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

**[2020] SGHC 110**

Originating Summons No 1052 of 2019
(Registrar's Appeal No 312 of 2019)

Between

Wong Siew Mee

… *Plaintiff*

And

1 Jee Lee

2 SMRT Buses Pte Ltd

… *Defendants*

And

Andy Tan Poh Weng (formerly known as Tan Poh Kim)

… *Third Party*

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# GROUNDS OF DECISION

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[Courts And Jurisdiction] — [High court] — [Transfer of cases]

# Wong Siew Mee
# v
# Jee Lee and another (Tan Poh Weng Andy (formerly known as Tan Poh Kim), third party)

**[2020] SGHC 110**

High Court — Originating Summons 1052 of 2019 (Registrar's Appeal No 312 of 2019)
Lai Siu Chiu SJ
11 November 2019

27 May 2020

**Lai Siu Chiu SJ:**

1 On 20 August 2019, Wong Siew Mee ("the Plaintiff") applied in Originating Summons No. 1052 of 2019 ("the OS") for her claim in negligence against (i) Jee Lee ("the First Defendant") and (ii) SMRT Buses ("the Second Defendant") (collectively "the Defendants") in DC Suit 3403 of 2013 ("the DC Suit") to be transferred to the High Court. The OS was premised on s 54B of the State Courts Act (Cap 321, 2007 Rev Ed) ("the SCA") as well as Order 89(1) of the Rules of Court (Cap 322 R 5, 2014 Rev Ed).

2 The OS was opposed by the Defendants, whose solicitor Pang Weng Fong ("Pang") filed an affidavit setting out the Defendants' objection to the OS. The OS was heard and dismissed by the Assistant Registrar ("the learned AR")

on 16 October 2019. The Plaintiff filed Registrar's Appeal No. 312 of 2019 ("the RA") against the learned AR's decision.

3 The RA came up for hearing before this court. I affirmed the decision of the learned AR and dismissed the appeal on 11 November 2019. As the Plaintiff is dissatisfied with my decision and has filed a notice of appeal (in CA 221 of 2019) against the dismissal of the OS, I now set out the reasons.

**The facts**

4 The Plaintiff suffered a whiplash injury in a motor accident that took place on 26 May 2010 ("the first accident") when the Second Defendant's motor bus TIB 1189R, then driven by the First Defendant, rear-ended into motor van GT723J driven by Andy Tan, then known as Tan Poh Kim ("the Third Party"). The Plaintiff was a passenger in the said motor van. She sued the Defendants in MC Suit 14711 of 2011 ("the first claim") filed on 14 June 2011. Besides sustaining physical injuries from the first accident, the Plaintiff apparently developed post-traumatic stress disorder (PTSD) as a consequence.[1]

5 On 6 October 2011, the Plaintiff whilst driving motor vehicle no. SGV7735T was involved in another accident ("the second accident") when motor vehicle no SGM1114Y driven by one Gan Siew Choo ("Mr Gan") collided into her car. She commenced a separate action against Mr Gan for the second accident in MC Suit 24606 of 2013 ("the second claim") on 14 November 2013.[2]

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1 Wong Siew Mee's affidavit dated 8 July 2019 at para 3; Wong Siew Mee's affidavit dated 17 April 2017 ("Wong's 17 Apr 2017 Affidavit") at pp 2–3 at paras 4–6.

2 Pang Weng Fong's affidavit dated 3 September 2019 ("Pang's Affidavit") at paras 6–7.

6 On 17 October 2011, the First Defendant issued a Third Party Notice against the Third Party in the first claim after obtaining leave of court.

7 On 4 July 2012, consent interlocutory judgment against both Defendants in the first claim was obtained by the Plaintiff with damages to be assessed by the Registrar; and the Third Party was to indemnify the Defendant for 5% of the Plaintiff's claim.[3]

8 On 16 May 2013, the Plaintiff applied in Originating Summons No. 142 of 2013 ("the transfer application") to transfer the first claim to the District Courts pursuant to Order 89 rule 1(1) of the Rules of Court (Cap 322 R 5, 2006 Rev Ed). On 12 July 2013, the transfer application was granted and the first claim was converted to the DC Suit.[4]

9 On 26 March 2014, the Plaintiff filed Summons for Directions for the DC Suit ("the First S/D"). Directions were given on the First S/D on 24 April 2014. According to Pang's affidavit, the Plaintiff did not comply with the directions given in the First S/D.[5]

10 The Plaintiff filed a second Summons for Directions on 15 December 2014 ("the Second S/D"). Directions were given on the Second S/D on 30 December 2014.[6]

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3 Pang's Affidavit at para 9 and pp 41–43.

