] above), Dr Yeo opines that "the various treatments given to him have been *appropriate*" [emphasis added] (see [24(e)] above).

53 In my judgment, I find the claimant's case to be bereft of any foundation and roundly contradicted by all the objective evidence on record. I turn to briefly address each of his complaints against the defendants.

54 First, in relation to his complaint that the first, second and fourth defendants had negligently diagnosed him with T2DM when he did not have such a condition, this complaint is contradicted by his test results. In Dr Yeo's report, he observed that the claimant likely had T2DM at least a year before 2010. Laboratory investigations confirmed that the claimant had grossly elevated HbA1c levels (with the results at 8.7% in 2010, 24.0% in 2015 and 7.1% in 2020) and blood sugar of 16.5 mmol/L in 2015. Dr Yeo stated that these results were consistent with the World Health Organization's criteria for a diagnosis of T2DM (see [24(b)] above). I note that these results are also

consistent with a diagnosis of T2DM since a laboratory investigation form ordered on 22 December 2020 by Marine Parade Polyclinic states that the HbA1c target for most non-pregnant adults with type 1 or type 2 diabetes should be <7.0% or <53 mmol/mol.[60]

55 The claimant is completely unable to explain how these results are inaccurate. While the claimant states in his Statement of Claim that this diagnosis was refuted in a report dated 26 July 2017,[61] no medical report corroborates this allegation. There are two medical reports dated 26 July 2017 but neither of which refutes the diagnosis of T2DM as alleged by the claimant.[62] Further, the claimant's assertion that the first defendant failed to ensure that he had fasted before doing a blood glucose test also does not suffice to support any alleged negligence given the consistency of the test results repeatedly confirming his diagnosis of T2DM. As the claimant's assertion is roundly contradicted by all the objective evidence before me, I find this complaint factually unsustainable.

56 Second, in relation to his complaint that the first, second and fourth defendants negligently prescribed him with metformin which caused him to suffer the Side Effects, I am of the view that this claim is unsustainable because even if the pleaded facts are assumed to be true in favour of the claimant, this does not establish negligence by the defendants.

57 At the outset, it should be clarified that only the fourth defendant prescribed the claimant with metformin:

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60 Claimant's Other Supporting Document filed on 21 July 2023 at p 25.

61 SOC at para 4.

62 Hoi's affidavit at pp 41, 42 and 52.

(a) The first defendant did not prescribe metformin to the claimant. In the clinical records of the claimant's consultation with the first defendant on 16 June 2015, it was noted that the claimant rejected the diagnosis of T2DM and insisted on "having a recheck" but no prescription was noted.[63] This is in contrast to the clinical notes of his consultation with Geylang Polyclinic on 2 September 2010 where a prescription for metformin and Simvastatin was noted.[64] Had the first defendant prescribed metformin to the claimant, this would have been stated in the clinical notes for the claimant's consultation with the second defendant on 16 June 2015.

(b) The second defendant neither personally treated nor managed the claimant. The second defendant states this on affidavit and explains that she only signed off on the medical report dated 5 December 2016 in the capacity of a senior doctor of the Department of Endocrinology of the fourth defendant since the then Head of Department was on leave.[65] During the hearing before me, the claimant initially said that he met the second defendant but eventually clarified that he did not remember the name of the doctor who had treated him. He named the second defendant in this Suit because of her signature on the medical report dated 5 December 2016.

(c) As recounted above at [9] above, the fourth defendant did prescribe metformin to the claimant on 12 October 2015. During this

63 Hoi's affidavit at pp 31 and 32.

64 Hoi's affidavit at p 28.

65 Hoi's affidavit at paras 62 and 63.

visit at the Department of Endocrinology, the claimant was educated on his diagnosis and given an appointment with a diabetes nurse educator.

58 Even if the claimant's pleadings that the defendants had prescribed metformin to the claimant which caused the claimant to suffer the Side Effects are assumed true, this does not establish that the defendants' prescription of metformin to the claimant for treatment of T2DM is negligent. To establish a claim in negligence, the claimant must establish a duty of care, breach of the duty of care, and damage caused. As to whether a doctor has breached his duty of care to a patient, the principles set out in *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582 and *Bolitho v City and Hackney Health Authority* [1998] AC 232 (cumulatively, the "*Bolam-Bolitho* Test") apply. The *Bolam-Bolitho Test* requires that the defendant's practice is supported by a responsible body of opinion within the profession, even if there is another body of opinion which disagrees and that the experts holding the opinion had directed their minds to the comparative risks and benefits relating to the matter and the opinion is defensible (*Hii Chii Kok v Ooi Peng Jin London Lucien and another* [2017] 2 SLR 492 at [76(c)] and [76(d)]).

