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

[2021] SGHC 139

Originating Summons No 225 of 2021

In the matter of Section 54B of the State Courts Act (Cap 321, 2007 Rev Ed)

Between

(1) Lee Chye Chong
(2) Chian Poh Seng
(3) Fung Chean Seng
(4) Tan Ting Hock Robin
(5) Chua Qwong Meng
(6) Thiyagu a/l Balan
(7) Gan Kim Kiam
(8) Huzainal bin Hussein
(9) Lim You Onn
(10) Chiew Yi Yee
(11) Meerah Mohamed bin Halideen
(12) Razak bin Hasim
(13) Mohamad Sani bin Din

… *Applicants*

And

SBS Transit Ltd

… *Respondent*

JUDGMENT

[Courts And Jurisdiction] — [High Court] — [Transfer of Proceedings from the Magistrate's Court to the General Division of the High Court] — [Important question of law] — [Test case] — [Other sufficient reason]

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Lee Chye Chong and others
v
SBS Transit Ltd

[2021] SGHC 139

General Division of the High Court — Originating Summons No 225 of 2021
Audrey Lim J
30 April 2021

10 June 2021 Judgment reserved.

Audrey Lim J:

1 This originating summons ("the OS") is an application to transfer Magistrate's Court Suit No 13887/2019 ("MC 13887") commenced by the fifth plaintiff ("Chua") against the defendant ("SBS") in the Magistrate's Court, to the General Division of the High Court ("High Court") pursuant to s 54B of the State Courts Act (Cap 321, 2007 Rev Ed) ("the SCA"). This case deals with the issues of what is meant by an "important" question of law and a "test case" within s 54B(1) of the SCA.

Background

2 On 20 September 2019, Chua commenced MC 13887 against SBS for breach of contract and various provisions of the Employment Act (Cap 91, 2009 Rev Ed) ("the EA"). Four other persons each commenced similar proceedings in the Magistrates' Courts on the same date. Subsequently, eight other persons

each commenced similar proceedings against SBS in the Magistrate's Courts in December 2019 and February 2020. In total there are 13 suits for 13 plaintiffs against SBS (collectively the "MC Suits") for essentially the same matters, pertaining to their employment as bus drivers for SBS.

3 In essence, Chua claims in MC 13887 that SBS had breached the terms of his employment contract (which commenced on 3 April 2017) and the EA on various matters.

4 First, SBS had breached s 36 of the EA in not giving Chua a rest day in each week, and s 38(1) of the EA which stipulates that an employee is not required to work for more than six consecutive hours without a period of leisure and for more than eight hours in one day or more than 44 hours in one week. Further, SBS's employment practice was in breach of the Ministry of Manpower's ("MOM") regulated pay rate that an employer is expected to pay for work done during an employee's rest day.[1]

5 Second, Chua was underpaid for overtime work and SBS had breached s 37(3) of the EA by failing to pay him the statutorily prescribed rate for working on a rest day, breached s 38(1) of the EA by imposing a mandatory "built-in overtime" that resulted in him working in excess of the statutorily prescribed work hours in a day/week, breached s 38(4) of the EA by failing to pay him the statutorily prescribed rate where he was required to work beyond the prescribed hours, and breached s 88(4) of the EA by failing to compensate him at the statutorily prescribed rate for work on a public holiday. Additionally, Chua claims that SBS had breached numerous clauses in a service agreement by failing to compensate him an agreed allowance for work done on the night shift,

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[1] Statement of Claim (Amendment No. 1) ("SOC") at [7(a)].

failing to add extra time to his credit insofar as he performed the First and Last Parade tasks, and failing to pay him for a certain time period between shifts when he was engaged to wait.[2]

6 SBS essentially denies Chua's claims, and asserts that it has complied with its contractual obligations and the laws, rules or regulations pertaining to working hours, overtime pay and rest days. In particular, s 38(2)(*f*) of the EA provides that an employee may be required to exceed the prescribed work hours, and to work on a rest day, for work to be performed by an employee in any industrial undertaking essential to the economy or any of the essential services under Part III of the Criminal Law (Temporary Provisions) Act (Cap 67) ("the CLA"). The definition of "essential service" in the CLA read with its First Schedule includes "public transport".[3] In such cases, SBS claims that it has compensated Chua in compliance with his employment contract, the law or the MOM's guidelines as the case may be.

