IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 23

Civil Appeal No 75 of 2020

Between

Munshi Rasal

… *Appellant*

And

Enlighten Furniture Decoration Co Pte Ltd

… *Respondent*

In the matter of District Court Appeal No 20 of 2019

Between

Munshi Rasal

… *Plaintiff*

And

Enlighten Furniture Decoration Co Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure] — [Appeals] — [Leave]

[Civil Procedure] — [Costs] — [Personal liability of solicitor for costs]
[Tort] — [Negligence] — [Breach of duty]

Munshi Rasal
v
Enlighten Furniture Decoration Co Pte Ltd

[2021] SGCA 23

Court of Appeal — Civil Appeal No 75 of 2020
Steven Chong JCA, Belinda Ang Saw Ean JAD and Quentin Loh JAD
3 March 2021

10 March 2021

Steven Chong JCA (delivering the grounds of decision of the court):

1 This appeal arose from a workplace accident suffered by the appellant, a male Bangladeshi worker. He was employed as a general worker by the respondent at the material time, and his job was to feed pieces of plywood through a wood laminating machine ("the machine"). We dismissed the appeal and now furnish our grounds of decision.

Background to the appeal

2 On 28 June 2015, the appellant and his co-worker were instructed to remove dried glue from the connecting rollers of the machine. While doing so, the appellant's hand got caught in between the moving rollers. His thumb and two of his fingers were fractured as a result.

3 The Workmen's Compensation Board awarded the appellant $43,464.88 in compensation. Dissatisfied, the appellant sued the respondent for negligence

and alleged that the respondent had breached its common law duty of care to take reasonable steps to ensure his workplace safety. He also alleged that the respondent had breached its statutory duties under ss 11 and 12 of the Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed). The appellant originally commenced proceedings against the respondent in the High Court, but the case was transferred to the District Court, ostensibly because the value of his claim was less than $250,000.

4 In *Munshi Rasal v Enlighten Furniture Decoration Co Pte Ltd* [2019] SGDC 172 ("the District Judge's decision"), the District Judge held that the respondent did not act negligently towards the appellant. The District Judge found that the appellant's injuries were not caused by any negligence on the respondent's part, but by the appellant's own ill-advised actions in using his hand to remove waste material from the moving rollers while the machine was switched on. The District Judge also rejected the appellant's claims that the respondent had failed to provide a safe system of work or adequate supervision and training.

5 The appellant's appeal against the District Judge's decision was dismissed by the High Court Judge ("the Judge") in *Munshi Rasal v Enlighten Furniture Decoration Co Pte Ltd* [2020] SGHC 69. The appellant then filed the present appeal against the Judge's decision.

Our decision

6 Before delving into the merits of this appeal, we deal first with the issue of whether the appellant should have sought leave to appeal to this court. The answer to this question is a categorical "yes". Under s 34(2)(*a*) of the version of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") that

was in force when the notice of appeal was filed ("the 2020 SCJA"), leave is required before an appeal may be brought to the Court of Appeal where the amount in dispute at the hearing before the High Court (excluding interest and costs) does not exceed $250,000. Based on the appellant's Statement of Claim, his claim was for a total sum of roughly $190,000. The transfer of the case from the High Court to the District Court underscored the fact that the value of the appellant's claim did not exceed $250,000. It should have been obvious to any reasonably competent lawyer that leave to appeal to this court was required.

7 The appellant's failure to obtain leave was even more inexcusable given that he was alerted to this very issue at a case management conference. At that case management conference, the appellant's counsel, Mr Subbiah Pillai ("Mr Pillai"), asserted that "[t]he [a]ppellant takes the position that the [a]ppellant can appeal as of right". Mr Pillai did not cite any authority for this somewhat astounding proposition. He also claimed that "… the value of the suit is more than $250,000". A cursory glance of the record of appeal and record of proceedings revealed that Mr Pillai's claim was baseless. As mentioned at [6] above, it appeared from the Statement of Claim that the value of the appellant's claim was about $190,000. Moreover, it was unfathomable that Mr Pillai could have asserted that the value of the appellant's claim exceeded $250,000, in light of Mr Pillai's own oral submissions before the Judge:

> Court: Now, you are---how much are you claiming in this case?
>
> …
>
> Pillai: *Roughly, we would have been claiming about 180,000.*
>
> Court: And what do you think is the assessment, I mean, the contribution?
>
> Pillai: In my view, the contribution on [the] part of the appellant should be about 20%.
>
> Court: Sorry, you are claiming 150?