4 Pang's Affidavit at para 9 and pp 45–62.

5 Pang's Affidavit at para 9 and pp 80–84.

6 Pang's Affidavit at para 9 and pp 85–90.

11 On 17 March 2016, the Plaintiff's former solicitors obtained an order of court discharging themselves from further acting for her. The Plaintiff gave notice of intention on 5 April 2016 that she intended to act in person. On the same day, she filed the third Summons for Directions ("the third S/D"). Directions were given on the third S/D on 19 April 2016.[7]

12 On 27 September 2016, the Plaintiff obtained consent interlocutory judgment with damages to be assessed, against Mr Gan in the second claim on the basis he was 60% liable for the second accident.

13 The Plaintiff appointed her present solicitors a year later on 17 March 2017. They filed (out of time, according to Pang's affidavit) her first affidavit of evidence-in-chief ("AEIC") on 17 April 2017.[8]

14 On 20 April 2017, the Plaintiff filed (out of time) a notice of appointment for assessment of damages.[9]

15 On 7 June 2017, the Defendants served Interrogatories on the Plaintiff. The Plaintiff refused to answer the Interrogatories, prompting the Defendants to file an application on 29 June 2017[10] to compel her to answer, which was granted on 15 August 2017. The Defendants followed up with another application on 6 September 2017[11] for an "unless order" to be made against the Plaintiff to

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7 Pang's Affidavit at para 9 and pp 102–103.

8 Pang's Affidavit at para 9 and pp 107–108.

9 Pang's Affidavit at para 9 and p 109.

10 In Summons No. 2250 of 2017.

11 In Summons No. 3060 of 2017.

compel her compliance; the court granted the "unless order" on 5 October 2017. The Plaintiff served her Answers to the Interrogatories on 16 October 2017.[12]

16 On 6 June 2018, the Plaintiff filed her second AEIC.

17 On 10 September 2018, the Defendants applied to the State Courts for consolidation of the two claims[13] ("the first consolidation application"). The first consolidation application was dismissed on 9 October due to some irregularity. The Defendants filed a second consolidation application on 7 December 2018,[14] which the State Courts granted on 11 December 2018, directing that the DC Suit and the second claim be heard together before the same court.[15]

18 The first tranche of the hearing for assessment of damages for both claims was fixed by the State Courts to take place on 17 May 2019.

19 The assessment hearing on 17 May 2019 was adjourned as the court decided it would hear the claim in the DC Suit first followed by the second claim instead of both at the same time.[16]

20 On 23 July 2019, the State Courts notified the parties that the first tranche of the assessment for the DC Suit would be refixed to 18 October 2019.[17]

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12 Pang's Affidavit at para 9 and pp 110–143.

13 In Summons No. 3201 of 2018.

14 In Summons No. 4388 of 2018.

15 Pang's Affidavit at para 9 and pp 144–156.

16 Pang's Affidavit at para 9.

17 *Ibid*.

21 The Plaintiff's solicitors wrote to the solicitors for the Defendants and the Third Party on 14 June 2019. They sought the endorsement of the Defendants and Third Party to a memorandum under s 23 of the SCA, consenting to the first claim remaining in the State Courts notwithstanding the possibility that the Plaintiff's claim may exceed $250,000, in lieu of a transfer to the High Court. The Defendants' solicitors replied on 20 June 2019 to say they had no instructions to consent to the memorandum. The Plaintiff filed the OS on 20 August 2019.

22 At the hearing of the RA, as part of her counsel's submissions, the Plaintiff set out the following table of timelines or work done to pursue her first claim to support her argument that there had been no delay in her prosecution of the first claim/DC Suit:[18]

| | **Date** | **Events** |
|---|---|---|
| 1 | 26.5.2010 | Accident |
| 2 | 14.6.2011 | Filing of first claim |
| 3 | 04.7.2012 | Interlocutory judgment for first claim |
| 4 | 12.7.2013 | Transfer of first claim to DC Suit |
| 5 | 04.2.2016 | Plaintiff's solicitors applied to discharge themselves |
| 6 | 17.3.2016 | Order for discharge granted |
| 7 | 17.3.2017 | Plaintiff appointed her current solicitors |
| 8 | 17.4.2017 | Plaintiff filed her first AEIC |
| 9 | 07.6.2017 | Defendants served Interrogatories on Plaintiff |

[18] Plaintiff's written submissions dated 7 November 2019 ("PWS") at p 3.

| | | |
|---|---|---|
| 10 | 13.10.2017 | Plaintiff answered Interrogatories |
| 11 | Mar 2018 | Report from Dr Lim Yee Gee of Orthopaedic department, Singapore General Hospital ("SGH") |
| 12 | Apr 2018 | Report obtained from Dr Yip Chun Wei of Neurology Department, SGH |
| 13 | Jan 2016 | Psychological report from Dr Lim of Plaintiff's second accident |
| 14 | Jun 2018 | Request from Defendants' solicitors for Plaintiff to see their specialist |
| 15 | Jul 2018 | Report from Dr Brian Yeo, the Defendants' specialist |
| 16 | 18.9.2018 | Request for report from psychiatrist, SGH |
| 17 | Oct/Nov 2018 | Defendants' first consolidation application |
| 18 | 8.11.2018 | Defendants' consolidation application for second claim |
| 19 | Dec 2018 | Defendants' second consolidation application |
| 20 | 1.02.2019 | Letter from SGH that request for psychiatrist report should be followed up with the Institute of Mental Health ("IMH") |
| 21 | 30.6.2019 | Defendants' request for Plaintiff's consent for medical documents from SGH |

