Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)
[2004] SGCA 10

Case Number : CA 97/2003/W

Decision Date : 26 March 2004

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Choo Han Teck J

Counsel Name(s) : Michael Hwang SC (instructed) and Ernest Wee (Michael Hwang SC), Siva Murugaiyan and Parveen Kaur Nagpal (Sant Singh Partnership) for appellant; Quentin Loh SC and Anthony Wee (Rajah and Tann) for respondent

Parties : Lassiter Ann Masters — To Keng Lam (alias Toh Jeanette)

Civil Procedure – Appeals – Registrar's appeal from assessment of damages to judge in chambers – Whether operates as rehearing – Whether judge in chambers has discretion to allow further evidence – Whether Ladd v Marshall principles applicable – Order 56 r 1 Rules of Court (Cap 322, R 5, 1997 Rev Ed)

26 March
2004
Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

1 This appeal raises a number of procedural issues relating to the principles governing the exercise of discretion in the admission of evidence at an assessment of damages conducted by the Registrar, the nature of the jurisdiction of the judge in chambers on hearing an appeal from such an assessment, and the applicable principles governing the admission of new evidence on the hearing of the "appeal" before the judge.

The background

2 We will first set out the facts upon which these issues arose for consideration. The plaintiff, Ann Masters Lassiter ("Mrs Lassiter" or "the appellant" as may be appropriate), is the widow of the late Henry Adolphus Lassiter ("HAL"), a US citizen, who was, on 9 May 1994, killed in a motor accident in Singapore. He was then aged 48. Mrs Lassiter commenced an action making a dependency claim, including an unusual claim for loss of inheritance, against the driver of the vehicle which collided with HAL, one Mdm To Keng Lam ("TKL" or "the respondent"). The claim was made by Mrs Lassiter on behalf of herself as well as her four daughters, under what is now s 20 of the Civil Law Act (Cap 43, 1999 Rev Ed). By agreement, on 19 May 1998, a consent judgment was entered into apportioning liability between HAL and TKL for the accident in the ratio of 55 and 45 respectively.

3 The assessment commenced before the assistant registrar ("AR") on 27 February 2002 and continued until 5 March 2002 ("the first tranche"). It resumed on 20 June 2002 and ended on 28 June 2002 ("the second tranche"). Of the witnesses called by the appellant, we need only mention two. The first is Dr Bruce Seaman from the Georgia State University, an expert witness, and the other is Mr James Baker, a real estate broker who had known HAL from 1981. The respondent called two expert witnesses, one is Mr William Hecht, a certified public accountant and lawyer and the other is Carl Bellows, an American lawyer who gave his legal opinion on certain tax issues.

4 At the time of his death, HAL was in the real property business, buying large tracts of timber land, clearing them and subdividing them into smaller lots, which he would then dispose of. He carried

out his business primarily through two firms, Lassiter Properties Inc ("LPI") and Micro Design Inc ("MDI"). Unbeknown to TKL, HAL and LPI came under Chapter 11 bankruptcy in the US. Though orders for discovery were made against the appellant, she suppressed the documents relating to the fact that HAL and LPI were subject to Chapter 11. This was only discovered much later by the respondent which necessitated the appellant's witnesses having to file further affidavits to modify the very rosy picture which they had painted in their earlier affidavits regarding the business of HAL. A second supplementary affidavit of Mr Baker ("2S-AEIC") was sought to be admitted into evidence by the appellant during the second tranche of the hearing. This was refused by the AR.

5 At the conclusion of the assessment, the AR made his awards, but he rejected the appellant's claim for loss of inheritance, it being not a claim permitted under a dependency claim. In the alternative, he held that the loss of inheritance claim had not been proved.

6 The appellant lodged an appeal to the judge in chambers against the award. So did TKL. For the hearing before the judge in chambers, the appellant filed a summons for further directions to have 2S-AEIC admitted into evidence for the appeal as well as a third supplementary affidavit of evidence-in-chief of Mr Baker (3S-AEIC) and a fourth supplementary affidavit of evidence-in-chief of Dr Seaman (4S-AEIC).

