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

[2021] SGHC 99

Registrar's Appeal from the State Courts No 2 of 2021
(Summons No 624 of 2021)

Between

Raman Dhir

… *Appellant*

And

Management Corporation Strata Title Plan No 1374

… *Respondent*

JUDGMENT

[Constitutional Law] — [Natural justice] — [Bias]

Raman Dhir
v
Management Corporation Strata Title Plan No 1374

[2021] SGHC 99

General Division of the High Court — Registrar's Appeal from the State Courts No 2 of 2021 (Summons No 624 of 2021)
Choo Han Teck J
19 April 2021

23 April 2021 Judgment reserved.

Choo Han Teck J:

1 This matter arises from MC/OSS 339 of 2019 between the appellant (the defendant in the court below) and the respondent (the plaintiff in the court below). The appellant was denied the declaration sought by him that no leave is required to appeal against the District Judge's (the "DJ") decision given on 23 October 2020. The DJ also declined to order that the Notice of Appeal filed on 11 November 2020 is good, valid and subsisting. The appellant thus filed an appeal in RAS 2 of 2021 against the DJ's decision (the "appeal"). The appeal has been fixed before me; however, the hearing on 19 April 2021 was not on the appeal itself but an application by Miss Carolyn Tan, counsel for the appellant ("Miss Tan"), that I recuse myself from hearing the appeal.

2 At the hearing before me on 19 April 2021, Miss Tan said that she had written a letter to the Registry on 12 March 2021 to request that another judge

hear the recusal application (the "initial request"). Miss Tan was thus seeking both my recusal from the hearing of the appeal and from the hearing of the recusal application. I heard the applications, and, after considering her submissions, I am of the view that I need not recuse myself. I set out my reasons below.

3 According to Miss Tan's affidavit of 2 March 2021, her client's application is based on an allegation of apparent bias. Miss Tan refers to a previous case in which she had also applied for leave to appeal against a District Judge's decision in MC Suit No 30163 of 2004 between the plaintiff Blenwel Agencies Pte Ltd and the defendant Tan Lee King; I heard the application on 27 September 2007 and refused leave to appeal. On 28 September 2007, Miss Tan requested for further arguments. The Registry initially fixed the date of 8 October 2007 for the hearing of further arguments. A copy of Miss Tan's letter of 28 September 2007 requesting leave to present further arguments was also sent to the Chief Justice, Chan Sek Keong CJ. This letter was a long and rambling one, much of which contained Miss Tan's complaints against me, essentially for not noting her arguments and not spending enough time on her case. The letter was copied to me. Miss Tan says that on 3 October 2007, the Registry wrote to inform her that since I would be hearing further arguments on 8 October, she might wish to submit on the matters raised in her letter during the hearing.

4 On 5 October 2007, I informed the Registry to notify Miss Tan that I would not be hearing further arguments. Miss Tan applied before me on 9 October 2007 for leave to appeal to the Court of Appeal. I dismissed her application for leave to appeal. Thereafter, Miss Tan appealed to the Court of Appeal against my decision refusing her leave to appeal. That appeal was subsequently withdrawn by her client after I released my grounds of decision

on 18 October 2007. The Court of Appeal allowed the withdrawal but nonetheless proceeded to release its written grounds in *Blenwel Agencies Pte Ltd v Tan Lee King* [2008] 2 SLR(R) 529.

5 Miss Tan now claims in this application for my recusal that I decided not to hear further arguments because "[a]t that juncture, the Honourable Chief Justice was called away to the Pedra Branca dispute". She goes on to state in her affidavit that:

> A reasonable and fair-minded reader may think that following the Honourable Chief Justice's departure to the Pedra Branca, the Honourable Justice Choo Han Teck revoked his decision to hear further arguments which the Honourable Chief Justice thought [that] the Honourable Justice Choo Han Teck would be hearing — which would have enabled me as counsel to argue the legal issues which the Honourable Chief Justice thought would be ventilated before Justice Choo Han Teck.

6 On those grounds, Miss Tan advised her client, the appellant, to file an affidavit in which the appellant states:

> I have been informed by my Solicitor that there is historic enmity between my Solicitor and the Honourable Justice Choo Han Teck, where the latter was dismissive of the former's submissions and antagonistic in his demeanour towards the former while she was giving her submissions…

The appellant appears not to have been informed that the enmity, if at all, is only one-sided. Judges do not have to like or dislike counsel. Conversely, judges do not have to be liked or disliked. They judge the cause and the witnesses, and they ensure that the conduct of counsel is proper. That is how the public expects judges to be. That is what judicial temperament is about.