7 In Chua's list of disputed issues filed on 12 December 2019 in the State Courts, he raised the following questions of law:[4]

(a) Whether SBS drivers provide an "essential service" within the context of Part III of the CLA;

(b) Whether imposing a compulsory 48 hours of work is in breach of s 38 of the EA;

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2 SOC at [7(b)].

3 Defence (Amendment No 1) at [3(c)].

4 Defendant's Bundle of Documents ("DB") at Tab 7.

(c) Whether all the terms of the EA imposing a 48-hour work week are "illegal terms of contact of service" within s 8 of the EA;

(d) Whether "rest days" under s 36(1) of the EA can be scheduled consecutively, such that an employee is made to work for 12 consecutive days;

(e) Whether SBS's employment practices are in breach of MOM's regulatory pay rate;

(f) Whether SBS has underpaid Chua for overtime work and work on a rest day, pursuant to the wage guidelines within the Fourth Schedule of the EA.

8 On 4 March 2020, at a case management conference, the State Courts suggested that MC 13887 be heard as a test case, with the other 12 MC Suits held in abeyance pending the determination of MC 13887. On 27 April 2020, SBS's lawyer ("Mr Singh SC") wrote to Mr Ravi (who acts for the 13 plaintiffs in the MC Suits) stating that SBS was agreeable to MC 13887 being a test case subject to the parties in the MC Suits agreeing to the terms set out in Annex A of that letter ("27 April 2020 Letter").[5] Paragraph 4 of the 27 April 2020 Letter stated as follows:

> Further, in light of our client's agreement to MC 13887 being the test case, we consider that it would make eminent sense and save the Court's and the parties' time and costs for all timelines in all the other cases to be held in abeyance pending the final resolution of MC 13887.

The terms in Annex A of the 27 April 2020 Letter are as follows:

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5 DB at Tab 8.

> (1) The Court's decision, determinations and/or findings in MC 13887 on any and all issues of fact and/or law which are common to all the Suits and/or arise in any one or more of the other Suits shall be binding on the Plaintiffs in the other Suits;
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> (2) The decisions, determinations and/or findings referred to in paragraph 1 above shall include decisions, determinations and/or findings in relation to interlocutory applications such as applications for further and better particulars, specific discovery and/or interrogatories;
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> (3) The Plaintiffs in the other Suits shall not be entitled to reopen or relitigate in any manner, whether in the other Suits or by way of fresh proceedings or otherwise, any such decision, determination or finding in MC 13887 on the matters referred to in paragraphs 1 and 2 above; and
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> (4) For the avoidance of doubt, paragraphs 1, 2 and 3 above shall also apply to any decision, determination and/or finding that is made by any Court in any appeal against the lower Court's decision in relation to any of the matters which are the subject of paragraphs 1 and 2 above.

9 Mr Ravi replied on 30 April 2020 to state that the plaintiffs were "agreeable to the terms set out in Annex A and to paragraph 4 of [the 27 April 2020 Letter]" ("Plaintiffs' 30 April 2020 Letter").[6]

10 On 30 April 2020, Mr Singh SC wrote to the State Courts to request the court to make the following directions: (a) that MC 13887 be the test case as set out in paragraph 5 of that letter (which essentially reproduced the terms in Annex A of the 27 April 2020 Letter); and (b) the timelines in all the other MC Suits be held in abeyance pending the final resolution of MC 13887. On 8 May 2020, the State Courts agreed to the request ("8 May 2020 Order").[7]

11 In September 2020, the parties filed their respective witnesses' affidavits of evidence-in-chief ("AEICs"). On 10 February 2021, Chua set down his claim

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6 DB at Tabs 8 and 9.

7 DB at Tabs 10 and 11.

for trial in the State Courts. On 11 February 2021, Mr Ravi then wrote to Mr Singh SC to seek SBS's consent to have MC 13887 heard in the High Court "as the matter concerns important questions of law centring around the interpretation of certain provisions of the [EA]". On 17 February 2021, Mr Singh SC replied to state that SBS was not agreeable to the proposal.[8]

12 At a pre-trial conference ("PTC") on 22 February 2021, the State Courts fixed the trial of MC 13887 for hearing on 17, 20 and 21 May 2021. At that PTC, Mr Ravi informed the court that Chua would be applying to transfer MC 13887 to the High Court. On 10 March 2021, Chua filed the OS.