7 When the two appeals and the summons for further directions came before the judge, she deemed it expedient to deal with the issues relating to the admission of the affidavits first and deferred the consideration of the two substantive appeals. The judge affirmed the AR's decision to refuse the admission of 2S-AEIC. She also said that it was procedurally wrong for the appellant to seek the admission of 2S-AEIC by way of a summons for further directions. It should have been by way of an appeal. As regards the other two affidavits, namely, 3S-AEIC and 4S-AEIC, the judge also refused to have them admitted into evidence.

8 The refusal of the judge to admit the three affidavits, 2S-AEIC, 3S-AEIC and 4S-AEIC, was the subject matter of this appeal. However, in the appellant's case, the appellant no longer sought to have admitted into evidence 4S-AEIC. So what remains are the two affidavits of Mr Baker.

9 Before us, much argument centred on the issue as to whether *Ladd v Marshall* [1954] 1 WLR 1489 applied to an appeal from the AR to the judge in chambers in relation to an award made by the AR after an assessment. However, we should explain that the positions regarding the two affidavits of Mr Baker – 2S-AEIC and 3S-AEIC – are different. In respect of 2S-AEIC, it is not really a case of a party seeking to put in fresh evidence at the appeal stage before the judge. In fact, the appellant sought to introduce the affidavit at the assessment itself, though very late. So for that affidavit, what was strictly in issue before the judge was whether the AR was correct in refusing to admit it. And for the purpose of this appeal the issue is whether the judge exercised her discretion properly in affirming the decision of the AR. It is only in relation to 3S-AEIC that the question of admitting fresh evidence would arise and it is in this connection that the court needs to consider how far the conditions laid down in *Ladd v Marshall* are applicable to an appeal from an assessment award.

Applicability of Ladd v Marshall

10 It would be expedient if we first deal with the question of whether *Ladd v Marshall* applies to an appeal from the Registrar's decision. It is settled law that when a judge in chambers hears an appeal from a decision of the Registrar, the judge is not exercising an appellate jurisdiction but a confirmatory jurisdiction. In such an appeal, there is a rehearing before the judge and he is entitled to exercise an unfettered discretion of his own. In *Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd* [1990] SLR 1234 ("*Herbs and Spices*"), Chan Sek Keong J (as he then was) said at 1237–

1238, [12]:

> In such appeals, the judge-in-chambers is not exercising "appellate" jurisdiction in the same sense when it hears appeals from the district court. This view is consistent with the rule that an appeal from the registrar of the High Court to the judge-in-chambers is by way of an actual rehearing of the application and the judge treats the matter afresh as though it came before him the first time, and the practice of allowing fresh affidavit evidence in such appeals.

11 These observations of Chan J were approved of in two subsequent cases of this court, namely, *Augustine v Goh Siam Yong* [1992] 1 SLR 767 and *Lian Soon Construction Pte Ltd v Guan Qian Realty Pte Ltd* [1999] 2 SLR 233.

12 The genesis of this line of cases is the House of Lords' decision in *Evans v Bartlam* [1937] AC 473 where the House was confronted with the question as to whether a master's exercise of discretion, in refusing to set aside a judgment in default of appearance and grant leave to defend, could be supplanted by the discretion of the judge in chambers to whom an appeal from the master lay. When the matter came before the judge in chambers he set aside the judgment and gave the defendant conditional leave to defend. By a majority, the Court of Appeal set aside the judge's decision on the ground that the judge was precluded from substituting his own discretion over the discretion of the master. The House of Lords disapproved of the majority view of the Court of Appeal. Lord Atkin said (at 478):

> I wish to state my conviction that where there is a discretionary jurisdiction given to the Court or a judge the judge in Chambers is in no way fettered by the previous exercise of the Master's discretion. His own discretion is intended by the rules to determine the parties' rights: and he is entitled to exercise it as though the matter came before him for the first time. He will, of course, give the weight it deserves to the previous decision of the Master: but he is in no way bound by it. This in my experience has always been the practice in Chambers, and I am glad to find it confirmed by the recent decision of the Court of Appeal in *Cooper v Cooper*, with which I entirely agree.

