Ong Jane Rebecca *v* PricewaterhouseCoopers and others
[2012] SGHC 106

Case Number : Suit No 156 of 2006 and Summons No 9 of 2012

Decision Date : 16 May 2012

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Woo Tchi Chu and Grace Tan (Robert Wang & Woo LLP) for the plaintiff; Ang Cheng Hock SC, Ramesh Selvaraj and Tan Kai Liang (Allen & Gledhill LLP) for the first and second defendants; Chandra Mohan and Gillian Hauw (Rajah & Tann LLP) for the third defendant.

Parties : Ong Jane Rebecca — PricewaterhouseCoopers and others

Civil Procedure – Proceedings at Trial – Judgment given in absence of party – Setting aside

16 May 2012

Lai Siu Chiu J:

Introduction

1 On 20 October 2011, I dismissed the claim of Jane Rebecca Ong ("the plaintiff") and awarded judgment to PricewaterhouseCoopers ("the first defendant"), and Arul Chew & Partners ("the third defendant") on their respective counterclaims when the plaintiff, despite my urging, refused to continue with the trial for this suit. I further dismissed the plaintiff's action against PricewaterhouseCoopers LLP ("the second defendant"). The plaintiff has appealed against my decision in Civil Appeal No 140 of 2011 ("the first appeal").

2 This suit was another episode in the litigation saga that Jane Rebecca Ong ("the plaintiff") first commenced twenty one years ago in Originating Summons No 939 of 1991 ("the OS") when she sued Lim Lie Hoa ("Mdm Lim") her then mother-in-law and her then estranged husband Ong Siauw Tjoan ("ST Ong") for one-twelfth share in the estate of Mdm Lim's husband Ong Seng King ("the deceased"). The deceased was a very wealthy Indonesian who had died intestate on 22 October 1974 leaving substantial assets in numerous countries including Singapore; ST Ong was/is a beneficiary of the deceased's estate ("the estate").

3 The OS was converted to a writ of summons pursuant to an order of court dated 4 April 1994. The plaintiff's claim was based on a deed of assignment dated 29 August 1991 ("the deed of assignment") whereby ST Ong assigned to her half of his one-sixth share in the estate. Earlier, ST Ong had executed a deed of release dated 29 June 1989 ("the deed of release") acknowledging that he had received £1,018,000 and US$150,000 in full and final settlement of his interest in the estate.

4 The plaintiff, as a litigant in person in the OS emerged victorious when on 16 July 1996, Justice Chao Hick Tin ("Chao J") ruled in her favour (see *Ong Jane Rebecca v Lim Lie Hoa and Another* [1996] SGHC 140) and held *inter alia* that: (i) the deed of release executed by ST Ong was void and unenforceable; (ii) the deed of assignment was valid and the plaintiff was entitled to one-twelfth share of the estate. Chao J ordered that an inquiry be held to determine ST Ong's one-sixth entitlement to the estate as of 29 August 1991 and the quantum of the plaintiff's one-twelfth share

under the deed of assignment. Mdm Lim appealed against Chao J's decision. Her appeal was heard by the Court of Appeal in February 1997 and dismissed on 16 April 1997 (see *Lim Lie Hoa and Another v Ong Jane Rebecca* [1997] 1 SLR(R) 775).

5 I should point out that the OS spawned subsequent proceedings by the parties which resulted in five other judgments that were reported at: (i) [2002] 1 SLR(R) 798; (ii) [2002] 2 SLR(R) 1078; (iii) [2003] 1 SLR(R) 457; (iv) [2004] 4 SLR(R) 301; (v) [2008] 3 SLR(R) 189; and (vi) [2009] 2 SLR(R) 798. The court files reveal that the plaintiff was/is a party to sixteen bills of costs, nine civil appeals, five suits and was a caveator in CAVP No. 175 of 2010 in the estate of Mdm Lim (who passed away on 8 August 2009).

6 The inquiry ordered by Chao J commenced in October 2002 and was held over 23 days before Assistant Registrar Phang Hsiao Chung ("AR Phang"). At the conclusion, AR Phang in his (185 page) judgment delivered on 13 June 2003 assessed (on a standard and not wilful default basis against Mdm Lim as the plaintiff contended should have been the case) the net values of the estate in the following countries were:

(a) Singapore – S$11,872,574.21

(b) Hong Kong – HK$18,686,098.75, NZ$451,935.37 and £1,430.34

(c) Malaysia – S$485,528

(d) Indonesia – S$3,616,667

(e) Europe – US$2,127,530.28, DM2,708,472.40 and £331,043.46

The total value of the estate was in the region of S$27.9m. Consequentially, AR Phang awarded final judgment to the plaintiff in the sum of $2,321,770.27 ("the judgment sum") plus interest together with one-twelfth share in a piece of land and a plantation in Indonesia as well as monies in a bank account in the United States. Setting off the judgment sum against periodic interim payments which the plaintiff had received between May 1998 and April 2001 pursuant to various orders of court she had obtained, the net sum due to the plaintiff was only $37,493.67. In a separate subsequent judgement, AR Phang awarded costs of the inquiry to the plaintiff.