> Pillai: 180.
>
> Court: *180,000?*
>
> Pillai: *Yes.*
>
> [emphasis added]

Mr Pillai had informed the Judge that the appellant's claim was for a sum of $180,000, which was more or less consistent with what had been pleaded in the Statement of Claim (see [6] above). The figure of $180,000 was, however, a far cry from the threshold of $250,000 set out in s 34(2)(*a*) of the 2020 SCJA, and there was as such no factual basis at all for Mr Pillai to assert that this threshold had been met. At the hearing before us, he continued to suggest that the value of the appellant's claim exceeded $250,000, yet he adduced no evidence to support such a quantification. When he was reminded of his own submission before the Judge, he then changed tack and asserted that he had merely informed the Judge that the appellant's claim for *general damages* amounted to $180,000, *ie*, that the $180,000 figure was not inclusive of special damages claimed. This assertion did not stand up to scrutiny in light of his unambiguous submission to the Judge that "… [the appellant] would have been claiming about [$]180,000".

8 At the same case management conference referred to at [7] above, Mr Pillai appeared to suggest that the appellant was entitled to appeal as of right as the action was originally commenced in the High Court. We found this to be another astonishing argument. The matter was *heard* in the District Court, and the appellant did not protest when the matter was transferred from the High Court to the District Court, ostensibly because the value of his claim did not exceed $250,000.

9 Mr Pillai's unfounded assertion also ignores the plain language of s 34(2)(*a*) of the 2020 SCJA, which stipulates that leave is required to bring an

appeal to the Court of Appeal "where the amount in dispute, or the value of the subject-matter, *at the hearing before the High Court* (excluding interest and costs) does not exceed $250,000 or such other amount as may be specified by an order made under subsection (3)" [emphasis added]. It is evident from the express wording of s 34(2)(*a*) that what is relevant, for jurisdictional purposes, is the *amount in dispute* at the hearing before the High Court, regardless of the court in which the suit was originally commenced. Any doubt in this regard was dispelled by this court in *Fong Khim Ling (administrator of the estate of Fong Ching Pau Lloyd, deceased) v Tan Teck Ann* [2014] 2 SLR 659. In that case, it was held (at [30]) that when a claim originates in the District Court and is subsequently heard by the High Court in its appellate capacity, the relevant amount for the purposes of s 34(2)(*a*) of the SCJA is quantified by reference to the value of the subject matter of the appeal *when it was heard by the High Court*. Contrary to Mr Pillai's assertion, whether the appellant's action was originally commenced in the High Court or in the District Court was immaterial. We add that this should have been plain and obvious to Mr Pillai. Otherwise, a party who erroneously commences an action in the High Court (much like the appellant) will be able to take advantage of his own error and circumvent the jurisdictional limit set out in s 34(2)(*a*), even if the matter was eventually heard in the District Court. In any event, given that the issue of leave had been drawn to Mr Pillai's attention on numerous occasions, the prudent course of action for him to adopt if he had any residual doubt would have been to obtain a declaration from the court clarifying if leave was required.

10 Mr Pillai's final salvo was to argue that the appellant did not require leave to appeal as the respondent did not apply to strike out the notice of appeal. His submission was, once again, misguided. Failure to obtain leave goes towards this court's jurisdiction to hear the present appeal and renders the notice

of appeal invalid (see *Singapore Civil Procedure 2020*, vol 1 (Chua Lee Ming gen ed) (Sweet & Maxwell, 10th ed, 2020) at para 57/16/12), independent of whether the respondent applied to strike out the notice of appeal. It was not open to either party to waive the leave requirement, and the fact that the respondent did not apply to strike out the notice of appeal did not, *ipso facto*, dispense with the need for the appellant to obtain leave since leave was otherwise required.

11 We stress that the leave requirement is not a mere procedural step that has to be observed for its own sake. Rather, s 34(2)(*a*) of the 2020 SCJA (or s 29A(1)(*b*) of the present SCJA) provides for a process to screen appeals to the Court of Appeal, in line with the legislative intention to allow only one tier of appeal *as of right* for civil claims of up to $250,000 (*Virtual Map (Singapore) Pte Ltd v Singapore Land Authority and another application* [2009] 2 SLR(R) 558 at [19]). The overarching need to conserve the finite resources of the Court of Appeal explains why leave to appeal is required if, *inter alia*, the amount in dispute does not exceed $250,000, as well as the limited situations in which leave will be granted (see the conditions laid down in *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 ("*Tang Liang Hong*") at [16]). At the second reading of the Supreme Court of Judicature (Amendment) Bill, the then Minister for Law, Prof S Jayakumar, explained as follows (*Singapore Parliamentary Debates, Official Report* (26 November 1998) vol 69 at col 1629 (Prof S Jayakumar, Minister for Law)):