13 Consistent with this approach that the judge in chambers exercises a confirmatory jurisdiction and is in no way bound by the discretion exercised by the Registrar, the judge in chambers has the discretion to admit fresh evidence on the hearing of the "appeal" before him. In *Herbs and Spices*, Chan J mentioned "the practice of allowing fresh affidavit evidence in such appeals". In *The Supreme Court Practice 1999* (Sweet & Maxwell, 1998) Vol 1 at para 58/1/3 it is stated that:

> It is common practice for the Judge in Chambers, subject of course to the question of costs, to admit further or additional evidence by affidavit to that which was before the Master or District Judge; but if a party has taken his stand on the evidence as it stood before the Master or District Judge, the Judge in Chambers may in his discretion, by analogy with the practice in the Court of Appeal, refuse to allow him to adduce further evidence …

14 But it would appear that in all the cases on appeal from the Registrar to the judge in chambers, they were invariably concerned with interlocutory matters without involving an examination of witnesses. So the question is, does the position remain the same when the Registrar conducts an assessment of damages with all the characteristics of a trial, which includes submission of affidavits of evidence-in-chief and cross-examination and re-examination of witnesses? In *Chang Ah Lek v Lim Ah Koon* [1999] 1 SLR 82, which is also a decision of this court, the issue there concerned the applicable principles governing an appeal to the judge in chambers on an award of damages made by an assistant registrar. There, it was held that the Registrar was not a trial judge and the judge in

chambers was entitled to deal with the appeal from the Registrar as though the matter came before him for the first time. The judge in chambers was entitled to exercise his own discretion in the matter which should not be fettered by the discretion exercised by the Registrar. The court further said this rule also applied to the quantum awarded by the Registrar as damages. It was unlike the situation where damages were assessed by the judge and the matter came on appeal to the Court of Appeal.

15 However, we have to point out that *Chang Ah Lek* was not a case which concerned the question of admitting fresh evidence at the stage before the judge in chambers after an assessment before the Registrar. As a matter of logic, if on all other matters that come on appeal to the judge in chambers there is, in law, a complete rehearing, where new points could be raised and fresh evidence by way of affidavit could be admitted and the judge is entitled to exercise his discretion completely unfettered by what the Registrar has decided, giving no doubt due consideration to the reasons of the Registrar, there would appear to be some force in the argument that even on an appeal to the judge in chambers on assessment, fresh evidence should be allowed to be adduced before the judge. The Rules of Court (Cap 322, R 5, 1997 Rev Ed) do not differentiate between the various matters that could come before the Registrar.

16 It is clear that on an appeal from a decision of the High Court on the merits of a case to the Court of Appeal, no fresh evidence may be adduced except where the three conditions laid down in *Ladd v Marshall* are satisfied, namely:

(a) It must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial.

(b) The evidence must be such that, if given, it would probably have had an important influence on the result of the case, though it need not be decisive.

(c) The evidence must be apparently credible, though it need not be incontrovertible.

These principles have been applied by this court in numerous cases, *eg*, *Cheong Kim Hock v Lin Securities (Pte) (in liquidation)* [1992] 2 SLR 349.

17 In *Lian Soon Construction* ([11] *supra*) this court held that the judge in chambers, who was hearing an appeal against a decision of granting summary judgment, was not wrong in admitting a further affidavit. It did not think that *Ladd v Marshall* applied to that situation and ruled that the judge did not err in the exercise of his discretion in admitting the new affidavit. Relying on para 14/4/45 of *The Supreme Court Practice 1999*, the court came to the conclusion (at [38]):

> A judge-in-chambers who hears an appeal from the registrar is entitled to treat the matter as though it came before him for the first time. The judge-in-chambers in effect exercises confirmatory jurisdiction. The judge's discretion is in no way fettered by the decision below, and he is free to allow the admission of fresh evidence in the absence of contrary reasons.

18 Of course *Lian Soon Construction* did not concern an appeal from an assessment of damages by the Registrar to the judge in chambers and thus the case is not strictly determinative of the present issue.