Chua's case

13 Mr Ravi submits that MC 13887 should be transferred to the High Court as it involves an important question of law, it is a test case, or it should be transferred for some "other sufficient reason", under s 54B(1) of the SCA.

14 First, the questions of law raised in MC 13887 will impact the plaintiffs in the other MC Suits, if not the whole of the employment sector in Singapore. The questions of law would include how "rest days" within the meaning of s 36(1) of the EA is to be interpreted and whether an employee can be made to work for 12 consecutive days over a 14-day period. This question has the potential to impact and affect all classes of employees in Singapore.[9] Even if there are mixed questions of law and fact, they are still considered questions of law to some extent.[10]

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8 DB at Tabs 12 and 13.

9 Plaintiffs' Written Submissions (22 April 2021) ("PWS") at [9]–[11].

10 Plaintiffs' Supplementary Written Submissions (30 April 2021) ("2PWS") at [14].

15 Second, MC 13887 is also a test case as the State Courts had, on the parties' agreement, made a direction to the effect that it would be a test case, such that any ruling on all issues in that suit will bind every plaintiff in the other MC Suits. MC 13887 satisfied the definition of a "test case" as a case based on the same facts and evidence, raised the same questions of law, and had a common defendant, with the other MC Suits; alternatively, it is a lawsuit brought to establish an important legal principle or right.[11] Additionally, there was no implied understanding or agreement that MC 13887 would be tried in the State Courts by virtue of it being a test case.[12]

16 Third, there is a sufficient reason for the transfer, as the total value of the subject matter in the MC Suits collectively amount to some $720,000, which is beyond even the District Court's limit.[13]

17 Finally, there is no prejudice to SBS if MC 13887 is transferred to the High Court.

SBS's case

18 Mr Singh SC claims that it is an abuse of the court process for Chua to rely on the parties' agreement and court order that his claim be tried as a test case to seek a transfer of MC 13887 to the High Court, where the 8 May 2020 Order that MC 13887 be a test case and SBS' agreement to Chua's claim being a test case were premised on Chua's claim being tried in the State Courts. By the OS application, Chua attempts to nullify everything that the State Courts

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11 2PWS at [17]; Court Minutes dated 30 April 2021.

12 PWS at [12]–[15].

13 PWS at [18].

have done in managing the case.[14] Moreover, the 8 May 2020 Order, which was made on the premise of and "expressly contemplates" a trial in the State Courts, is a consent order, which Chua cannot now seek to resile from. Even if there is no consent order, Chua did not appeal against the 8 May 2020 Order and he is now out of time to do so.[15]

19 Second, there is no important question of law. The issues in MC 13887 relate to questions concerning specific obligations under the EA, a service agreement, or MOM's guidelines, and they pertain to statutory or contractual interpretation. There is nothing to suggest that these raise difficult or complex issues. Further the State Courts regularly deal with employment disputes involving the provisions of the EA or interpretation of employment agreements.[16] Chua has also not explained how employment terms and/or employees in Singapore will be impacted by the court's determination of MC 13887 or how the impact would be "significant and general".[17]

20 Third, not every test case within the meaning of 54B of the SCA would make it sufficient to order a transfer of the case to the High Court, and it must be shown that the case presents some case management or other concern which would make the matter unsuitable for determination by the State Courts. Chua has not shown what that may be, given that all the plaintiffs in the MC Suits had agreed to the determination by the State Courts of MC 13887 as a test case.[18]

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14 Defendant's Written Submissions (22 April 2021) ("DWS") at [7]; Cheng Siak Kian's affidavit ("Cheng's affidavit") at [18].