7 Mdm Lim, ST Ong, the plaintiff as well as ST Ong's two siblings (who had been joined as the third and fourth defendants to the OS because they were interested parties as beneficiaries of the estate) appealed against AR Phang's decision, first to a judge in chambers (Justice Choo Han Teck ("Choo J")) who dismissed their appeals (at [2004] SGHC 131) and then to the Court of Appeal. The plaintiff's appeal was in Civil Appeal No 58 of 2004. All the appeals were dismissed on 19 January 2005 (see *Lim Lie Hoa and Another v Ong Jane Rebecca* [2005] 3 SLR(R) 116) ("the CA decision").

8 I should point out that the plaintiff went into an Individual Voluntary Arrangement ("IVA") with her creditors in the UK in April 2005 when she was unable to pay her debts. I should also add that throughout her years of litigation including the present proceedings, the plaintiff appeared to have received third party funding.

The facts

9 The CA decision was the genesis of this suit. On 20 March 2006, the plaintiff commenced this suit against the three defendants for professional negligence in acting for her as her experts (the first

and second defendants) and legal adviser respectively (the third defendant) in the inquiry. Excluding the two annexures and the reliefs she claimed, the plaintiff's statement of claim (Amendment No 1) filed on 27 January 2010 totalled 229 pages and exceeded 182 paragraphs. The plaintiff apparently did nothing after filing the writ which (after renewal) was only served more than a year later in May 2007, after the plaintiff was directed to do so by the court.

10 The first defendant is the Singapore office of PricewaterhouseCoopers which is considered one of "the big four" international accounting firms. The second defendant is the London office of PricewaterhouseCoopers.

11 The third defendant was/is a firm of advocates and solicitors whose partner and subsequent sole-proprietor (from 1 January 2001) was one Andre Arul ("Arul").

12 The plaintiff approached the second defendant with a view to engaging it as her expert witness in the inquiry. After a discussion with the plaintiff on 10 March 1999, Andrew Peter Clark ("Clark") a partner of the second defendant felt it would be more appropriate for a partner of the first defendant (as it was based in Singapore) to be the plaintiff's expert witness. Accordingly, Clark introduced the plaintiff to the first defendant's partner Chan Ket Teck ("Chan") who has since passed away (in late 2008). The first defendant was instructed to value the plaintiff's one-twelfth entitlement to the estate and to evaluate the accounts pertaining to the assets of the estate when they were prepared pursuant to Chao J's judgment. Mdm Lim engaged the accounting firm of Arthur Andersen ("AA") to prepare the accounts of the estate's assets. AA in two reports valued the estate in the region of S$26m.

13 The plaintiff engaged the first defendant's services in or about April 1999. The first defendant produced an interim report dated 21 March 2000 ("the PWC report") pursuant to the plaintiff's instructions. The PWC report valued the estate in the region of S$263.5m and it was used at the inquiry.

14 The plaintiff's complaint in her statement of claim in essence was that the defendants had failed to advise her that the scope of the inquiry ordered by Chao J pursuant to the judgment dated 16 July 1996 did not allow her to recover damages for breaches of trust committed by Mdm Lim. However, the PWC report was prepared on the basis that there were breaches of trust committed by Mdm Lim. The plaintiff *inter alia* also alleged that AR Phang found the PWC report unreliable and she was portrayed as a greedy woman. She blamed the first defendant for neither putting before AR Phang the requisite information and documents nor relying on all the documents and evidence she presented, resulting in an undervaluation by the court of the estate as being worth $27,861.242 when the estate was actually worth at least $309,265,348.12.

15 As for the third defendant, the plaintiff alleged that Arul was negligent in failing to bring to her attention that her case was not properly pleaded in the OS, amend her pleadings and to give her proper legal advice.

16 In their respective defences, the three defendants denied the plaintiff's allegations. The second defendant denied it had acted for the plaintiff at all. The first defendant counterclaimed against the plaintiff for its professional fees in the sum of $569,865.76 for the services it rendered for the inquiry. The third defendant similarly counterclaimed the sum of $329,809.27 for professional fees and disbursements incurred in acting for the plaintiff between the period 27 December 1996 and 3 March 2006.

The events leading up to the trial

17 Since commencement of these proceedings and until this court's dismissal of her action on 20 October 2011, the plaintiff has appointed no less than three firms of solicitors to represent her at various times. She had also acted in person at various stages. One firm in particular, Engelin Teh Practice LLC ("ETP") was appointed twice, first on 24 June 2009 and then reappointed on 4 August 2011. The plaintiff acted in person in the periods 1 December 2008 to 23 June 2009, 10 May to 3 August 2011 and from 29 September 2011 onward after ETP ceased acting for her when the firm failed (first before Justice Woo Bih Li ("Woo J")) and then before the Court of Appeal) to vacate the original trial dates fixed between 26 September and 21 October 2011 ("the trial dates"). It is pertinent to note that trial dates were first given in July 2009 but those dates were vacated with costs ordered against the plaintiff. Apparently the vacation was due to the plaintiff's indication to the court below at a pre-trial conference held on 19 June 2009, that she intended to amend her statement of claim, which she did much later (in January 2010).

18 Although Woo J did not allow the trial dates to be vacated, he had nevertheless (by his order of court dated 2 September 2011) pushed back the start of trial by one week so that it would commence on Monday, 3 October 2011 instead of on 26 September 2011. Similarly, although the Court of Appeal dismissed (on 21 September 2011) the plaintiff's expedited appeal (in Civil Appeal No 109 of 2011) against Woo J's decision, it ordered that the trial dates be pushed further back. Instead of commencing on 3 October 2011, the trial was pushed back another week to start on 10 October 2011.