19 At this juncture, we should observe that Judith Prakash J had in a very recent decision, *Ang Leng Hock v Leo Ee Ah* ([2004] SGHC 55 delivered on 16 March 2004), also adopted the approach taken by the judge below in the present case in holding that *Ladd v Marshall* applied to an appeal from an assessment of damages to the judge in chambers. Prakash J reasoned (at [15]):

> I think that there is a distinction to be drawn between the adduction of further evidence before the judge in chambers on an appeal from the registrar against a decision on an interlocutory application like an O 14 application, and one that is against a final decision, albeit by a registrar, which has been taken after a full trial on the merits in that discovery has taken place, documents and affidavits of evidence-in-chief have been filed, *viva voce* evidence has been given and the parties have had the opportunity of cross-examining each other's witnesses. In the first case, the original evidence would have been only documentary. Any prejudice that might have arisen from allowing further documentary evidence by way of affidavit could have been dealt with easily by giving the other party a right of reply. The second situation is very different. In that case, both parties would have (or should have) prepared for the hearing before the registrar in the same manner as for a trial in the High Court and would have engaged in the discovery exercise and in the cross-examination of witnesses. To allow further evidence to be freely adduced before the judge on appeal could easily lead to abuse of process.

20 We recognise that the very *raison d'etre* of having an assessment of damages being carried out by the Registrar, instead of before the court, is to save the time of the judge. This object would be lost, or substantially diminished, if the applicable principle is that either party is freely entitled to adduce new evidence at the hearing before the judge or that the judge should, as a rule, exercise his discretion liberally to admit such fresh evidence, including the *viva voce* examination of witnesses. This approach would mean that everything could be re-opened or further clarified. We do not see how such a rule could serve the interest of justice. It would only protract the assessment process and could lead to abuse. It is our opinion that the parties should, as a rule, present their entire evidence at the assessment. But does it therefore follow that the strict test in *Ladd v Marshall* should apply *in toto*?

21 In this regard, it may be of interest to note that in England, an appeal from a master's decision on assessment of damages goes direct to the Court of Appeal, where the principles in *Ladd v Marshall* will be applicable. In Malaysia, the problem has been overcome by an express provision (O 56 r 3A) introduced in 1993 into their rules of court, incorporating the *Ladd v Marshall* principles.

22 As far as the Court of Appeal is concerned, there are express provisions which lay down that the court should not receive further evidence, except in relation to an interlocutory order, unless there are "special grounds": see s 37(4) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA") and O 57 r 13(2) of the Rules of Court. There is no equivalent provision anywhere relating generally to an appeal from the Registrar to the judge in chambers, or specifically in relation to an appeal to the judge from an assessment award made by the Registrar, like the Malaysian O 56 r 3A. The term, "special grounds", has been translated into the three conditions laid down in *Ladd v Marshall*.

23 While we find the following comments of the judge below ([2003] 3 SLR 666 at [32]) not without some persuasiveness:

> [N]either the fact that Registrar's Appeals operate by way of rehearings nor O 38 r 2(3) of the Rules of Court gives a judge in chambers the discretion to automatically admit further testimony (oral or written), where damages have already been assessed and judgment thereto delivered. No amount of costs would compensate the irreparable prejudice caused thereby to the opposing party. To allow such applications would be to set a dangerous precedent and open the floodgates to abuse of the rule that Registrar's Appeals are dealt with by way of rehearings.

we cannot disregard the fact that the Registrar, in carrying out the assessment, is discharging a delegated function and there is no applicable provision like s 37(4) of the SCJA or O 57 r 13(2) of the

Rules of Court. Such an appeal, like the present, ought not to be treated in the same way as an appeal from the judge to the Court of Appeal.

24 Having said that, and for the reasons set out in [20], we are far from suggesting that a party should be free to bring in fresh evidence as he pleases. The discretion rests with the judge. Reasonable conditions must be set. The first condition under *Ladd v Marshall* is a very stringent one – it must be shown that the new evidence could not have been obtained with reasonable diligence at the trial. Any sort of judgmental error would not be sufficient to meet this condition. However, for the reasons given in the previous paragraph, the imposition of the same stringent requirement on an appeal from an assessment by the Registrar to the judge would not be appropriate. The judge should be given a wider discretion in the matter. But this is not to say that the discretion ought to be exercised liberally. Sufficiently strong reasons must be shown why the new evidence was not adduced at the assessment before the Registrar.

25 The next question to ask is whether the second and third conditions in *Ladd v Marshall*, namely, that the evidence must be such that, if given, it would probably have an important influence on the result of the case and that it must be apparently credible though it need not be incontrovertible, are in any way relevant. To our mind, these two conditions are eminently reasonable ones. If the new evidence sought to be admitted cannot satisfy the two conditions, what would be the point of admitting the evidence? It would be meaningless to do so.