23 The Plaintiff's above chronology omitted other medical reports she had obtained well before item 11 above (*ie* 14 March 2018). Her earlier medical reports were exhibited in Pang's affidavit and were the following:[19]

[19] Pang's Affidavit at pp 36, 183–185, 187, 232–235, 239–243.

| | Date | Particulars |
|---|---|---|
| 1 | 2.10.2010 | Report of Island Orthopaedic Consultants |
| 2 | 20.3.2013 | Report of Island Orthopaedic Consultants |
| 3 | 30.4.2013 | Medical memorandum of Island Orthopaedic Consultants |
| 4 | 04.3.2014 | Report of Yeo Orthopaedic Centre |
| 5 | 21.8.2014 | Report of Dr Thong Jiunn Yew of Nobel Psychological Wellness Clinic ("NPWC") |
| 6 | 30.6.2016 | Report of Dr Raja Sathy Velloo of IMH |

24 Further, the Plaintiff's list of medical reports in [23] also omitted six other medical reports listed in paragraphs 5 and 6 of her first AEIC filed in the DC Suit on 17 April 2017 (see [13] above). These were:[20]

| | Date | Particulars |
|---|---|---|
| 1 | 27.7.2010 | Report of Dr TH Loi of Tan Tock Seng Hospital |
| 2 | 18.9.2010 | Report of Dr KC Ng of Mount Alvernia Hospital |
| 3 | 05.8.2010 | Report of Dr KS Chan of Gleneagles Hospital |
| 4 | 16.11.2011 | Report of Dr Thong Jiunn Yew of NPWC |
| 5 | 14.3.2012 | Report of Dr Thong Jiunn Yew of NPWC |
| 6 | 03.03.2016 | Report of Dr Raja Sathy Velloo of IMH |

25 In paragraph 4 of her second AEIC filed on 6 June 2018 (see [16] above), the Plaintiff referred to yet another medical report that was omitted from the list

[20] See Wong's 17 Apr 2017 Affidavit at p 3 at para 5.

in [22], namely, the report of Dr Lim Yun Chin from Raffles Hospital dated 20 November 2016.

26 Not only were earlier medical reports omitted from the Plaintiff's list at [22] but she also provided no explanation as to why it took her one year[21] to appoint her current solicitors after her former solicitors discharged themselves from acting for her. Neither did she offer any explanation as to why she refused to answer the Defendants' Interrogatories and, even after an order of court was granted for the Interrogatories on 15 August 2017, she still failed to answer until compelled by an "unless order" dated 5 October 2017 to do so (see [15] above).

## The submissions

### *The Plaintiff's submissions*

27 The Plaintiff relied on s 54B of the SCA for the transfer application; it reads as follows:

> 54B.—(1) Where it appears to the High Court, on the application of a party to any civil proceedings pending in a State Court, that the proceedings, by reason of its involving some important question of law, or being a test case, or for any other sufficient reason, should be tried in the High Court, it may order the proceedings to be transferred to the High Court.

For the Plaintiff to be able to rely on the above provision, she must come within the limb "or for any other sufficient reason" since the other 2 limbs (an important question of law or a test case) are not applicable. Her counsel, Mr Seah, submitted that the threshold for transfer should not be set too high.

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21 See item nos. 6 & 7 in [22].

28 The Plaintiff cited the case of *Tan Kee Huat v Lim Kui Lin* [2013] 1 SLR 765 ("*Tan Kee Huat*") to say this court should exercise its discretion and allow the appeal and the transfer. Mr Seah submitted that there was no undue delay on the Plaintiff's part, referring to the chronology he had prepared at [22] above. Mr Seah submitted that the Plaintiff has a claim, not that she does not have one.[22]

29 Mr Seah informed the court that the Plaintiff thought of making the transfer in 2017 at the time she filed her first AEIC. When the court questioned Mr Seah why he/the Plaintiff then waited for another two years before she made her application, he said it was because of the Defendants' applications including Interrogatories (in June 2017) which the Plaintiff could only answer in October 2017. He added that in between (items no. 11 to 16 in [22] above), the Plaintiff was seeing many doctors because her original whiplash injury developed into something serious. From seeing orthopaedic and neurosurgery specialists, she had to be referred to psychiatrists.[23]

30 Mr Seah added that, following the second accident, the Plaintiff was requested by Mr Gan's lawyers to see their doctor to determine if her PTSD was a result of the first or second accident. When he received the report that the Plaintiff's PTSD was due to the first accident and he sent it to the Defendants, the Defendants requested that the Plaintiff be examined by their insurers' psychiatrist. Mr Seah said that he thought it would be prudent for all medical reports to be available and hence took some time to file the OS application after

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22 PWS at paras 6 and 8; Minute Sheet (11 November 2019) at p 3.