15 DWS at [25] and [30].

16 DWS at [45]–[46].

17 DWS at [59].

18 DWS at [70]–[71].

21 Fourth, there is no sufficient reason to transfer the case. Chua has not shown credible evidence that damages in MC 13887 would exceed $250,000, being the jurisdictional limit of the District Court, and he cannot take the aggregate of all the potential damages in the MC Suits to claim the value of the subject matter in dispute as above $250,000.[19]

22 Finally, Chua has made the OS application very late in the day, and where the trial is around the corner. There has been no change of circumstance since he commenced MC 13887 which has now prompted the OS application.[20] A transfer of MC 13887 to the High Court will prolong the proceedings and delay the trial to SBS's prejudice. The parties have filed their pleadings and AEICs and all that remains is the trial itself; hence Chua should not be allowed to delay the matter further as the parties are at the doorstep of trial.[21]

Abuse of process

23 Parties do not dispute that the 8 May 2020 Order is a consent order. The question is whether it is a term of the consent order that the parties agreed to Chua's claim being tried only in the State Courts.

24 To constitute a consent order, there must be a real agreement between parties (*Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 at [18]). A reading of the 27 April 2020 Letter and Annex A of it showed that the parties agreed to MC 13887 being the test case on the terms which are essentially that the court's decision, determination and findings in MC 13887 which are common to the other MC Suits will bind the plaintiffs

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19 DWS at [83]–[84].

20 DWS at [92], [95]–[96].

21 DWS at [99]–[100].

in those other MC Suits, and that this would apply to the decision, determination and findings made by an appellate court against the lower court's decision in relation to such matters.

25 The terms consented to and embodied in the 27 April 2020 Letter did not go so far as to show an agreement between the plaintiffs in the MC Suits and SBS that MC 13887 must be tried in the State Courts or that the parties are precluded from having the matter tried in the High Court. There was no such term in the 27 April 2020 Letter, the Plaintiffs' 30 April 2020 Letter in reply or the 8 May 2020 Order, and I am unable to accept the defendant's submission that the parties had "expressly contemplate[d]" a trial in the State Courts.

26 What the parties contemplated, which led to an agreement for MC 13887 to be the test case and for the court's decision, determination and findings in that case to be binding on the plaintiffs in the other MC Suits, was essentially to save time and costs given that the issues in the MC Suits are largely similar. Even if SBS had entered into the agreement "on the premise" that MC 13887 would be conducted in the State Courts, this is but its premise and there is no evidence that such premise was shared by the plaintiffs in the MC Suits. Further, the reference to "the lower court" in Annex A of the 27 April 2020 Letter merely meant a court of the first instance, and cannot be taken to mean only the Magistrate's Court (or the State Courts). The phrase "any court in any appeal" in Annex A was general in purport, and did not assist SBS's case to show that therefore the "lower court" must be the State Courts and no other.

27 As such, whilst there is a consent order, it did not embody a term that MC 13887 must be tried in the State Courts. Hence, Chua was not resiling from any agreement that the case must be heard in the State Courts, and there is nothing that he needs to appeal against. I also do not understand Mr Singh SC's

argument that by the OS application Chua is attempting to "nullify everything that the Magistrate's Court has done in managing the case", and in any event this did not assist to determine the terms of the consent order. That the State Courts are managing a case does not preclude the case from being transferred to the High Court pursuant to s 54B of the SCA. There is thus no abuse of process by Chua.

Section 54B of the State Courts Act

28 Section 54B(1) of the SCA provides as follows:

> (1) Where it appears to the General Division of 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 General Division of the High Court, it may order the proceedings to be transferred to the General Division of the High Court.

It should be noted that even if one or more of the grounds in s 54B(1) of the SCA are met, the court retains a discretion as to whether to transfer a case. The exercise of this discretion requires the court to balance the interests of the parties: see *Keppel Singmarine Dockyard Pte Ltd v Ng Chan Teng* [2010] 2 SLR 1015 at [17] ("*Keppel Singmarine*").