19 Trial in fact did not commence on Monday 10 October 2011 but on 13 October 2011 as I was on leave before that. On Tuesday 12 October 2011, the parties appeared in my chambers for the urgent hearing of Summons No 4491 of 2011 ("the plaintiff's application") which I granted. The plaintiff had applied for extensions of time to: file her objections to the Affidavits of Evidence-in-Chief ("the AEICs") of the defendants, file her core bundle of documents and the opening statement.

20 Previously, the second defendant had in Summons No 4471 of 2011 ("the second defendant's application") filed on 6 October 2011, applied for the evidence of Clark to be given by way of videolink from London. The second defendant's application (which was supported by Clark's affidavit) was granted on 10 October 2011 by the court below with the consent of the third defendant and the plaintiff. The plaintiff was absent but counsel for the first/second defendant mentioned the matter on her behalf.

The trial

21 After settling various housekeeping issues including the voluminous bundles that were produced in court (numbering 90 odd volumes from the plaintiff and the defendants), the trial commenced with the plaintiff taking the stand. She was assisted by a company called Litigation Edge Pte Ltd ("Litigation Edge") whose function, through its two representatives in court (Serena Lim and Chen Junbin), was to assist the plaintiff to bring up for viewing via the mobile infotech trolley, documents that the plaintiff and/or counsel referred to in the course of her testimony.

22 The plaintiff was cross-examined by counsel for the first/second defendants Mr Ang Cheng Hock ("Mr Ang") followed by counsel for the third defendant Mr Chandra Mohan ("Mr Mohan"). The plaintiff's cross-examination did not conclude until the afternoon of Tuesday 18 October 2011. Effectively, the plaintiff was in the witness stand for about five days. The plaintiff's second witness was her son Nicholas Ong whose examination and cross-examination were brief and was concluded when this court rose on the evening of 18 October 2011. Hearing did not resume on Wednesday, 19 October 2011 when the plaintiff would have been re-examined as she had informed the court on Tuesday that she needed more time to review the transcripts of her testimony which were being produced on a daily

basis. The court acceded to her request and adjourned the hearing to Thursday 20 October 2011 morning.

23 On the morning of 20 October 2011, the plaintiff requested to see me in chambers which request I acceded to. The plaintiff complained that she had just received that morning at 9.30am Mr Ang's letter dated 19 October 2011 giving his order of witnesses; it stated that Clark would be the first witness (on the second defendant's behalf) followed by three witnesses for the first defendant. The plaintiff claimed she was not aware until then that the second defendant's witness would be called first instead of those for the first defendant. The plaintiff then went into the history of how she came to act in person (after ETP ceased acting for her) and indicated she could not continue with the trial because of her late receipt of the first/second defendants' list of witnesses.

24 Quite apart from the fact that it was the prerogative of their counsel Mr Ang as to which of his witnesses he chose to call first since he acted for both the first and the second defendants, the court pointed out that the plaintiff had known (from the second defendant's application in [20]) that Clark's testimony was to be taken by videolink). Mr Ang added that when the second defendant applied for videolink of Clark's testimony, it was on the basis of the trial dates before Woo J pushed them back to 3 October 2011. His witnesses had reserved their availability based on the trial dates. Mr Ang reminded the court that at the hearing of the plaintiff's application (on 12 October 2011), he had indicated that he had booked the Technology Court for 20 October 2011.

25 Mr Ang explained that Clark was scheduled to testify on 20 October 2011 as Clark's time was fully booked on other dates for matters he was involved in (which were stated in Clark's supporting affidavit for the second defendant's application). Mr Ang did not understand how the plaintiff could be taken by surprise as he had on the first day of trial (13 October 2011 at Notes of Evidence ("NE") 16) again said that Clark's evidence by videolink would take place on 20 October 2011. Mr Ang added that his accounting expert was Trevor John Dick ("Dick") from Ernst & Young's Hong Kong office, while Ian Edward Huskisson an English solicitor, was to testify on the plaintiff's IVA in the UK (see [8]). All his witnesses had blocked the dates in their diaries based on the trial dates commencing on 26 September 2011; the dates had since been shifted. Instead of making his witnesses wait even longer, they should be allowed to testify.

26 The court informed the plaintiff that Clark would testify that afternoon as scheduled. The plaintiff then inquired whether she could recall Clark after she had cross-examined the first defendant's witness Chan Kheng Tek ("CKT"). She explained that the questions she would put to CKT may need input from Clark. I assured the plaintiff that Clark could be recalled although she *may* have to pay the costs of doing so. If need be, Dick too could be recalled either in person or by videolink after he had testified. Mr Ang also offered to cross-examine the plaintiff's accounting expert Owain Rhys Stone ("Stone") first before Clark testified and before the plaintiff was re-examined.

27 Notwithstanding what the court and counsel said, the plaintiff maintained she did not feel capable or emotionally capable of continuing, adding that she had been told that if at any time she could not carry on, she must inform the court. She felt she had no choice. The plaintiff said she did not want to waste the court's time and continue with the trial.

28 I made it clear to the plaintiff that if she failed to continue with the trial, I would be left with no alternative but to dismiss her case against the three defendants with costs. I suggested to the plaintiff that her re-examination be postponed until after she had had an opportunity to go through the notes of evidence of the previous Thursday's hearing (which parties had just received that morning). In fact, counsel agreed that the plaintiff need only do her own re-examination after Clark had testified. Consequently, the hearing in open court was stood down to 11.00am to enable the

plaintiff to refresh herself with Thursday's notes of evidence and also Clark's AEIC.