59 The claimant's pleadings, however, are premised on the misguided allegation that his T2DM diagnosis is wrong and that the defendants are negligent simply because he suffered Side Effects after consuming metformin. I find this claim plainly and obviously unsustainable as well. Given my finding above (at [54]) that his T2DM diagnosis is supported by laboratory investigations, the allegation that the prescription of metformin is negligent on the basis that his T2DM diagnosis is wrong is a non-starter. Even if the claimant suffered Side Effects from taking metformin as prescribed, this does not in itself amount to medical negligence on the part of the defendants. There are no facts pleaded to even show some chance of success of establishing a breach of the

standard of care on the part of the defendants in accordance with the *Bolam-Bolitho* Test. For instance, it is not pleaded that the defendants had any special knowledge of any allergy that the claimant had which was not taken into account in the decision to prescribe metformin. Instead, Dr Yeo's evidence for the claimant is that the treatment with oral diabetic agents such as metformin and glipizide was correct (see [24(b)] above).

60 Third, in relation to his complaint that the third and fourth defendants negligently conducted the Surgery without his consent, this complaint is patently baseless. It was explained in a medical report dated 26 July 2017 by the third defendant that the Surgery was needed to save the claimant's life and prevent permanent brain damage. At that time, the claimant was comatose and incompetent to give consent. The medical team at the fourth defendant therefore performed the Surgery "in the best interests of the patient".

61 Where the patient is incompetent and unable to provide consent for treatment, the law allows doctors the power to proceed with emergency treatment of the patient in the patient's best interests. The High Court, in *Re LP (adult patient: medical treatment)* [2006] 2 SLR(R) 13 at [9]–[10], explained that in situations where doctors are unable to obtain clear and express consent of their patient to proceed with any medical treatment, their only course is to act in the best interests of the patient. More recently, the High Court, in *Goh Guan Sin (by her litigation representative Chiam Yu Zhu) v Yeo Tseng Tsai and another* [2021] 3 SLR 364 ("*Goh Guan Sin*") at [284], observed that in a situation where emergency and immediate treatment was needed to prevent the patient's death, the legal significance of consent, which could not in any case have been obtained, paled in importance compared to acting in the patient's best interests which could be assessed to be saving the patient's life.

62 While the fourth defendant's treatment team sought consent for the Surgery from the claimant's mother, counsel for the defendants rightly concedes that this does not have the legal effect of providing consent on behalf of the claimant. This is because even the claimant's mother, as his next of kin, does not have the right to consent on behalf of the claimant. The position, as set out by the High Court in *Goh Guan Sin* at [281]–[282], is that the doctor need only obtain informed consent from the next of kin if there is a representative with the legal authority (*ie*, a deputy or a lasting power of attorney) to make decisions with respect to medical treatment for the patient. If not, the next of kin has no legal right either to consent or to refuse consent.

63 In this case, the evidence before me shows that the claimant was incompetent to give consent for the Surgery and the decision made by the fourth defendant's treatment team to proceed with the Surgery was unequivocally in the best interests of the claimant with the aim of saving his life. As stated in a medical report dated 26 July 2017 by the third defendant, the claimant's GCS score dropped from 15 to 11 on 20 December 2015 and he was observed to be "very drowsy". An urgent CT scan also revealed interval worsening of the claimant's left SDH. This necessitated an emergency burr hole drainage procedure.[66] The Surgery was described in the third defendant's report as needed to "prevent permanent brain damage" and "life-saving".[67] The claimant does not plead that the Surgery was conducted for any other reason other than his best interests. The facts pleaded also do not allow any basis for the court to conclude that there was negligence. Dr Yeo opined that the treatment given to the claimant was appropriate and the symptoms the claimant complained of were a

66 Hoi's affidavit at pp 41 to 43.

67 Hoi's affidavit at p 42.

consequence of "serious head injury and [SDH]" (see above at [24(c)]). Thus, I find that the claimant's complaint as pleaded is unsustainable.

64 Fourth, in relation to his complaint that the third and fourth defendants treated him negligently after the 2015 Fall, the claimant does not even plead any specifics as to the alleged negligent treatment. Given the insufficient particularisation which surely cannot fairly apprise the defendants of the case they have to meet in their defence (see *Chandra Winata Lie v Citibank NA* [2015] 1 SLR 875 at [34]), this claim is in my view bound to fail. Dr Yeo had been apprised by the claimant of his complaints and the available medical reports but nevertheless considered the treatment given to the claimant as appropriate. I thus find this complaint as pleaded to be plainly and obviously unsustainable as well.

65 I would therefore strike out the claimant's statement of claim and dismiss this Suit under O 9 r 16(1)(*b*) and O 9 r 16(1)(*c*) on the basis that the claimant's claim is plainly and obviously unsustainable.

Conclusion

66 In sum, I allow SUM 3365 with costs to be paid by the claimant to the defendants. The statement of claim filed by the claimant on 13 April 2023 is struck out and this Suit is dismissed.

67 For completeness, I also note that the claimant made several insinuations against the defendants regarding fabrication of evidence and conspiracy.[68] Such allegations are extremely serious because they imply dishonesty and a lack of integrity. They ought not to be made lightly. I find the bare assertions made by

[68] Claimant's reply affidavit filed on 21 November 2023 at pp 4, 5, 6.

the claimant roundly contradicted by all the evidence before the court and I reject them in their entirety.

68 I will hear parties on costs.

Gerome Goh Teng Jun
Assistant Registrar

The plaintiff in person;
Lydia Yeow and Audrey Sim (Dentons Rodyk & Davidson LLP) for the defendants.