> In view of the enhanced District Courts' jurisdiction to $250,000 in civil matters, the Chief Justice has proposed that the existing $30,000 limit in section 34(2)(*a*) be raised to $250,000. In other words, bring its limit in line with the enhancement. *If the limit is not raised to $250,000, District Court cases of less than $250,000 can first go on appeal to the High Court and then Court of Appeal. This would strain the limited resources of the Court of Appeal.* [emphasis added]

12 By steadfastly refusing to seek leave to appeal on behalf of the appellant, Mr Pillai regrettably committed the very mischief that the then Minister for Law cautioned against. Judicial resources were unnecessarily expended over what was, in our view, a fruitless appeal. The evidence overwhelmingly supported the factual findings made by both the District Judge and the Judge. We affirmed the Judge's findings that the respondent had provided the appellant with adequate supervision and training, and that the appellant was the author of his own misfortune in switching on the machine and bringing his hand near the moving rollers while the machine was in operation. Furthermore, this appeal raised neither novel questions of general principle nor questions of public interest or importance. In other words, even if the appellant had sought leave to appeal, we would not have granted leave as the leave requirements set out in *Tang Liang Hong* at [16] were not satisfied. Since leave was not obtained *and* as the appeal was without merit, we dismissed the appeal.

13 On the whole, we were troubled by Mr Pillai's conduct of this appeal. First, it was shocking that the leave requirement could have escaped him. The need to seek leave to appeal to the Court of Appeal where a claim is less than $250,000 is a rudimentary point of law that any reasonably competent lawyer should be aware of even without prompting from the court. Second, the leave requirement was specifically and repeatedly drawn to his attention at numerous case management conferences. However, he chose to insist on the appellant's purportedly unqualified right of appeal without any proper legal basis. Third, he aggravated matters by attempting to assert before the court on at least three occasions that the appellant's claim was in excess of $250,000, even though a significantly lower sum was pleaded in the Statement of Claim. His conduct of this appeal left much to be desired and fell short of the standards expected of officers of the court.

14 We took a particularly dim view of Mr Pillai's conduct in view of the fact that he was acting for a vulnerable client. As a foreign worker, the appellant would have been unfamiliar with the intricacies of the legal system and wholly dependent on Mr Pillai to ensure that the requisite procedural steps had been complied with. It was therefore incumbent upon Mr Pillai to ensure that the relevant procedural rules had been observed and to avoid incurring wasted time and costs in pursuit of a hopeless appeal. As V K Rajah JA observed in *Zhou Tong and others v Public Prosecutor* [2010] 4 SLR 534 at [13]:

> … Many lay persons, like the appellants in this case, have little knowledge or experience with the nuts and bolts of the legal machinery. They are entirely dependent on their solicitors to advise them on the most appropriate course of action to take. Unsophisticated clients are particularly vulnerable. They are ordinarily in no position to assess if their solicitors have discharged their professional responsibilities competently. They have no alternative but to assume that their solicitors will protect their interests and conduct their case to the best of their ability and in good faith. …

15 In pursuing this unmeritorious appeal without even seeking leave as required, Mr Pillai wrongly caused the appellant to have false expectations that there was a legitimate basis for his appeal. Instead, all it did was to expose the appellant to the adverse costs consequences that would follow the pursuit of a completely misconceived appeal.

16 That left us with the question of what costs orders ought to be made. In our view, as Mr Pillai's conduct in these proceedings was a huge disservice to the appellant, it did not seem fair and just to visit the costs of this appeal on the appellant. Accordingly, we invited counsel for both parties to submit on whether Mr Pillai ought to be made to bear personal liability for the costs incurred in this appeal, pursuant to O 59 r 8(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC").

17 Order 59 r 8(1) of the ROC empowers the court to order costs against solicitors personally where costs have been incurred "unreasonably or improperly" in any proceedings or have been "wasted by failure to conduct proceedings with reasonable competence and expedition". The applicable test in deciding whether to order costs against a solicitor personally is the three-step test set out by the English Court of Appeal in *Ridehalgh v Horsefield* [1994] Ch 205 at 231, which has been endorsed by this court in *Tang Liang Hong v Lee Kuan Yew and another and other appeals* [1997] 3 SLR(R) 576 at [71] and *Ho Kon Kim v Lim Gek Kim Betsy and others and another appeal* [2001] 3 SLR(R) 220 at [58]:

> (a) Has the legal representative of whom complaint is made acted improperly, unreasonably or negligently?
>
> (b) If so, did such conduct cause the applicant to incur unnecessary costs?
>
> (c) If so, is it in all the circumstances just to order the legal representative to compensate the applicant for the whole or any part of the relevant costs?