29 Despite the above warning and the efforts of the court as well as counsel to accommodate her, when open court resumed at 11.08am, the plaintiff was absent. Invited to speak, Serena Lim from Litigation Edge informed me that the plaintiff had indeed left the court's premises and had told her that she (the plaintiff) would not be returning to court.

30 On hearing Serena Lim, Messrs Ang and Mohan applied on behalf of their respective clients to dismiss the plaintiff's claim. In the case of the first and third defendants, counsel also applied for judgment on their clients' counterclaims. I dismissed the plaintiff' claim and awarded judgment on the counterclaims. In this regard, I should point out that when the plaintiff was cross-examined, she did not dispute the counterclaim of either the first or the third defendants. Her main contention as stated in her reply and defence to their respective counterclaims (apart from stating she was not obliged to pay them because of their negligence) was, that the two defendants had waived their rights and/or were barred/stopped from making their claims because of the IVA she had made with her creditors, and which she asserted included the two defendants.

31 As was pointed out by Mr Ang, this court was *not* precluded from awarding judgment on the counterclaims of the first and third defendants merely because the plaintiff was under an IVA with her UK creditors. The IVA would only affect the issue of enforcement of the defendants' judgments in the UK. (The formal judgment was extracted by the first/second defendants on 20 October 2011).

32 Although both counsel asked for costs on an indemnity basis, I felt that it would not be fair to award such costs to the three defendants without affording the plaintiff an opportunity to present her arguments. Consequently costs of the suit were reserved. On the same day itself, the court wrote to the plaintiff setting out the events of the morning, informing her of the defendants' request for indemnity costs and giving her two weeks (until Thursday, 3 November 2011) to revert with her objections if she disagreed that the defendants should be awarded indemnity costs.

33 By her letter dated 25 October 2011 (carbon-copied to the defendants' solicitors), the plaintiff reverted voicing her objections to indemnity instead of standard costs being awarded to three defendants. It would not be necessary to address the contents of the plaintiff's letter save to point out that counsel for the three defendants did not agree with the contents generally. It was noteworthy that the plaintiff's letter showed she appreciated the difference between the two types of costs. It was also noteworthy that the plaintiff did not disagree with the court's narration of what took place in my chambers on 20 October 2011. Neither did she raise any of the allegations found in the first affidavit that she filed for the appeal application. Instead, the plaintiff concluded her letter as follows:

> I offer my sincere apologies and regret as I did not mean to act discourteous or disrespectful to Your Honour by not returning to court. I just felt unable to regain my composure enough to face the ordeal in such stressful circumstances. I sincerely thank Your Honour for allowing and inviting Ms Serena Lim of Litigation Edge to address and inform the court on my behalf that I would not be continuing with the trial. I am also extremely grateful for giving me the opportunity to put my objections to the Court on the request of the Defendants for costs on an indemnity basis.

34 In view of her objections to the award of indemnity costs to the defendants, the Supreme Court Registry ("the Registry") informed the plaintiff by its letter dated 8 November 2011 that a hearing date would be fixed for the parties to present arguments on costs in the first quarter of 2012 and that the plaintiff should make herself available in Singapore for that purpose.

35 However, no hearing date for arguments on costs was fixed at all because subsequent events overtook the issue and rendered a hearing date unnecessary. First, the plaintiff appointed her present solicitors Robert Wang & Woo LLP ("RWW") on 18 November 2011. Second, on the same day, RWW filed the first appeal [1] on the plaintiff's behalf. Third, on 3 January 2012 through RWW, the plaintiff applied in Summons No 9 of 2012 ("the appeal application") to: (i) set aside the judgment awarded to the defendants on 20 October 2011 and (ii) stay the first appeal. Fourth, the defendants subsequently informed the court that they would settle for costs on a standard basis.

36 The appeal application (which was unanimously opposed by all three defendants), was heard by this court on 21 February 2012 and dismissed. On 20 March 2012, the plaintiff filed a second notice of appeal in Civil Appeal No 25 of 2012 ("the plaintiff's second appeal") against my dismissal.

37 In relation to the fourth reason in [35], the third and first/second defendants' solicitors wrote on 7 March and 16 March 2012 respectively to inform me that their clients had decided (notwithstanding their entitlement to the same) not to pursue their claim for indemnity costs. Instead, the defendants wished to proceed to tax their costs on a standard basis.

38 Accordingly, and after the Registry had confirmed to their solicitors that costs to all three defendants were on a standard basis, the third defendant extracted an order of court dated 9 March 2012 to that effect.

The decision

(i) The plaintiff's first appeal

39 I shall first set out the reasons for this court's dismissal of the plaintiff's claim and the consequential award of judgment to the first and third defendants on their respective counterclaims, before dealing with the appeal application.

40 It is not unreasonable to conclude based on her litigation history set out at [5], that the plaintiff is undoubtedly a savvy/seasoned litigator notwithstanding her denials to the contrary. That was how the counsel for the defendants described her in these proceedings and I agree it was an apt description. The plaintiff acquitted herself admirably as a litigant in person when she faced two senior lawyers (who represented Mdm Lim and ST Ong) as her opponents in the OS; both lawyers subsequently became senior counsel. However, there was another side to the plaintiff's character that surfaced over the years she was embroiled in litigation; the plaintiff repeatedly failed to comply with timelines whether consensual or court-imposed, and with innumerable directions made by the court. This was a frequent complaint by counsel for the defendants.