Important question of law

29 While there are no local cases on what constitutes an "important question of law" in the context of s 54B(1) SCA, the court in *Tan Kok Ing v Tan Swee Meng and others* [2003] 1 SLR(R) 657 considered this ground in the context of s 53 of the Subordinate Courts Act (Cap 321, 1999 Rev Ed) which dealt with the transfer of a case from a Magistrate's Court to a District Court where "some important question of law or fact is likely to arise". Woo Bih Li JC (as he then was) held (at [39]) that a question of law or fact to be "important"

should affect more than the immediate interests of the parties or be a point of law that affects other cases (referring to the decision of the court of first instance in *Patterson v Ellis* [1957] 1 WLR 857). Further a distinction should be drawn between "important" and "difficult". That an important question of law should be one that affects more than the immediate interests of the parties was also alluded to in *TMT Asia Ltd v BHP Billiton Marketing AG (Singapore Branch) and another* [2015] 2 SLR 540 ("*TMT Asia Ltd*"), which dealt with whether various questions raised were suitable for a summary determination pursuant to O 14 r 12 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed). There, Judith Prakash J (as she then was) noted that the defendants acknowledged that there were points of "public interest" raised when they applied to transfer the action to the High Court under s 54B(1) of the SCA, and found that given the considerable public importance of the questions raised, the suit was not suitable for summary determination (at [36]–[37]).

30 I am of the view that in the context of s 54B(1) of the SCA, an important question of law should be a question of law which affects more than the immediate interests of the parties, or be of some public importance, or a point of law which would affect other cases. Otherwise, every case involving a question of law not yet decided could easily amount to an "important" question of law. That said, an "important" question of law need not necessarily be a difficult or complex one, although it may be so in many instances. Further, an action that raises an "important question of law" may also amount to a "test case" (which I will consider later) and hence the two grounds under s 54B(1) of the SCA overlap to some extent.

31 In the present case, and on the assumption that the acts alleged against SBS are established at trial, the questions of law involve the interpretation of provisions in the EA relating to *eg*, whether a "rest day" within s 36(1) can be

scheduled such that an employee can be made to work for 12 consecutive days, and whether the exception under s 38(2)(*f*) (which allows an employer to require the employee to work in excess of the prescribed limit of hours or to work on a rest day) applies to the plaintiffs who are bus drivers as they have contended that in the ordinary circumstances an employee in "public transport" such as a bus driver would not be deemed to fall within the ambit of the CLA given the purpose of the CLA.

32 I am satisfied that these questions of law, which centre on the interpretation of certain specific provisions of the EA and its interplay with the CLA, are important questions of law which affect not only Chua but a larger class of employees including those in the public transport sector who may potentially fall within the definition of employees "in any industrial undertaking essential to the economy of Singapore or any of the essential services as defined under Part III of the [CLA]" pursuant to s 38(2)(*f*) of the EA. That it affects a much larger interest can be seen from the fact that there are 12 other bus drivers who have filed similar suits (the MC Suits). The EA provides for mandated rest days and limits to hours of work (among other matters) to protect the rights of employees. The question of whether this can be "overridden" in a case where an employee is deemed to provide essential services, which on its face may not look like a difficult question, is important as it affects a larger population of workers in general and not just the immediate plaintiff or parties to the case, and would have potential ramifications on how such contracts are structured in terms of granting off days, computing overtime pay and determining work hours.

33 As such, I find that Chua satisfies the first ground under s 54B(1) of the SCA, namely that his case involves some important question of law. This however, is not to be taken to mean that in every case in which a provision of the EA is engaged that it would thus constitute an important question of law.

Much depends on the particular provision in question and the factual circumstances it relates to. That the State Courts deal with employment disputes involving the interpretation of provisions of the EA does not therefore mean that there can never arise important questions of law in any of the provisions of the EA.

Test case

34 Next, I consider whether MC 13887 is a "test case" within the meaning of s 54B(1) of the SCA. A "test case" is not defined in the SCA, although the parties accept the definitions in *Black's Law Dictionary* (Bryan A Garner gen ed) (Thomson Reuters, 11th Ed, 2019) ("*Black's Law*") at page 267:

> 1. A lawsuit brought to establish an important legal principle or right. Such an action is frequently brought by the parties' mutual consent on agreed facts – when that is so, a test case is also sometimes termed *amicable action* or *amicable suit* ["***the first definition***"] …
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> …
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> 2. An action selected from several suits that are based on the same facts and evidence, raise the same question of law, and have a common plaintiff or a common defendant. Sometimes, when all parties agree, the court orders a consolidation and all parties are bound by the decision in the test case. – Also termed *test action* ["***the second definition"***].
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> [emphasis in original in italics; emphasis added in bold italics]

