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

[2021] SGHC 213

Registrar's Appeal from the State Courts No 2 of 2021

Between

Raman Dhir

… *Appellant*

And

Management Corporation Strata Title Plan No 1374

… *Respondent*

GROUNDS OF DECISION

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

Raman Dhir
v
Management Corporation Strata Title Plan No 1374

[2021] SGHC 213

General Division of the High Court — Registrar's Appeal from the State Courts No 2 of 2021
Choo Han Teck J
14 September 2021

16 September 2021

Choo Han Teck J:

1 This was an appeal against the District Judge's refusal to grant the appellant the declarations sought. In the hearings below, the appellant sought a declaration from the DJ that no leave was required to file a notice of appeal in the General Division of the High Court against the DJ's decision in MC/OSS 339 of 2019.

2 In MC/OSS 339 of 2019, the respondent, the Management Corporation of the strata-titled development known as the Balmoral ("the MCST"), sought an order that the appellant, a subsidiary proprietor of a unit in the Balmoral, pay for contributions due from 1 October 2018 to 1 October 2019. The appellant did not dispute that he owed the MCST the contributions, but claimed that he had a cross-claim against the MCST for failing to maintain the common property; this could be set off against the MCST's claim.

3 In October 2020, the DJ granted the MCST the order sought, and held that the appellant's cross-claim did not call into question the existence of the debt owed to the MCST. Hence, the cross-claim did not prevent the court from granting the order sought by the MCST. The DJ, however, allowed the appellant to convert his cross-claim to a writ action, so that he (the appellant) could pursue his claim without going through the trouble of re-filing a fresh originating process.

4 The appellant did not convert his claim into a writ action, but instead, on 11 November 2020, he filed a notice of appeal in the High Court with respect to the DJ's decision. The notice of appeal was rejected by the High Court for want of leave to proceed. A month later, the appellant filed the application in the State Courts for declarations that no leave is required for the appeal, and for the State Courts to declare that the Notice of Appeal filed in the High Court was good and valid. The DJ dismissed the appellant's application, holding that the subject-matter (the amount in dispute) was just the appellant's claim for the outstanding contributions and interest, which was in the sum of around $42,000. Hence, leave is required to appeal against the DJ's decision in October 2020.

5 Section 21(1)(*a*) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) states that in any case, where the amount in dispute, or the value of the subject matter at the hearing before the District Court or Magistrate's Court does not exceed $60,000, leave of the District Court or Magistrate's Court or the General Division of the High Court is require for an appeal from the District and Magistrates' Courts, save for specified cases in the Third Schedule. The operative phrases "amount in dispute" and "the value of the subject-matter" mean the original amount claimed in the lower court and do not include interest or costs (*Fong Khim Ling (administrator of the estate of Fong Ching Pau Lloyd, deceased) v Tan Teck Ann* [2014] 2 SLR 659 at [21]). They are synonymous

and alternative formulations to describe the quantification of the claim before the court.

6 The appellant's argument on appeal was that the counterclaim should be recognised as a dispute or a subject matter at the hearings before the DJ. The value of the appellant's counterclaim was at large, and would exceed $60,000. The appellant's counsel referred to *Ong Wah Chuan v Seow Hwa Chuan* [2011] 3 SLR 1150 ("*Ong Wah Chuan*"), where the court found that leave would not be necessary if the damages were truly at large.

7 The question here was what the claim before the DJ was. Bearing in mind that the DJ has allowed the appellant to file his cross-claim as if begun by writ, so long as he filed and served his claim by 20 November 2020, I agreed with the DJ that the cross-claim was not before him at the lower court. The only claim in question was the claim by the MCST for the unpaid contributions. The appellant's case below was not that he was not obliged to pay contributions if the estate was not repaired. Rather, he alleged that the MCST failed to maintain the common property, and such breaches entitled him to certain reimbursement from the MCST. This did not mean that the contributions due to the MCST was not owed. Though the cross-claim may well exceed the monetary threshold of $60,000, that claim was not before the DJ, and the DJ was therefore correct in finding that leave was required for the appellant to file his appeal.

8 Since I had found that the cross-claim was not before the DJ, whether the quantum of the cross-claim exceeded $60,000 was moot. But in any event, there was no evidence before me that suggested that the appellant's cross-claim exceeded $60,000. In the case cited by the appellant's counsel, *Ong Wah Chuan*, the court qualified that leave is not required provided that the maximum possible amount in damages when assessed is clearly not below $60,000. But this is

where the damages bore no specific value and were truly at large. If not, parties and the court had to ascertain, as best as they could, the amount in dispute (*Ong Wah Chuan* at [35]). In this case, the alleged damages were property damages, as the appellant complained that the MCST failed to keep the common property in a state of good and serviceable repair. It could not be said that such damages bore no specific value. Yet, there was no evidence that the damages clearly exceeded the monetary threshold.

9 I must emphasise the importance of civil procedure rules. If the rules are not followed or are misunderstood, the litigant may be taking a wrong turn into an alley so dark he might not even see that it was a dead end. Under O 55D r 4(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court"), the appellant could have sought leave from the DJ within seven days from the date of the order, before filing the notice of appeal. If that was rejected, he could apply to the General Division for leave by an originating summons, as was done in the case of *Ong Wah Chuan*. Or he could have sought leave from the High Court when the notice of appeal was filed, and appeal was being heard. Instead, the appellant filed the Notice of Appeal in the High Court (that was rejected for want of leave), and subsequently a declaration from the State Courts that the Notice of Appeal filed in the High Court was correct, and then an appeal following from the DJ's dismissal of the application.

10 Mr Kuoh Hao Teng, counsel for the appellant, submitted that it was the DJ who was responsible for rejecting the Notice of Appeal, hence the appellant appealed against that decision to this court. The appellant's Notice of Appeal was filed in the High Court. The DJ had no authority to reject the Notice of Appeal, which, on record, was rejected by the High Court and the DJ's minutes cannot change this fact.

11 If the appellant had wanted a declaration that the rejection was wrong, he had to file an application in the High Court for that declaration. Otherwise, he could simply have applied for an extension of time before the DJ to apply for leave to appeal. His application to the DJ for a declaration was therefore a wrong animal to carry the burden.

12 I dismissed the appeal without prejudice to the appellant's right to pursue the cross-claim provided he takes the right route. I awarded costs to the respondent fixed at $5,000 plus disbursements, taking into account the prior application by the appellant to adduce further evidence on appeal.

- Sgd -
Choo Han Teck
Judge of the High Court

Tan Beng Hui Carolyn, Kuoh Hao Teng and Leong De Shun Kevin (Tan & Au LLP) for the appellant;
Lim Tat and Kang Hui Lin Jasmin (Aequitas Law LLP) for the respondent.