41 In this regard, I would refer to Woo J's grounds of decision dated 14 September 2011 (at [2011] SGHC 203) when he refused to allow her to vacate the trial dates. Woo J had this to say at [119]:

> I concluded that JRO [the plaintiff] had abused her position as a lay litigant and her need to obtain funding for legal representation. There was no strong reason to support the Present Summons. There was also a history of failure by her to comply with timelines agreed to by herself and/or imposed by the court. Her explanations were also not *bona fide*. In the circumstances, I declined to vacate all the Present Trial Dates…

For the reasons set out below, I fully endorse Woo J's observation.

42 When she was in my chambers on 20 October 2011, the plaintiff had alluded (see [25]) to one

of Woo J's orders made on 2 September 2011 when she informed me that she had been told that she must inform the court if at any time she could not carry on. However, the plaintiff had only made selective reference to Woo J's order; the full text of prayer 8 of his order reads as follows:

> If the plaintiff is of the view that it is pointless for her to attempt to meet any of the above orders, she or her solicitors are to notify the solicitors of all the defendants immediately in writing, *whereupon her claim against each and every Defendant is struck out and the plaintiff is to pay the costs of her action to the Defendants to be agreed or taxed*. (emphasis mine)

The plaintiff had deliberately and wilfully omitted to refer to the italicised portion of Woo J's order. She well knew the consequences of her action – that if she did *not* resume the trial but chose to walk out of my court, (despite my and the efforts of counsel to accommodate her on the order of witnesses to be called), her claim would be dismissed. She made a deliberate and conscious decision to abandon her case. Yet the plaintiff came back later by way of the appeal application and requested me to overlook/ignore her earlier decision. The plaintiff's ambivalent stand was not only unreasonable but totally unacceptable.

43 It should be noted that prior to his letter dated 19 October 2011, Mr Ang had *not*, indeed he had *never*, given any indication to the plaintiff (nor did she ask) of the order of his witnesses. It was Mr Ang (and Mr Mohan) who had requested the plaintiff for her order of witnesses. That being the case, how could the plaintiff say that Mr Ang had changed his order of witnesses? In any case, as Mr Ang acted for both the first and second defendants, it was entirely within his prerogative to decide whether he would put the first or second defendants' witness on the stand first.

44 In her first affidavit filed on 3 January 2012 (para 58) in support of the appeal application (at [33]), the plaintiff had alleged that the order of court dated 2 September 2011 (made by Woo J (at [18]) set out the order of witnesses to be called by the first and second defendants. That is incorrect. That order of court merely *identified* the factual and expert witnesses the parties intended to call, not the order in which they would be called. Even if it did, the order was not cast in stone. Counsel for the two defendants was entitled to change his order of witnesses.

45 I would add that the plaintiff's contention (in para 98 of her first affidavit) that I should have granted her at least one day's adjournment to prepare her cross-examination of the first defendant's expert witnesses was *not* raised on 20 October 2011 or in her subsequent letter dated 25 October 2011 at [33]. Had she done so, her request would have been favourably considered, she being the party bearing the hearing fees not the defendants. It was in any case unlikely that the first defendant's experts would have testified on 20 October 2011 in view of the fact that Clark was scheduled to testify via video-link that afternoon. I had informed the plaintiff that she would be given time to refresh herself with Clark's AEIC and I stood down the hearing that morning for that reason.

46 It is telling that the plaintiff had shifted her stand – on 20 October 2011, she told the court and counsel she could not carry on with the *trial*, she *did not* say that she was unable to carry on for that day *only.* If, as the plaintiff deposed in para 32 of her affidavit dated 17 February 2012 ("the plaintiff's third affidavit"), that standing down the hearing to 11am was insufficient time for her to read 132 pages of the notes of evidence of Thursday 13 October 2011 to refresh herself for re-examination, this was not told to me nor was I asked for more time (which I would have readily granted). In any case, I had directed that her re-examination would be postponed to a later date. The 20 days' trial was scheduled to continue until Friday 4 November 2011 (unless it was concluded earlier or later). The impression given by the plaintiff that morning was *not* that she wanted a short adjournment but that she did not intend to carry on with the trial *at all*.

47 Notwithstanding her "extremely distressed and upset state" (according to her letter dated 25 October 2011), the plaintiff lost no time and had the presence of mind to write to the Registry immediately after the morning to request the refund of her hearing fees. Although her request was dated 21 October 2011, that date was obviously a mistake and the letter must have been written on 20 October 2011. This is clear from the following two paragraphs of her letter where the plaintiff said:

> I refer to the court hearing in relation to the above suit 156/2006W, which had been scheduled for the following dates: 13th October 2011 to 4th November 2011.
>
> As the trial ended on the morning of 21 October 2011, I am writing to request for the unutilised court hearing fees to be refunded to me and for the same to be paid to "Litigation Edge Pte Ltd".

Her request for the hearing fees also belied the plaintiff's (current) contention that she only intended to have a short adjournment of her case. She attempted to explain her action (at para 26) in her third affidavit (see [55]) by stating she needed the hearing fees to reimburse Litigation Edge their disbursements; no figures were given nor was any evidence produced; I remain highly sceptical of the plaintiff's explanation.