26 Accordingly, to the extent that the judge below held that all the conditions in *Ladd v Marshall* applied to the present case, we would, with the utmost respect, differ from that view. On the other hand, we would reiterate that it is also wrong to think that a party appealing against a Registrar's award following an assessment is freely entitled to introduce fresh evidence before the judge. The discretion to admit such evidence is with the judge who should exercise it subject to the conditions we mentioned above. In passing, we would add that we do not see any reason why these conditions should not also apply to other similar proceedings conducted by the Registrar, such as the taking of accounts or the making of inquiries.

Was discretion properly exercised

27 At this juncture, we will briefly explain why the appellant wishes to have 2S-AEIC admitted. Following the visit of TKL's solicitor, Mr Anthony Wee, to Atlanta, USA to inspect the Chapter 11 documents, the respondent's expert, Mr Hecht, filed and served a report on 7 June 2002 (set out in his third affidavit) wherein, based on the documents uncovered by Anthony Wee, Mr Hecht made three points:

(a) the Lassiter family home was sold in a "straw man transaction" to place it out of the reach of creditors;

(b) the values attributed to HAL's properties in certain documents filed in the Chapter 11 proceedings were suspect;

(c) the values of two pieces of land relied on by Dr Seaman, in giving his opinion, were inflated – one in Henry County, Georgia ("the Orkin transaction"), and the other in Adirondacks, New York ("the Adirondacks transaction").

28 In 2S-AEIC Mr Baker tabulated 32 property transactions, including the actual prices at which they were sold, with a view to showing that the values of neither the Orkin transaction nor the Adirondacks transaction were inflated.

29 In 3S-AEIC, Mr Baker tabulated a further 74 property transactions, with their actual selling prices. The affidavit 4S-AEIC was Dr Seaman's response to the criticisms made by the AR in his grounds of decision of Seaman's calculations.

30 The appellant attempted to introduce 2S-AEIC twice during the assessment. The first was just before the respondent's witnesses gave evidence during the second tranche of the hearing. The second occasion was after the respondent had closed her case when the appellant sought to introduce it as rebuttal evidence. In her grounds of decision, the judge said that even if *Ladd v Marshall* was not applicable, and that she had a discretion to admit the affidavit, she would still have refused to admit the new evidence having regard to the conduct of the appellant. This is what she said at [37]:

> From the chronology of events set out by the parties, it seems to me that the plaintiff's conduct has been less than commendable. In this regard, Mr Loh's criticism of the plaintiff, that she conducted her trial "by ambush" is not unfounded. I find it most telling that the plaintiff (according to her own chronology of events) failed to comply with the consent order for discovery made on 15 February 1999. Clearly, she did not wish to reveal and indeed deliberately hid, the deceased's Chapter 11 bankruptcy until she was forced to deal with it when confronted by the defendant's counsel upon their discovery. Neither did she give satisfactory answer when cross-examined (on 20th June) on her omission. Equally, the plaintiff chose not to disclose the Taylor Consulting report which she had submitted to IRS, showing that LPI had a negative value of US$5.497m.

31 We will now allude to some essential facts which clearly had a bearing on the AR and the judge in refusing to admit 2S-AEIC.

32 For a long time before the assessment commenced, the appellant suppressed the following vital facts:

(a) that HAL and his flagship business, LPI, had on 4 November 1991 filed for Chapter 11 bankruptcy;

(b) that HAL's other business, MDI, was also facing financial difficulties;

(c) that HAL was on 11 October 1993 indicted under the State of Georgia's Racketeer Influenced and Corrupt Organisations Act for certain fraud offences which related to his main business of buying and selling timber land;

(d) that the worth of LPI, in accordance with the Taylor Consulting Report, was in fact a negative US$5.497m. This report was submitted by the appellant to the US Inland Revenue Service and was not in the numerous boxes of documents discovered by her to the respondent. It had to be extracted out of her and disclosure was only eventually made on 7 May 2002; and

(v) that HAL was in such a bad financial state that apparently he did not even have enough money to pay the retainer of his lawyers handling his Chapter 11 matters.