23 Minute Sheet (11 November 2019) at pp 1–2.

he decided that the Plaintiff's action exceeded the jurisdiction of the District Courts.[24]

31 Mr Seah then referred to the events in items nos. 17 to 19 at [22] above on the issue of whether the two accident claims should be consolidated. He said that he accommodated the Defendants' request for the two claims to be consolidated. Unfortunately, the first consolidation application was unsuccessful. He then agreed to the second consolidation application which did not succeed either (listed as item no. 18 in [22] above). Only the third consolidation attempt (at item no. 19) succeeded.[25]

32 Finally, there was the Defendants' request (at item no. 21 in [22] above) for the Plaintiff's consent to obtain her medical documents from the SGH. Hence, the OS was, Mr Seah submits, taken out at a late stage.[26]

33 Neither the Plaintiff's affidavit filed on 20 August 2019 ("Plaintiff's supporting affidavit") nor Mr Seah in his submissions referred to the assessment of damages exercise that is ongoing for both claims and is still pending in the State Courts because of (i) the transfer application and (ii) the Plaintiff's current pending appeal to the Court of Appeal. Neither did they state what would be the fate of the second claim (consolidated with the DC Suit) as the Plaintiff had not applied to transfer the second claim to the High Court. Indeed, the second claim did not feature at all in Mr Seah's submissions or in his list at [22] above, notwithstanding the consolidation order granted on 11 December 2017 at [17] above.

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24 Minute Sheet (11 November 2019) at p 2.

25 *Ibid*.

26 *Ibid*.

***The Defendants' submissions***

34 In his submissions, counsel for the Defendants, Mr Pang, relied on the Plaintiff's two AEICs as well as the documents exhibited in her AEICs and/or the Plaintiff's supporting affidavit and her list of documents (particularly her medical reports). He pointed out that the Plaintiff's transfer application was filed more than nine years after the first accident; more than 8 years after she instituted the first claim; more than seven years after the second accident took place; and more than seven years after interlocutory judgment was obtained in the first claim. It was also more than five years after the first claim was converted to the DC Suit and more than five years after the Plaintiff commenced the second claim. It was also more than two years after the Plaintiff filed her first AEIC; more than a year after she filed her second AEIC; and more than three months after the first tranche of the assessment hearing on 17 May 2019. The assessment hearing was supposed to resume on 18 October 2019.[27]

35 Further, Mr Pang submitted that the Plaintiff provided no credible explanation whatsoever for her inordinate delay in the Plaintiff's supporting affidavit[28] save to say that, following the interlocutory judgment obtained on 4 July 2012, she and her former solicitors could not agree on how best to proceed and whether to transfer her claim to the High Court.

36 Besides the unexplained delay, the Plaintiff's claim would not likely exceed $250,000. In the Plaintiff's supporting affidavit, she had only said[29] that she verily believed that her claim would exceed $250,000.

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27 Minute Sheet (11 November 2019) at pp 4–5; Pang's Affidavit at paras 13–18.

28 At para 3.

29 At para 5.

37 The Defendants argued that this court should not exercise its discretion to grant the transfer application both on the merits of the Plaintiff's case and because of the undue delay in the application. They relied on *Keppel Singmarine Dockyard Pte Ltd v Ng Chan Teng* [2010] 2 SLR 1015 ("*Keppel Singmarine II*") and *Ng Djoni v Miranda Joseph Jude* [2018] 5 SLR 670 ("*Ng Djoni*") for their arguments.

38 The Defendants added that, on the merits, the Plaintiff's claim was unlikely to exceed $250,000 based on her income before and after the first accident. They referred to her claims for general damages totalling $58,000.00 (based on 100% liability):[30]

| | | | |
|---|---|---|---|
| (a) | Pain & suffering | | $23,000.00 |
| (b) | Loss of earnings/loss of future earnings | | $ 5,000.00 |
| (c) | Future medical expenses | | $10,000.00 |
| (d) | Special damages: | | |
| | (i) | Medical expenses | $12,000.00 |
| | (ii) | Transport | $ 1,000.00 |
| | (iii) | Pre-trial loss of earnings | $ 7,000.00 |

39 In regard to her claim for pain and suffering, the Defendants pointed out that the Plaintiff allegedly suffered from a whiplash injury from the first accident as well as psychiatric problems. For her neck injuries, the Plaintiff apparently suffered from paresthesia in her fingers, toes and the whole of her two arms some four years after the first accident. Her back injuries were L4 and L5 disc bulk and a L5/S1 disc protrusion. In 2010, her prognosis for recovery

[30] Defendants' written submissions dated 6 November 2019 ("DWS") at para 13.

was excellent while her orthopaedic injuries were also pre-existing. The Defendants estimated damages for the Plaintiff's orthopaedic injuries to be $10,000 and $8,000 for back and neck respectively for a total of $18,000.[31]