7 Neither the appellant nor the respondent is known to me and I have no personal interest in the matter in dispute. There is therefore no reason for me not to hear the appeal. So far as apparent bias is concerned, I am of the view

that a judge should not recuse himself from hearing counsel just because the counsel had complained against him. There are only about two dozen judges in the High Court. If a counsel had complained about each of them, there will be no one left to hear that counsel.

8 Miss Tan's belief that I had decided not to hear further arguments in the 2007 case because "the Honourable Chief Justice was called away to the Pedra Branca dispute" is amusing but not true. In any event, Miss Tan had, since that case, appeared before me on other occasions, and did not seem perturbed that I was the judge. I cannot recall what those cases were and how they were decided. That is the way of judges. They hear counsel, decide on the merits, and then they move on to the next matter. They have far thicker skin than counsel might think. And judges also know better than to succumb to flattery.

9 So long as counsel's submissions are sensible and relevant, they will be allowed to go on; otherwise, they will be stopped. Miss Tan has not and will not be treated any differently from other counsel. If the merits are with her client, then he will succeed; otherwise, his appeal will be dismissed. To say that there is "historic enmity" between Miss Tan and myself is a bit of an overstatement. All I needed to say about the *Blenwel* case has been said in my grounds of decision in that case. There is also, of course, the Court of Appeal's grounds of decision, which was unusual in that the court released its written grounds even though it had granted Miss Tan's client leave to discontinue the appeal.

10 I would prefer not to hear cases in which counsel is less than happy to submit to the jurisdiction of my court, but judges should no more choose their cases than lawyers choose their judges. In this case, Miss Tan submitted at the hearing that it was to placate her client who might reasonably be troubled by a perceived apparent bias. In that regard, she submitted a further authority at the

hearing in support of this application. That was *Wendy Ann El-Farargy v Nael Mahmoud El Farargy and others* [2007] EWCA Civ 1149 ("*El-Farargy*"). It was a family dispute in which the husband claimed that the matrimonial home belonged to the third respondent, one Sheikh Khalid Ben Abdullah Rashid Al Fawaz ("Sheikh Khalid"). It was Sheikh Khalid who applied successfully to have the matter heard before another judge.

11 Miss Tan relied on *El-Farargy* first to suggest that her client's application for my recusal ought to be heard by another judge. In the postscript to the judgment, Ward LJ held that it is invidious for a judge to sit in judgment on his own conduct in such cases. When the Registry notified me of this application, I had enquired if another judge might be better suited to hear it, but it was eventually fixed before me. Having seen the papers and having had the benefit of Miss Tan's submissions, it seems to me that neither the application for my recusal from the appeal nor Miss Tan's initial request (that the application for my recusal ought to be heard by another judge) was the sort of recusal that Ward LJ had in mind.

12 This application before me is not a complaint by a party to the action against my conduct of his case. Indeed, I had not heard of the appellant until this application was placed before me. And it is not a complaint like that in *El-Farargy* where the English Court of Appeal held that the judge's comments (which, *inter alia*, included remarks that Sheikh Khalid might choose to "depart on his flying carpet never to be seen again" and that his affidavit was "a bit gelatinous" like "Turkish Delight") were "mocking and disparaging of the third respondent for his status as a Sheikh and/or his Saudi nationality and/or his ethnic origins and/or his Muslim faith". The court therefore concluded that the judge's comments "gave an appearance to the fair-minded and informed observer that there was a real possibility that the judge would carry into his

judgment the scorn and contempt [his] words convey". It is not alleged that I have ever made any comments of a similar nature to Miss Tan.

13 Miss Tan said at the hearing that her client may reasonably fear an apparent bias as a result of the letter she had written in 2007. She also said that this letter was written "in the heat of the battle" due to her distress at an "adverse outcome", and described it as "obnoxious" and "disrespectful". But that letter has nothing to do with the appellant in this case. In fact, nothing turned on that letter so far as that case was concerned, nor in any of the other cases thereafter where Miss Tan had subsequently appeared before me. Neither an apology from Miss Tan for that letter nor forgiveness from me is necessary because no offence was taken.

14 For the reasons above, Miss Tan's application for my recusal from the hearing of the appeal is dismissed with no order as to costs — although Miss Kang, counsel for the respondent, was obliged to attend court for it, she had not asked for costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Tan Beng Hui Carolyn and Au Thye Chuen (Tan & Au LLP) for the appellant;
Kang Hui Lin Jasmin (Aequitas Law LLP) for the respondent.