48 Even if the plaintiff's complaint against Mr Ang's scheduling or rescheduling of witnesses had any merit, the third defendant had no part to play in that complaint. The plaintiff could have proceeded with her cross-examination of Arul. Her case against him and his defence had no bearing on her case against the other two defendants; she did not.

49 It bears noting that this suit commenced more than six years ago. Had the plaintiff pursued her claim with reasonable diligence, the proceedings from commencement of trial to the conclusion of the appeal process should have taken no more than two to three years. Even giving due allowance to the plaintiff's propensity to appeal against (almost) every interlocutory application that was made against her (as seen from her past litigation history), the trial should have taken place before the demise of Chan in late 2008. As it is, because of the plaintiff's dilatory conduct, the first defendant had suffered irreparable prejudice as Chan is no longer available to answer the plaintiff's many allegations against the first defendant/him or to defend his conduct generally and his preparation of the PWC report in particular. In the case of the third defendant, he has had this suit hanging over his head like the sword of Damocles for the same amount of time. This is highly unsatisfactory to a senior member of the Singapore Bar.

50 It was very clear to me that the plaintiff was looking for an excuse not to continue with the trial. I would not wish to speculate on the plaintiff's reason for doing so although counsel for the defendants seemed to think (on hindsight after she filed her first affidavit in support of the appeal application) that it was the plaintiff's way of obtaining the adjournment of the trial dates that she sought earlier but which was denied.

51 As stated at [30], the plaintiff did not seriously challenge the professional fees claimed by the first and third defendants when she was cross-examined by their counsel. Her excuse for not paying either claim was that she could not because she lacked the funds and was technically bankrupt being under IVA in the UK. In the plaintiff's reply and defence to counterclaims of the two defendants, she had pleaded that the two defendants were barred from making their claims as those debts were existing at the date when her creditors approved the IVA; the quantum was not in issue. The plaintiff contended that under cl 4(3) of the standard conditions in her IVA, no creditor including the defendants could commence or continue any claim against her outside the IVA. She added that the two defendants were bound by the IVA.

52 It seemed to me that the plaintiff's defence did not preclude either the first or the third defendants from obtaining judgment on their respective counterclaims. Whether they could enforce the judgments they obtained against the plaintiff in the UK is another matter altogether and does not concern the Singapore courts.

(ii) The plaintiff's second appeal

53 I move now to the plaintiff's second appeal. The appeal application was as follows:

(a) The plaintiff be granted an extension of time to set aside the dismissal of her claim and judgment entered against her on the first defendant and third defendants' respective counterclaims on 20 October 2011 pursuant to O 35 r 2(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules");

(b) The judgment given by the Honourable Justice Lai Siu Chiu on 20 October 2011 be set aside pursuant to O 35 r 2(1) of the Rules;

(c) The plaintiff's appeal in Civil Appeal No 140 of 2011 be stayed pending the outcome of this application; and

(d) The costs of this application be costs in the cause.

54 Order 35 r 2 of the Rules upon which the appeal application was based reads as follows:

(1) Any judgment or order made under Rule 1 may be set aside by the Court on the application of any party on such terms as the Court thinks just.

(2) An application under this Rule must be made within 14 days after the date of the judgment or order.

while r 1 states:

(1) If, when the trial of an action is called on, neither party appears, the Judge may dismiss the action or make any other order as he thinks fit.

(2) If, when the trial of an action is called on, one party does not appeal, the Judge may proceed with the trial of the action or any counterclaim in the absence of that party, or may without trial give judgment or dismiss the action, or make any other order as he thinks fit.

55 In support of the appeal application, the plaintiff filed three affidavits, the first (comprising of 397 pages and 167 paragraphs of text) on 3 January 2012 (the plaintiff's/her first affidavit"); there she deposed to the entire genesis of this suit. The plaintiff gave a very different version of what transpired on 20 October 2011 in my chambers. Her version was wholly/partly untrue or totally inaccurate altogether. The first/second as well as the third defendants filed one affidavit each by their counsel Ramesh Selvaraj and Gillian Hauw respectively, to rebut the plaintiff's first affidavit. The plaintiff filed two further affidavits in response, one on 15 February 2012 ("the plaintiff's second affidavit") and by her third affidavit. As Messrs Ang and Mohan (with his colleague) were present, they were/are the best persons to verify the accuracy of the plaintiff's version of what transpired in my chambers on 20 October 2011; I need say no more.

56 In addition to giving a distorted version of the chamber hearing on 20 October 2011, on the

orders that I had made for preparation of bundles of documents on 10 October 2011 and on counsel's conduct towards her, the plaintiff's first affidavit touched on ETP's conduct of her case. Some of her comments in that regard were critical of ETP not to mention untrue, when seen in the light of ETP's responses (see [59]). Contrary to Rule 71 of the Legal Profession (Professional) Conduct Rules which states:

> (1) An advocate and solicitor whose client has given instructions to include in an affidavit to be sworn whether by the client or his witness, an allegation made against another advocate and solicitor, shall give the other advocate and solicitor an opportunity to answer the intended allegations.
>
> (2) In such a case, the answer of the other advocate and solicitor shall be included in the affidavit before the same is deposed to, filed and served.

ETP was not served with a copy of the plaintiff's first affidavit and afforded an opportunity to respond to the plaintiff's allegations *before* the hearing of the appeal application. Instead, the court was told that it was Mr Mohan who informed ETP of the plaintiff's allegations and the senior partner then contacted the plaintiff's solicitors; a copy of the plaintiff's first affidavit was later extended to ETP.