33 The respondent was only able to unearth the materials on the Chapter 11 proceeding with much difficulty. Without the respondent probing into the one sentence in Dr Seaman's first affidavit of evidence-in-chief where he merely stated that HAL was "dealing with some financial complications through the bankruptcy courts", the deception would not have been uncovered.

34 Following this discovery, the appellant had to recast the numerous affidavits of evidence-in-chief ("AEIC") already filed, including the first supplementary AEIC of Mr Baker, which was filed just three days before the start of the hearing of the assessment and that of Dr Seaman on the day of the commencement of the assessment.

35 Moreover, during the first tranche of the assessment hearing, Dr Seaman touched on new points which were not included in his two AEIC filed, including the "keyman discount" concept which would have had the effect of enhancing HAL's net worth from US$39m to US$100m. Because of this and other matters, the cross-examination of Dr Seaman by the respondent was postponed to the second tranche to enable the respondent to carry out further investigation and the respondent was given up to 7 June 2002 to furnish her report on the matter. This was done. This deadline similarly applied to the appellant, if she should wish to file any further report or affidavit.

36 On 7 June 2002 the respondent submitted a report by Mr Hecht, wherein, based on the documents discovered, he came to the conclusion that the value of HAL's land bank had been greatly inflated. Due to constraints of time he managed only to value the two biggest land transactions, the Orkin transaction and the Adirondacks transaction, which in terms of dimension represented 61.7% of the total land bank. In Mr Hecht's opinion, on these two transactions there was an inflation of US$30m.

37 No indication was given between 7 June 2002 and 25 June 2002 that the appellant wished to recall Mr Baker or that he would be submitting a new affidavit. From 7 June 2002 the appellant had clearly known that the respondent would be challenging the land values. Indeed, having regard to the deliberate attempts to suppress discovery of the Chapter 11 documents, the appellant could hardly aver that she was surprised that the respondent would take objection to the valuations. Contradictions were apparent on the face of the documents disclosed and the appellant should have, of her own accord, explained to the court even without the respondent taking issue on them.

38 The appellant's argument is that until she and her advisers saw Mr Hecht's report she would not know which of the land valuations would be subject to criticism. She should thus be allowed to put in 2S-AEIC. This argument is hardly persuasive. It would be recalled that Dr Seaman told the AR that in view of the "keyman discount" the net worth of HAL would be nearer US$100m rather than US$39m. This would naturally bring into question the land values, particularly the bigger or more valuable tracts. What the appellant had submitted was only the consolidated financial statement of HAL as at July 1990. The statement merely contained bare assertions of HAL's financial position in that year. In any case, it did not relate to HAL's financial position as at the date of his death. The fact that Mr Hecht challenged the values of the larger tracts of land should hardly be surprising as the questions were apparent from the documents themselves. The appellant should have done her homework and substantiated her valuation by 7 June 2002. The appellant, being the plaintiff, has the burden to prove her claim.

39 It also seems to us to be an inadequate excuse to say that between 7 June 2002 and the commencement of the second tranche hearing, the appellant's solicitors and counsel were, during a portion of that period, outstationed and were attending to other matters, so that they could not respond earlier. We are aware that the second tranche hearing dates were brought forward by some five days due to the imminent transfer of the AR to another post outside the Registry. But this change was known to the appellant on 7 May 2002. The following remarks of the AR, who undoubtedly had first-hand knowledge of how the assessment went, show how exasperated he was with the manner in which the appellant had conducted her case:

Hwang: … This is important evidence. It is certainly relevant to the court, if it is interested

in justice, in considering it. Otherwise, I will be hampered in my cross-examination of Mr Hecht.

His Honour: This is not the first time that this has occurred, Mr Hwang. Right before we were supposed to begin with the examination of Dr Seaman a fresh affidavit or second affidavit of Dr Seaman was filed, right on the hour.

That is precisely my point. I do not deny that the plaintiffs have a right to bring the relevant facts. What I find disconcerting is the timing of the plaintiff's action.

All these facts were freely available to the plaintiffs. All these facts are only in the awareness of the plaintiff. Without denying that they have a right to bring these facts to the court, why have they chosen to bring these facts to the court at the last minute on each occasion.