40 As for her psychiatric problems, the Defendants noted that the Plaintiff suffered from PTSD as a consequence of the first accident and had substantially recovered from it by the time she had the second accident. The PTSD recurred after the second accident but she improved significantly by 2012. Consequently, the Defendants would only be liable for the Plaintiff's PTSD between the first and second accidents for which the Defendants estimated the damages would not exceed $5,000.[32]

41 As for her loss of future earnings and/or loss of earning capacity, the Defendants compiled the following table of the Plaintiff's income based on her tax returns:[33]

| **Year of Assessment ("Y/A" for income from preceding year)** | **Income ($)** |
|---|---|
| 2007 (Y/A 2006) | 39,234.00 |
| 2008 (Y/A 2007) | 38,950.00 |
| 2009 (Y/A 2008) | 49,486.00 |
| 2010 (Y/A 2009) | 16,000.00 |
| 2011 (Y/A 2010 - first accident) | 31,650.00 |
| 2012 (Y/A 2011 - second accident) | 32,540.00 |

31 DWS at paras 15–16.

32 DWS at paras 17–18.

33 DWS at para 20.

| | |
|---|---|
| 2013 | 39,540.00 |
| 2014 | 8,126.00 |
| 2015 | 0.00 |

42 The Plaintiff started her own air-conditioning business in April 2009. She closed it down in Y/A 2013 and returned to Malaysia for two years in 2014 and 2015. The Defendants pointed out that for Y/A 2010 to 2012, the Plaintiff's income actually increased. Based on her income before the first accident which averaged out to about $100 per day ($39,234 + $38,950 +$49,486 +$16,000 = $143,670 ÷ 4 years ÷ 12 months ÷ 30 days), the Defendants estimated her pre-trial loss of earnings would not exceed $7,000.

43 The burden is on the Plaintiff to prove that her loss of earnings are attributable to the first accident. She had claimed for all her loss of earnings/loss of earning capacity in the DC Suit as well as in the second claim.

44 As for her future medical expenses, the Plaintiff estimated that as of 2014, she would need to see a general practitioner for her orthopaedic injuries at $60 per visit. No substantiation was provided for her estimate. Even so, the estimate cannot exceed $10,000 for 10 years.[34]

45 If her condition worsened, the Plaintiff said she would need physiotherapy at $3,600 per year until 2017. If she required surgery, it would cost her $60,000 for her spine and between $50,000 and $60,000 for her neck (plus $1,000 to $1,500 for MRI scan). The Plaintiff stated that she has to visit consultants at the department of orthopaedics of SGH once every 6 months.

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[34] DWS at paras 24–26.

However, none of the Plaintiff's recent medical reports suggested a need for surgery.[35]

46 The Plaintiff's medical expenses based on her documents totalled $12,177.96. Less the medical expenses attributable to the second accident, the figure was reduced to $11,965.46. Consequently, the estimate cannot exceed $12,000.

47 Therefore, *prima facie*, the Plaintiff's claim cannot exceed $250,000. Assuming it does, the Defendants submitted the court should still not grant the transfer application because the prejudice suffered by the Defendants thereby is not compensatable by costs.

48 Citing the Court of Appeal's decision in *Keppel Singmarine II* ([37] *supra*), the Defendants contended that there was such a significant delay by the Plaintiff in making the transfer application that they were entitled to rely on the fact/expectation that their liability would be limited to $250,000.

## The decision

### *The caselaw*

49 I first set out the cases that the Plaintiff and Defendants have cited. In *Keppel Singmarine II* ([37] *supra*), the plaintiff/respondent was involved in an accident on 13 November 2001 while working at the premises of the defendant/appellant. He subsequently commenced proceedings in the district court for his claim for personal injury and losses. Although the plaintiff's claim ($725,000) exceeded the jurisdiction of the district courts, no steps were taken

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35 DWS at para 25.

to transfer the matter to the High Court. Instead, the parties entered into a consent interlocutory judgment on 7 May 2004 based on apportionment of liability with damages to be assessed. The plaintiff changed solicitors on 25 May 2006. His new solicitors recognised that his claim exceeded the district courts' jurisdiction. However, because of the Court of Appeal's decision in *Ricky Charles s/o Gabriel Thanabalan v Chua Boon Yeow* [2003] 1 SLR(R) 511 ("*Ricky Charles*"), they did not apply to transfer the plaintiff's action to the High Court (in a nutshell, *Ricky Charles* held that where a plaintiff had obtained interlocutory judgment in the district courts, he had thereby affirmed the district courts' jurisdiction and would not be allowed to transfer his action to the High Court).

50 On 5 April 2007, the defendant in that case brought an application before the district court pursuant to O 14 r 12 of the Rules of Court (Cap 322 R 5, 2006 Rev Ed) to determine whether the deduction for contributory negligence was to be made from the district court limit or from the actual damages assessed. The issue was eventually resolved by the Court of Appeal in *Keppel Singmarine Dockyard Pte Ltd v Ng Chan Teng* [2008] 2 SLR(R) 839 ("*Keppel Singmarine I")*.