35 *Black's Law* and authorities from various jurisdictions show that a "test case" is capable of more than one meaning. In *Lim Choon Seng v Lim Poh Kwee* [2020] 5 MLJ 587 at [35], the Federal Court of Malaysia, after considering the meaning from various jurisdictions, accepted the second definition in *Black's Law* in the context of the matter before them. A test case has also been said to mean a case in which there are other cases in which parties are awaiting with interest the outcome of the first case (*Re Compania Merabello San Nicholas SA*

[1972] 3 All ER 448 at 451) or a case where there is simply no precedent giving the parties or the court sufficient guidance as to how a new statutory provision is to be interpreted and applied and in which the court's judgment would be useful not only to the immediate parties but to others (*Eastern Bay Independent Industrial Workers Union Inc v Carter Holt Harvey Ltd* [2010] NZEMPC 56 at [18]). In *TMT Asia Ltd* (see [29] above), the action was a "test case" dealing with the ambit of "futures contracts" and "futures markets" within the Securities and Futures Act (Cap 289, 2006 Rev Ed), which raised considerable public importance and which would affect persons other than the parties to the action. A test case of the second definition could also in a sense be a case management tool to expedite the resolution of multiple disputes involving multiple plaintiffs based on the same legal and factual issues: see *First Choice Capital Fund Ltd. v First Canadian Capital Corp.* [1999] S.J. No. 333.

36 In the context of s 54B(1) of the SCA, I am of the view that whilst a "test case" can include a case which involves an "important question of law", it can also include a case within the second definition in *Black's Law* and as illustrated by the above cases. Otherwise, the words "test case" would be rendered otiose by the phrase "important question of law" in s 54B(1).

37 In the present case, MC 13887 falls within the definition of a "test case". It is a case selected from several suits which are based on common fact circumstances and raise the same questions of law and with a common defendant. The outcome of MC 13887 would affect the other MC Suits; the plaintiffs in the other MC Suits have agreed to be bound by the court's decision, determination and findings in MC 13887 which are common to the other MC Suits. Further it is a test case in that it deals with the interpretation and ambit of specific provisions of the EA (presently not determined) which would affect a

larger class of employees and in particular workers in the essential services (see [32] above).

38 SBS submits that in addition to the second definition in *Black's Law*, there is a requirement that the "test case" should raise case management or other concerns which would make the matter unsuitable for determination by the State Courts. SBS refers to *CEPU v Australian Postal Corporation* [2010] FMCA 461 ("*CEPU*"),[22] where the Federal Magistrates Court of Australia dismissed an application pursuant to s 39 of the Federal Magistrates Act 1999 (Cth), and r 8.02 of the Federal Magistrates Court Rules 2001 (Cth) (collectively the "Australian provisions"), to transfer proceedings to the Federal Court of Australia. *CEPU* was a test case insofar as there were numerous named employees who were affected by the alleged contraventions of the Australian Fair Work Act 2009 (Cth) by the same employer pertaining to overtime work and denial of sick leave. The Federal Magistrates Court declined to order a transfer, stating (at [28]–[32]) that the claims did not pose any case management or other concerns to make the continuance of the matter unsuited to that court and that there were sufficient resources in that court to hear and determine the proceedings.

39 I reject SBS's submission in this regard. The Australian provisions set out considerations that guide the Federal Magistrates Court in the exercise of its discretion as to whether to transfer proceedings, which include whether there are sufficient resources to hear the proceedings before that court and whether there are proceedings in respect of an associated matter which is pending in the Federal Court. No such requirements are stipulated in s 54B(1) of the SCA to determine what amounts to a "test case". I add that such matters may, however,

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22 DWS at [62] and [66].

constitute relevant considerations under the second stage of the inquiry pertaining to the exercise of the court's discretion whether to transfer even if one of the grounds in s 54B(1) is made out.

Other sufficient reason

40 I turn to the third ground for a transfer of proceedings, namely whether there is any other "sufficient reason" for the matter to be tried in the High Court. The likelihood that a plaintiff's damages would exceed the jurisdictional limit of the District Court would ordinarily be regarded as "sufficient reason" for a transfer under s 54B of the SCA. However, the mere existence or presence of a "sufficient reason" does not automatically entitle a party to have the proceedings transferred from the District Court to the Hight Court. A holistic evaluation of all the material circumstances must be undertaken; in particular the court should assess the prejudice that might be visited upon a party resisting the transfer (see *Keppel Singmarine* at [16]–[17]).