40 Viewed against this backdrop, we think the AR was amply justified to refuse the admission of 2S-AEIC. These are matters which the appellant should have explained to the court, with or without any challenge by the respondent, in the light of the inherent contradictions in the documents themselves. These are the appellant's own documents of which she should be fully conversant.

41 The judge below shared the sentiments of the AR and rejected the argument of the appellant that she was caught by surprise by Mr Hecht's report. The judge said (at [24]):

> On the complaint that the plaintiff had been caught by surprise by Hecht's report, Mr Loh pointed out that it was the plaintiff who introduced (through Seaman) the concept of "key man" discount and alleged that the deceased's estate was worth US$100m as at 31 December 1993. Yet the value of his estate had dropped to US$39m by the date of his demise, a difference of more than US$60m. There could only be two possible explanations for the sharp drop in value:
>
> (a) a "key man" discount was indeed given by the [Inland Revenue Service] or;
>
> (b) the deceased's net worth in the [consolidated financial statement] and Disclosure Statements in the bankruptcy court was inflated.
>
> Consequently, the plaintiff and her legal advisers must have known that the above discrepancy in figures would lead to a train of inquiry on the possibilities. Had the plaintiff complied with her discovery obligations under Singapore law and the defendant's witnesses were erroneous in their views, there would have been no difficulty for them to have been proved wrong had they been shown the correct documents. It therefore did not lie in the plaintiff's mouth to allege she had been taken by surprise.

42 It is trite law that on a matter involving an exercise of a discretion, the Court of Appeal should not disturb the decision of the judge unless it is shown that the judge misapplied the law, or misapprehended the facts, or that the decision was plainly wrong: see *The Vishva Apurva* [1992] 2 SLR 175.

43 On the facts of this case, we do not think that there is any basis for us to overturn the decision of the judge below in refusing to admit 2S-AEIC. While the judge was wrong to hold that *Ladd v Marshall* applied, she had in the alternative gone on to hold that even if that case was not applicable she was not inclined to exercise her discretion in favour of the appellant.

44 As regards 3S-AEIC, wherein Mr Baker tabulated another 74 property transactions and their

actual selling prices and which the appellant sought to have admitted after the assessment and for the purposes of the appeals before the judge, we again do not see how the judge's exercise of her discretion in this instance could be shown to be erroneous. The reason given for the late introduction is hardly meritorious.

45 In the circumstances of this case, it is quite clear that the appellant did not proceed with the assessment in all good faith. Neither has she fulfilled her duty to discover. There were clear attempts at suppressing the truth and in preventing the respondent from discovering the truth. Sufficient opportunities were accorded to the appellant to substantiate her claims and yet she failed to do so. The AR and in turn the judge were amply justified to refuse to grant further indulgence to the appellant. Any party who comes to court seeking to play a "cat-and-mouse" game cannot expect sympathy or indulgence.

Should a separate notice of appeal be filed

46 Before we conclude this judgment, we should briefly address a point raised by the respondent that the appellant, having failed to obtain the admission of 2S-AEIC, should have filed a notice of appeal against that part of the decision of the AR instead of filing a fresh summons for further directions to have the affidavit admitted. The respondent submitted that this amounted to an abuse of process. We agree that as the AR had refused to admit 2S-AEIC, that should have been stated in the notice of appeal as one of the grounds of the appeal. There is no necessity to take out a separate summons for further directions.

47 As for 3S-AEIC which the appellant sought to be admitted for the first time before the judge, the appellant was correct to file an application for an order to admit that affidavit. However, a simple summons in chambers should do. Order 32 r 1 of the Rules of Court provides that every application in chambers must be made by summons in chambers (Form 62), except as provided by O 25 r 7. Order 25 r 7 applies only to parties to whom a prior summons for directions has already been addressed. That was not the case here.

48 In any event, such procedural errors are matters which the court, in exercise of its discretionary powers under O 2 r 1(1), may treat as an irregularity. Neither the appellant nor the respondent would be prejudiced by the court so treating the procedural defects as mere irregularities. Both parties knew what were the issues they had to address.

Judgment

49 In the result, the appeal is dismissed with two-thirds costs to the respondent. The security for costs, together with any accrued interest, shall be released to the respondent to account of the respondent's costs.