51 As a result of certain observations made by the Court of Appeal in *Keppel Singmarine I* on the decision in *Ricky Charles*, the plaintiff in *Keppel Singmarine II* ([37] *supra*) then applied on 24 April 2008 to transfer his action to the High Court. The High Court judge allowed the transfer (see *Ng Chan Teng v Keppel Singmarine Dockyard Pte Ltd* [2009] 2 SLR(R) 647). On appeal by the defendant, the Court of Appeal in *Keppel Singmarine II* allowed the appeal and reversed the decision of the High Court.

52 In disallowing the plaintiff's transfer of his action to the High Court, the Court of Appeal in *Keppel Singmarine II* ([37] *supra*) held (at [17]–[20]), *inter alia*, that:

> [T]he mere existence or presence of a "sufficient reason" [under s 54B of the SCA] does not automatically entitle a party to have the proceedings transferred from the District Court to the High Court. A holistic evaluation of all the material circumstances needs to be undertaken in every case where a transfer application is made; in particular, the court needs to assess the prejudice that might be visited upon the party resisting such a transfer …
>
> [T]he "prejudice" suffered by the appellant was not simply that the damages awarded could exceed the District Court's jurisdictional limit … First, at the time the parties entered the consent interlocutory judgment, it was thought that, following *Ricky Charles*, by entering the interlocutory judgment in the District Court, the parties would be taken to have affirmed the jurisdiction of the District Court and would, therefore, be barred from transferring proceedings to the High Court … [I]t was rather unlikely that the appellant would have agreed to a consent order on the same terms had they known of this potential exposure. To allow for the transfer of proceedings now would, therefore, prejudicially expose the appellant to increased damages … Second, … both parties had accepted and relied on the consensual agreement for a substantial period of time … Third, even if we were to exercise our discretion to transfer the proceedings on the condition that the consent order was to be set aside, the appellant would nevertheless still be prejudiced by the transfer. Certain interlocutory processes have already been completed since the interlocutory judgment was entered … The appellant quite rightly underscored the fact that many practical difficulties might arise if the issue of liability had also to be re-opened … [T]o require the appellant to defend its case on liability despite the significant lapse of time since the accident occurred would be severely prejudicial to its interests.

53 Subsequently, the High Court in *Ng Djoni* ([37] *supra*) followed and applied the principles enunciated in *Keppel Singmarine II* ([37] *supra*).

54 In *Ng Djoni* ([37] *supra*), the plaintiff and the defendant were involved in a car accident on 27 December 2012. On 23 December 2015, the plaintiff commenced an MC Suit ("the MC Suit") against the defendant for the injuries

he sustained in the 2012 accident. In 2016, the plaintiff was involved in two more car accidents. The writ of summons and statement of claim were finally served on the defendant on 16 March 2017 after the writ of summons was twice renewed. On 11 April 2017, the plaintiff applied to transfer the MC Suit to the High Court on the ground that his claim for damages would exceed the State Courts' jurisdiction of $250,000. An Assistant Registrar ("the AR") disallowed the application for the reason that the plaintiff failed to demonstrate a *prima facie* case that his claim would exceed the jurisdiction of the State Courts and that there would be irreparable prejudice to the defendant if the transfer were allowed.

55 The plaintiff appealed to a judge in chambers by way of a Registrar's Appeal. His appeal was dismissed as the judge accepted the AR's reasoning and held that there was a two stage process to the court's analysis of whether there is "any other sufficient reason" for a transfer to the High Court under s 54B of the SCA and adopted the Court of Appeal's reasoning in *Keppel Singmarine II* ([37] *supra*) set out at [52] above. The judge added that there must be *prima facie* credible evidence (which there was none) to substantiate the assertions underlying the quantification of the claims. She further held that there would be irreparable prejudice to the defendant if the MC Suit were to be transferred to the High Court, as the plaintiff had delayed in commencing his suit and in crystallising his position on the quantum of damages claimed. As a result of the delay, any re-examination of the plaintiff's medical condition, which the defendant wished to carry out if his potential liability became higher, would not be fruitful.

56 I turn next to the case of *Tan Kee Huat* ([28] *supra*) that the Plaintiff relied on. There, the plaintiff commenced a DC Suit in 2009 to recover damages for injuries he sustained when his taxi was involved in a collision with a vehicle

driven by the defendant on 14 October 2008. The plaintiff obtained consent interlocutory judgment against the defendant on 17 March 2010 on the basis the defendant would bear 85% liability. On 17 May 2012, the plaintiff applied to transfer the DC Suit to the High Court. By then, two assessment hearings in the State Courts had been adjourned twice.