41 In MC 13887, Chua merely pleads for "damages to be assessed", without particularising the amount of damages that he is seeking. He has not produced any evidence, let alone credible evidence, before me to show that the damages in MC 13887 would likely exceed $250,000 or the jurisdictional limit of the District Court. This is also reflected in Chua's claim being filed as a Magistrate's Court suit. That Chua is aware of this can be seen from the argument that he mounts – that it is the combined value of the damages in all 13 MC Suits that would exceed $250,000.[23] As Mr Ravi agreed before me, Chua's claim in MC 13887 alone does not exceed the State Court's jurisdiction.[24]

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23 Chua's affidavit (10 March 2021) at [11] read with PWS at [18].

24 Court Minutes dated 30 April 2021.

42 In any event, the principle in *Keppel Singmarine* (*ie*, the likelihood that a plaintiff's damages would exceed the jurisdictional limit of the District Court is ordinarily a sufficient reason to transfer proceedings to the High Court) must mean only the value of the action that is before this court for consideration of a s 54B SCA application and no others, because the crucial question is whether *that* action would exceed the jurisdictional limit of the District Court. Chua is not entitled to rely on the aggregate sum of all the MC Suits for this purpose. While MC 13887 is a test case, all the MC Suits remain as separate cases and there is no consolidation such that the court should even consider the aggregate of the claims. I add also, that whilst Mr Ravi sought to argue before me that the claim of the ninth plaintiff ("Lim") would likely exceed $250,000 (which I find is irrelevant in any event), this is but a bare assertion unsupported by any evidence, such as an affidavit from Lim. Moreover, Lim's Statement of Claim also pleads for damages to be assessed.

43 As such, the ground of "other sufficient reason" is not satisfied.

Prejudice

44 As stated earlier, even if Chua is able to show one or more of the grounds in s 54B(1) of the SCA, the court retains the discretion as to whether to transfer the case. A key consideration in the exercise of this discretion would be whether there is any prejudice to the party opposing the application.

45 SBS's case is that there was an 18-month delay on Chua's part, starting from 20 September 2019 when the claim was filed in the Magistrate's Court, to

the time the OS was brought. It would thus unfairly prejudice SBS as the transfer would further drag out the proceedings and delay the trial.[25]

46 Mr Ravi submits that there was no compelling basis for Chua to make the present application until around 8 May 2020, as MC 13887 as it then stood did not have the significant impact it has at the present stage. It was only on 8 May 2020 that MC 13887 satisfied the "test case" limb and therefore time should only begin to run from that date. The 10-month delay (counting from May 2020) in commencing the OS would not amount to undue delay.[26]

47 However, insofar as Chua's application relies on the ground of an "important question of law" under s 54B(1) of the SCA, this would have been known to Chua at the very least when he filed the list of issues in December 2019 (see [7] above) and further when he amended his Statement of Claim in April 2020 to further particularise SBS's breach on overtime pay and referred to the various provisions of the EA. That the parties agreed subsequently to MC 13887 being a test case merely provided Chua another ground for his application.

48 Nevertheless, although I find that there is some delay in bringing the OS, there is no prejudice to SBS. First, whilst SBS claims that a transfer of MC 13887 to the High Court (if granted) would delay the trial of the suit, the trial dates (originally scheduled for May 2021) fixed by the State Courts were asked to be vacated by Mr Singh SC, *after* the OS was filed, because he was involved in a trial in the High Court on the same dates. On 17 March 2021, Mr Singh SC informed the State Courts that "[the plaintiff in MC 13887] will not be

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25 Cheng's affidavit at [23]–[24].

26 PWS at [23].

prejudiced if the dates are deferred. In fact, the [p]laintiff has applied to transfer MC 13887 to the High Court and that application is pending."[27] In that letter, SBS also stated that it wanted Mr Singh SC to lead the matter in MC 13887. SBS cannot blow hot and cold and claim that there would be delay to the trial, when it had earlier asked to vacate the trial. Indeed, SBS was prepared to have the trial rescheduled because it wanted Mr Singh SC to deal with the matter. At this point, it should be noted that, at the hearing before me on 30 April 2021, the parties informed me that after Mr Singh SC's letter of 17 March 2021, the State Courts had allocated new trial dates in September 2021.