57 At the commencement of the hearing, counsel from RWW Mr Woo Tchi Chu ("Mr Woo") informed the court that ETP had written two responses (dated 16 February 2012 and 17 February 2012) to the allegations made against ETP in the plaintiff's first affidavit. Mr Woo handed copies thereof to the court. At the court's direction, a solicitor from RWW (Mr Ong Sing Huat) filed an affidavit subsequently to exhibit ETP's said letters.

58 The plaintiff's first affidavit was telling in many respects. She had no qualms about bending the truth when it suited her purpose, even where (as in the case of the chamber hearing on 20 October 2011) counsel was present and could/did rebut her version of what transpired. As stated in [56], she made adverse comments on ETP's handling of her case without affording the firm an opportunity to respond to her allegations, until after Mr Mohan intervened.

59 It spoke volumes that ETP's letter dated 16 February 2012 pointed out that the trial dates and timelines for various matters to be done were given at a pre-trial conference ("PTC") on 1 April 2011; ETP could have complied with those directions and brought the action to trial if not for the fact that the plaintiff (because of lack of funding) had *suspended* ETP's work on 3 March 2011 and thereafter *discharged* the firm on 10 May 2011. Notwithstanding the firm's discharge as her solicitors, ETP constantly reminded the plaintiff of the timelines and directions made on 1 April 2011 which PTC, as a favour to her, ETP attended even though they no longer acted for the plaintiff.

60 When ETP was reappointed as the plaintiff's solicitors on 4 August 2011 (which was seven weeks before the trial was due to commence on 26 September 2011), *the plaintiff had still not complied with the directions made on 1 April 2011.* There was insufficient time between 4 August 2011 and 26 September 2011 for ETP to comply with the order of court dated 1 April 2011. This significant fact was conveniently omitted from the plaintiff's first affidavit. In other words, the plaintiff's conduct (and/or that of her funders) caused ETP to be unable to be ready for trial by 26 September 2011. Consequently, the plaintiff's comment in her letter to court dated 25 October 2011 (see [33]) that "I was left high and dry and without legal representation just 2 weeks before the trial commenced. No work had been done in preparation for trial by former solicitors…" was an unfair/unjust criticism of ETP.

61 As for the lateness of her application, the plaintiff explained *inter alia* in her first affidavit (at

paras 103 to 111) that she needed time to find a new firm of solicitors who were able/willing to represent her, she needed approval from her funders, she had to fight attempts by her brother-in-law Ong Siauw Ping to make her a bankrupt in the UK following the dismissal of this suit and she spent 4-5 days in seclusion to recover after the traumatic experience in my court on 20 October 2011 before she pulled herself together, picked up the pieces and sought legal advice. As I was aware of the plaintiff's conduct and previous litigation history, her excuses rang hollow. At the risk of repetition, the plaintiff wasted no time in applying for the refund of her unused hearing fees. What was so difficult for her, a seasoned lay litigant, to have filed a summons application for an extension of time to appeal before she appointed RWW, if she needed more time to collect her thoughts? Instead, she filed the first appeal. In the past, the plaintiff was perfectly capable of filing and had filed applications herself, judging by the plaintiff's application in [19] above.

62 After counsel for the defendants filed their affidavits to refute her first affidavit, the plaintiff in her third affidavit sought *inter alia* to explain away her letter to court dated 25 October 2011 (where she said Serena Lim had informed the court she would not be continuing with the trial) by contending that her letter was written without legal advice or assistance. The plaintiff maintained she was unable to carry on with the trial on 20 October 2011 because of the first and second defendant's change in their order of witnesses. In the light of my earlier observations in [43] and [44], this excuse did not hold water.

63 At the hearing of the appeal application, Mr Woo asked a number of questions including, why would the plaintiff go to the extent of deliberately walking out on her own trial as counsel had accused her of doing? What benefit did she gain by behaving in the manner she did when she had everything to lose? He argued it was because the plaintiff was emotionally distraught and had suffered a "meltdown". Mr Woo also raised the issue of the defendants' change of order of witnesses which he termed the plaintiff's "main bugbear". He submitted that the plaintiff's conduct that day was not contumelious or deliberate. Mr Woo pointed out that the defendants would not be prejudiced in any way if the plaintiff was allowed to continue with the trial from where she left off. He argued that whatever prejudice suffered by the defendants was compensable by costs. In the light of Chan's demise in 2008 and my comment in [49], I rejected this submission.

64 Various cases were cited by Mr Woo in support of the appeal application including *Su Sh-Hsyu v Wee Yue Chew* [2007] 3 SLR(R) 673 ("*Su Sh-Hsyu*") which I shall refer to later.

65 Needless to say, the appeal application was strenuously opposed by counsel. Messrs Ang and Mohan raised the preliminary objection (which I accepted) that the application was misconceived – O 35 r 2 of the Rules (at [54]) *did not* apply to the plaintiff as hers was not a case where she failed to turn up for the trial as stated under O 35 r 1(2); the trial was underway but the plaintiff refused to continue notwithstanding being warned by the court of the consequences of such a course of action. Counsel disagreed with the plaintiff's portrayal of herself as a helpless lay litigant citing her past litigation history. (I would add this included the plaintiff's ability to file objections to the contents of the AEICs of the first/second defendants' witnesses of fact *viz* CKT and Clark on the grounds of hearsay, opinion and speculation.). The plaintiff's excuse of being a lay litigant had worn thin after 21 years as she had been found to have abused her status time and again.