18 In *Bintai Kindenko Pte Ltd v Samsung C&T Corp* [2018] 2 SLR 532 ("*Bintai*"), this court explained (at [67]–[69]) that there were at least two types of situations in which a solicitor might be regarded as having acted improperly, unreasonably or negligently so as to warrant a personal costs order. The first is where a solicitor advances a wholly disingenuous case or files utterly ill-conceived applications even though the solicitor ought to have known better and advised his client against such a course of action. An example of this can be found in *Prometheus Marine Pte Ltd v King, Ann Rita and another appeal* [2018] 1 SLR 1, which concerned applications to set aside an arbitral award.

The appellant appealed against a High Court Judge's dismissal of its setting-aside applications and filed two further summonses alleging that the High Court Judge had been biased against it. This court found the manner in which the appellant's counsel conducted the appeal troubling in several respects. First, the appellant's counsel insisted that he was entitled to maintain the summonses even after it had been pointed out to him that his position was wrong. Second, he displayed a tendency to advance untenable positions on his client's instructions. If he took the view that those positions were untenable, he was duty-bound to decline to put them forward; on the other hand, if he considered that the points could fairly be put, then he ought not to have suggested that he was only maintaining those positions on his client's instructions. Third, he mounted baseless allegations of fraud and corruption against the arbitrator and the High Court Judge without compunction. In light of the irresponsible manner in which the appeal was conducted, this court ordered the appellant's counsel to personally bear $10,000 of his client's costs, *ie*, the portion of the costs apportioned to the filing and prosecution of the summonses.

19 Second, a solicitor may be liable for costs personally where he engages in thoughtless and undiscerning preparation of documents in respect of court proceedings. Such conduct was displayed by the solicitors in *Tommy Wong Poh Choy @ Wong Pau Chou and others v Devagi d/o Narayanan @ Devaki Nair and another* (CA/CA 75/2017, unreported). In preparation for that appeal, counsel for the appellants filed a 3,535-page long record of appeal and a voluminous core bundle comprising nearly 550 pages of documents, even though the appeal only concerned a very narrow issue. This court noted that significant portions of the record of appeal and core bundle consisted of documents that were entirely superfluous and irrelevant to the issue on appeal, as well as documents that were duplicative of other material that was already

before the court. The failure of the appellants' counsel to conduct the appeal with reasonable competence added to the costs incurred, both in terms of the disbursements incurred in photocopying as well as in terms of time wasted in studying the unnecessary documents that had been included. Accordingly, the appellants' lawyers were ordered to bear half the costs of the appeal and disallowed them from recovering the disbursements incurred in photocopying from their clients.

20 In our view, there was no question that Mr Pillai had acted improperly and unreasonably and thereby caused the appellant to incur unnecessary costs. The appeal was ill-conceived given that leave was not sought, and Mr Pillai ought to have known better than to proceed with the appeal without leave of court. What was egregious about his conduct was not merely the fact that he had failed to obtain leave, but that he had persisted in his failure to do so despite having been alerted to the leave requirement on multiple occasions. We were particularly dismayed by his insistence that he could dispense with the leave requirement, whether because the appellant was purportedly entitled to appeal as of right or because the appellant's claim apparently exceeded $250,000, despite the court's repeated efforts to advise him otherwise on this point. As such, we were satisfied that it would be appropriate to order that the costs of this appeal be borne by Mr Pillai personally.

21 We were cognisant of this court's remarks in *Bintai* (at [67]) that where a solicitor advances a wholly disingenuous case or files utterly ill-conceived applications even though he ought to have known better, the appropriate costs order would be to direct that the solicitor bear "a portion" of the party-and-party costs that have been ordered against his or her client, pursuant to O 59 r 8(1)(*b*) of the ROC. However, this hopeless appeal should never have been filed in the first place, and it certainly should never have been filed without leave. We

therefore saw fit to order Mr Pillai to bear *all* the costs incurred in this appeal personally. We further ordered that Mr Pillai should not charge the appellant for any fees or disbursements in respect of this appeal.

Conclusion

22 In conclusion, we dismissed the appeal and made the costs orders stated in [21] above. The usual consequential orders followed.

Steven Chong
Justice of the Court of Appeal

Belinda Ang Saw Ean
Judge of the Appellate Division

Quentin Loh
Judge of the Appellate Division

Pillai Subbiah (Tan & Pillai) for the appellant;
Appoo Ramesh and Vinodhan Gunasekaran (Just Law LLC) for the respondent.