57 In *Tan Kee Huat* ([28] *supra*), the plaintiff, a taxi-driver, was able to show a material change in his condition, as shown in his medical reports, since the time he filed his writ in the State Courts. The breakdown of his claim for general damages produced to the court showed a total sum of $463,500. The plaintiff had been on medical leave since the accident and had not been able to return to work. As a consequence of the whiplash injury he suffered from the accident (together with a right foot fracture), the plaintiff alleged he was troubled by chronic neck and lower back pain and he suffered from depression as well as impotency, both of which the defendant contended were unsubstantiated.

58 The plaintiff had relied on the medical reports of one Dr Ho for the change in his condition. However, the defendant had roundly criticised Dr Ho's medical reports on the basis that Dr Ho, being a consultant anaesthesiologist and not an orthopaedic surgeon, was not qualified to comment on the orthopaedic condition of the plaintiff or to assess his medical condition. The defendant's orthopaedic surgeon, Dr Chang, on the other hand, had concluded that the plaintiff's neck pain had been resolved while his back issues were age-related degeneration. Dr Chang further opined that surgical procedures recommended by Dr Ho were unnecessary and the plaintiff could be gainfully re-employed, including driving a taxi.

59 Although the court there agreed that the time lapse (between the accident and the transfer application) was not ideal, it noted that there was no evidence that the time lapse had led to any particular difficulty in conducting the litigation. Consequently, the court held that the plaintiff had *prima facie* established the material change in circumstances necessary to support his application for a transfer. Consequently, notwithstanding the objections of the defendant, the court granted the transfer application on the basis that the consent judgment was set aside so that, after the transfer, the defendant could defend the suit and argue that his liability should be for less than 85% of the plaintiff's damages.

***Application to the present facts***

60 As can be seen from the narrative in [56] to [59], the facts of *Tan Kee Huat* ([28] *supra*) were far removed from those in this case.

61 It bears noting that the application to transfer proceedings in *Keppel Singmarine II* ([37] *supra*) was made almost four years after the consent interlocutory judgment. In *Ng Djoni* ([37] *supra*), it was four years and four months after the plaintiff commenced proceedings. In *Tan Kee Huat* ([28] *supra*), the delay between the granting of the consent judgment and the transfer application was just two years and two months. The time lapses in the three cases should be contrasted with the prolonged delays in this case as set out earlier at [34] above. Here, the plaintiff was making her transfer application in August 2019, which was more than *seven* years after she obtained consent judgment (on 4 July 2012) for her first claim and more than *nine* years after the first accident (on 26 May 2010). No valid excuse or any explanation was offered in the Plaintiff's supporting affidavit for such delay.

62 At the hearing below, the learned AR had considered the medical report of Raffles Hospital dated 20 November 2016 exhibited in the plaintiff's second AEIC dated 6 June 2018. The plaintiff had quantified her claim for general damages at $800,000 at the hearing below. This is what the learned AR said in dismissing the plaintiff's transfer application:[36]

> The evidence provided by the Plaintiff does not appear to support the desired quantification $800,000. First, no breakdown has been given as to how the amount of $800,000 is reached. Next, on a *prima facie* inspection of the IRAS statements, there did not appear to be any drop in the Plaintiff's income in the immediate years following the accident.
>
> Further, I find that even if there is a *prima facie* case that the claim amount exceeds $250,000, I find that there would be substantial injustice caused to the Defendant if the issue of liability is reopened when the matter is transferred. It has been more than 9 years since the accident. As far as the further medical reports are concerned, it would have been apparent to the Plaintiff by, at the very latest November 2016, that the Plaintiff had a medical report stating that the 1st incident may still be operative to cause her injuries.
>
> In the Plaintiff's supporting affidavit paragraph 6, the medical reports referred to are up to 2016. It would have been apparent by then what the extent of the Plaintiff's injuries were and the quantum that the Plaintiff seeks to claim.
>
> Having considered *Keppel Singmarine*, there are practical difficulties if the issue of apportionment of liability is reopened. There would be prejudice suffered by the Defendant in preparing its case against the third party (and vice versa) in the apportionment. That is not compensable costs.

63 This court endorses the learned AR's above comments. Before the learned AR, the plaintiff's counsel stated that the medical report the learned AR referred to came from the defendants. That would have been the report of Dr Lim Yun Chin, a consultant in Psychological Medicine at Raffles Hospital (referred to above by the learned AR) stating that the plaintiff had not fully

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[36] NE (16 October 2019) at p 5 lines 7–31.

recovered from PTSD resulting from the first accident when she met with the second accident 16 months later. However, there was also another medical report along the same lines as that from Raffles Hospital. That was the plaintiff's own medical report that she referred to in her first AEIC dated 17 April 2017 (see [23] above), namely that dated 30 June 2016 from Dr Raja Sathy Velloo of IMH. In that report,[37] Dr Velloo clarified his earlier report dated 3 March 2016 and said:

> Based on our record, the first accident caused her initial Post Traumatic Stress Disorder (PTAD). The diagnosis of PTSD was made by a private psychiatrist. She reported that she improved with treatment.
>
> The second accident caused a relapse of her PTSD.