66 I turn at this juncture to the case of *Su Sh-Hsyu* (*supra* [64]). I accepted the submission of counsel for the defendants that this case did not help the plaintiff at all. There, the Court of Appeal dealt with an application under O 35 r 2 of the Rules by the defendant/appellant. Judgment had been entered against her by the trial judge in her absence from court after her solicitor failed to obtain an adjournment of the trial dates. The appellate court also dealt with the issue of additional evidence that the defendant wanted to adduce which would prove that the respondent's/plaintiff's signature on

a banking slip was his, to rebut the respondent's contention that he had never signed the document.

67 The appellate court allowed the defendant's application to adduce additional evidence because the evidence uncovered a possible fraud being perpetrated by the respondent. The appellate court in allowing the appeal (even though it held the defendant's conduct in not attending the trial was deliberate) laid down (at [44]) five criteria for the court's exercise of its discretion in such cases as follows:

(a) Prejudice – whether the successful party would be prejudiced by the judgment being set aside, especially if the prejudice was irremediable by an order for costs;

(b) Applicant's delay – whether there was any undue delay by the absent party in applying to set aside the judgment, especially if during the period of delay, the successful party acted on the judgment, or third parties acquired rights by reference to it;

(c) Whether complete retrial required – whether the setting aside of a judgment would entail a complete retrial on matters of fact which have already been investigated by the court;

(d) Prospects of success – whether the applicant enjoyed a real prospect of success; and

(e) Public interest – whether the public interest in finality in litigation would be compromised.

68 A case more on point was that cited by the first/second defendants *viz* Selvam J's (unreported) decision in *Brosco International Pte Ltd v Furniture & Household Square Ltd* [1997] [SGHC] 226. There, counsel for the defendant applied for an adjournment on the third day of trial. When the application was refused, the defendant's solicitor applied to discharge himself. The request for discharge was also refused whereupon the defendant's counsel walked out of the proceedings. The trial judge then proceeded to hear the case *ex parte* after which judgment was awarded to the plaintiff. The defendant subsequently filed a notice of appeal *inter alia* to set aside the judgment alternatively for an extension of time for leave to appeal against the judgment. In dismissing the application, Selvam J held that it was an abuse of process for the defendant to render no assistance to the trial judge by being absent and then file an appeal against the trial judge's decision on the merits of the case.

69 Assuming *arguendo* that the appeal application was correctly brought under O 35 r 2 (which I held it was not), the plaintiff would still fail as she did not satisfy the criteria (a) to (e) in [67]. She failed to give a satisfactory explanation for not filing the appeal application within the 14 days stipulated under O 35 r 2(2) of the Rules *viz* by 2 November 2011. It was filed by RWW on 3 January 2012, more than two months after 20 October 2011.

70 It is not for this court to comment on the merits of the plaintiff' claim against the three defendants *ie* the criterion under (d) in [67]. However, I noted that on 20 October 2011 when the plaintiff complained of his order of witnesses having been changed (when it was not), Mr Ang had made a pertinent observation that although the plaintiff's claims were based on the alleged professional negligence of the three defendants, her expert witness Stone did not even deal with the plaintiff' allegations in her statement of claim (Amendment No 1). That being the case how was the plaintiff to cross-examine the witnesses of the first and second defendants? She would have no expert evidence to rely on to rebut their testimony. The defendants contended that the plaintiff had no real prospect of success for her claim.

71 Even assuming the plaintiff has a good case, the other criteria in *Su Sh-Hsyu* dictates that the

plaintiff should not be allowed to revive her case. With respect, Mr Woo's submission that she should be allowed to carry on where the plaintiff left off on 20 October 2011 has no merit – it would be a blatant abuse of process by the plaintiff, in view of her conduct that day. There ought to be finality to these protracted proceedings in the interests of the defendants and in the interests of justice.

72 Another procedural irregularity of the appeal application was in prayer (c) at [53] above where RWW applied for a stay of the plaintiff's first appeal pending the outcome of the appeal application. Such an application can only be made to the Court of Appeal or, under s 36 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the SCJA") to a High Court judge sitting as a single judge in the Court of Appeal. The section states:

> (1) In any proceeding pending before the Court of Appeal, any direction incidental thereto not involving the decision of the appeal, any interim order to prevent prejudice to the claims of parties pending the appeal, and any order for security for costs and for the dismissal of an appeal for default in furnishing security so ordered, may at any time be made by a Judge.
>
> (2) Every application under subsection (1) shall be deemed to be a proceeding in the Court of Appeal.

However, the appeal application was not filed under the plaintiff's first appeal but in this suit. I could not deal with it under s 36 of the SCJA. Indeed I could not hear it at all.

Conclusion

73 No court would lightly deny a litigant, especially one unrepresented, his day in court. However, when a lay litigant behaved in the manner the plaintiff did on 20 October 2011 despite the court's attempts to assist her and to militate against whatever perceived disadvantages there were to her being unrepresented, it does not lie in the plaintiff's mouth to contend that the court should give her another chance for her case to be heard on its merits. To grant the appeal application would be an abuse of process.

74 Consequently, I dismissed the appeal application with costs to all three defendants.