49 The cases cited by Mr Singh SC can be distinguished. *Ng Djoni v Miranda Joseph Jude* [2018] 5 SLR 670 ("*Ng Djoni*") was a personal injury matter. The accident occurred in December 2012, and the plaintiff ("P") commenced his action in December 2015, barely a few days before the expiry of the limitation period. In November 2016, P already knew that the quantum of his claims appeared to exceed the jurisdictional limit of the Magistrate's Court, and the writ and statement of claim were then served in March 2017 (more than four years after the accident) and the application to transfer the matter to the High Court was made in April 2017. There was substantial delay in commencing the action and a delay in crystallising P's position on the quantum of damages. Pertinently, the defendant ("D") was prejudiced because he was not aware of the MC Suit pending against him until March 2017 and he further did not seek to re-examine P's condition as he reasonably believed his liability would be limited to $60,000. If the transfer application was granted, D would have to carry out a re-examination of P's medical condition more than five years after the accident, and the medical opinion would need to disentangle

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27 Plaintiffs' Bundle of Documents (22 April 2021) at Tab C.

the injuries caused by the accident from P's pre-existing medical condition. Also, since the accident, P was further involved in two more accidents in 2016. As such, the application to transfer was not granted.

50 *Skading Anne v Yeo Kian Seng* [2005] 2 SLR(R) 546 ("*Skading Anne*"), which pertained to an application to transfer the suit from the Magistrate's Court to the District Court, was again a claim for personal injuries in a road accident. The transfer application was refused. There the plaintiff applied to transfer the proceedings almost five years after the accident, and sued the defendant just short of three years after the accident, and for a further two years was content to have the matter tried in the Magistrate's Court.

51 The present case pertains to a claim for breach of contract in which Chua was, until early 2020, SBS's employee. This is not a case in which he did not do anything. He had commenced MC 13887 whilst being employed with SBS. As borne out by his pleadings, Chua had reported the matter to the Tripartite Alliance for Dispute Management which resulted in meetings being held with the National Transport Workers' Union and various other parties subsequently. Hence, SBS knew of Chua's grouses early on and it was not a case in which Chua sat on his claim, unlike in *Ng Djoni* and *Skading Anne*.

52 In any event, SBS has not really articulated what prejudice it would face if MC 13887 were transferred to the High Court and even if later trial dates are allocated, other than to state that the proceedings in the State Courts are at the doorstep of the trial and there is nothing further to be done given that AEICs have all been filed. That nothing remains to be done merely means that the case is ready for trial, and not that it would prejudice SBS if early trial dates cannot be obtained. In *Tan Kee Huat v Lim Kui Lin* [2013] 1 SLR 765, the court allowed a transfer of the personal injuries case to the High Court for some "other

sufficient reason", despite that the s 54B(1) SCA application was taken out more than three and a half years after the accident, and after interlocutory judgment had been entered (by consent) with damages to be assessed, and notice of appointment for assessment of damages had been filed twice. Prakash J (as she then was) stated that the work already done by both parties would be as useful to an assessment in the High Court as it would have been to an assessment in the District Court and was thus not wasted. I also reiterate my points at [51] above. Further, this is not a case in which the longer the delay, the more likely SBS would be prejudiced because of any memory lapse of SBS's witnesses. The case concerns largely the interpretation of an employment contract and the EA, and any evidence pertaining to Chua's employment hours including overtime *etc* would have been documented.

Conclusion

53 Having considered the matter in totality, I am satisfied that grounds have been established under s 54B(1) of the SCA to transfer the case to the High Court (*ie*, that the case raises some important question of law or it is a test case) and that the discretion should be exercised in favour of a transfer. As such, I allow the OS application.

Audrey Lim
Judge of the High Court

Ravi s/o Madasamy (Carson Law Chambers) for the applicants;
Davinder Singh SC, Jaikanth Shankar, Hanspreet Singh Sachdev, Stella Ng Yu Xin and Chua Shu Yuan, Delvin (Davinder Singh Chambers LLC) for the respondent.