64 Based on her own medical report from IMH, therefore, the plaintiff well-knew almost five months before 20 November 2016 that her PTSD resulted from the first accident and recurred after the second accident. No further medical reports were required after 20 November 2016 – her condition may improve but would not worsen so as to prevent the Plaintiff from pursuing her two claims whether in the High Court or in the State Courts. However, the Plaintiff did nothing. This can be seen from her solicitor's own selective chronology of events set out in [22] above. Instead, what she did in June 2017 was to refuse to answer the Interrogatories served on her by the Defendants and to continue to ignore them despite an order of court directing her to furnish her answers in August 2017, until she was served with an "unless order" in October 2017 (see [15] above).

65 Earlier (at [33] above), I had alluded to the Plaintiff's failure to address the court on what would happen to the second claim and the consolidation order

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[37] Pang's Affidavit at p 187.

if the transfer application was allowed. The second claim will be left in limbo if only the DC Suit is transferred to the High Court. In addition, the Plaintiff seemed to have overlooked that there are third party proceedings in the DC Suit. What about the position of the Third Party? Would he be forced to defend a High Court suit for his 5% liability to the Plaintiff? The Plaintiff did not even join the Third Party to the OS until prompted by the Court below to do so.

66 No figures were provided by the Plaintiff that showed that her claim for general damages was likely to exceed the $250,000 threshold of the State Courts' jurisdiction. The Plaintiff had sought to persuade this court to follow *Tan Kee Huat* ([28] *supra*), where the court held that a transfer application is not the forum to determine the merits of the Plaintiff's claim or its quantum. That may be so but the burden is still on the Plaintiff to present some *prima facie* evidence (as the plaintiff in *Tan Kee Huat* did), that the general damages she is claiming is likely to exceed $250,000; she failed to do so.

67 The Defendants, on the other hand, presented figures that showed that the Plaintiff's claim for damages *prima facie* is unlikely to be anywhere near $250,000 (see [38]–[46] above). To recapitulate, the Defendants' main arguments, in regard to the Plaintiff's physical (whiplash) injuries, is that she had recovered well and her future medical expenses may be $10,000 to $18,000 (according to the Defendants; see [39] above). Giving the Plaintiff the benefit of the doubt, the court would be prepared to double those figures to say $38,000 to $40,000. It was difficult to estimate the Plaintiff's loss of future earnings as her income tax returns at [41] above showed no discernible loss of income after the first accident. Again, giving the Plaintiff the benefit of the doubt and awarding her some loss of future earnings, it could never be anywhere near $50,000 or $100,000. Similarly, her claim for pain and suffering cannot be a high figure. The Plaintiff would not be able to claim for any surgical procedures

in future as none of her medical reports made the recommendation. Consequently, the court is hard put to make an estimate, however generous, of $250,000 and more, for her claim for general damages. Her claims for special damages cannot be excessive either in the light of [46] above.

68 Apart from the lack of substantiation that the Plaintiff's claim is likely to exceed $250,000, there is the question of prejudice as pointed out by the learned AR at [62] above. It would be appropriate for the court to refer to *Keppel Singmarine II* ([37] *supra*) at this juncture and to cite the following passage from the appellate court's judgment (at [52] above):

> A holistic evaluation of all the material circumstances needs to be undertaken in every case where a transfer application is made; in particular, the court needs to assess the prejudice that might be visited upon the party resisting such a transfer...

69 Irreparable prejudice would be caused not only to the Defendants but also to the Third Party if the transfer application is allowed. For seven years, the Defendants were under the impression that their total liability would not exceed $250,000 with the Third Party bearing 5% of the quantum determined by the court. The Defendants may not even have consented to interlocutory judgment in July 2012 had they known that their liability for damages was not capped at $250,000. No amount of costs that the Plaintiff is willing to pay can compensate for the prejudice the Defendants would suffer thereby. Not only must the consent judgment be set aside for the DC Suit if the first claim is transferred to the High Court, but also what about the Third Party proceedings, the consolidation order, the second claim and the adjourned hearing for the assessment of damages in the State Courts? To echo the words of the Court of Appeal in *Keppel Singmarine II* ([37] *supra*; see [52] above):

> Certain interlocutory processes have already been completed since the interlocutory judgment was entered … The appellant quite rightly underscored the fact that many practical

> difficulties might arise if the issue of liability had also to be re-opened … [T]o require the appellant to defend its case on liability despite the significant lapse of time since the accident occurred would be severely prejudicial to its interest.

70 It also bears noting that the Plaintiff should have been the party that applied for consolidation of the two claims instead of relying on the Defendants to do so. She was never proactive in the pursuit of either of her two claims.

**Conclusion**

71 For the many reasons set out earlier, this court was of the view that the transfer application should not be granted and it was accordingly dismissed with costs.

Lai Siu Chiu
Senior Judge

Seah Choon Huat Johnny (Seah & Co) for the plaintiff/appellant;
Pang Weng Fong and Anthony Wee (United Legal Alliance LLC) for the first and second defendants/respondents and the third party.