IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 108

Originating Summons No 1084 of 2018

Between

Mah Kiat Seng

… Plaintiff

And

(1) Attorney-General
(2) Mohamed Rosli Bin Mohamed
(3) Tan Chin Thiam Lawrence

… Defendants

GROUNDS OF DECISION

[Civil Procedure] — [Appeals] — [Leave]
[Civil Procedure] — [Costs]
[Civil Procedure] — [Extension of time]
[Mental Disorders and Treatment]

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v
Attorney-General and others

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Valerie Thean J:

Introduction

1 The Mental Health (Care and Treatment) Act ("MHCTA"), replacing Parts II and III of the Mental Disorders and Treatment Act, came into force on 1 March 2010. Its object, Mr Khaw Boon Wan, then Minister for Health explained, is to regulate the involuntary detention of persons in psychiatric institutions for treatment. Two needs in particular were highlighted: the health and safety of persons with mental disorders, and the protection of the community at large (see *Singapore Parliamentary Debates, Official Report* (15 September 2008) vol 85 at col 57).

2 This case puts these dual needs of society in focus. Section 7 of the MHCTA allows for the apprehension, for the purposes of subsequent referral to treatment, of any person reported to be mentally disordered and believed to be

dangerous to himself or other persons. Persons so apprehended are to be referred to a designated medical practitioner at a psychiatric institution, or any medical practitioner who may then, under s 9 of the MHCTA, refer the patient to a designated medical practitioner at a psychiatric institution. Section 25 of the MHCTA provides that where a person has done anything under the MHCTA, neither civil nor criminal liability would arise unless he has acted in bad faith or without reasonable care; nor should such proceedings be brought against him without the leave of court; and finally, leave is to be granted only where the court is satisfied that there is substantial ground for believing that he acted in bad faith or without reasonable care.

3 Mr Mah Kiat Seng ("Mr Mah") was arrested by police officers under s 7 of the MHCTA on the night of 7 July 2017. Examined by a medical practitioner and interviewed by a police inspector at the Police Cantonment Complex that night, he was thereafter escorted to the Institute of Mental Health early the next morning, where he was subsequently discharged after another examination.

4 On 31 August 2018, Mr Mah brought this originating summons to seek leave under s 25(2) of the MHCTA to commence proceedings against two officers involved in his arrest and detention. In addition, he sought an extension of time for leave to appeal and leave to appeal against various costs orders made in the State Courts in an earlier action brought there, without leave, in respect of the same incident. I dismissed Mr Mah's originating summons on 14 January 2019. He has now appealed and I furnish my reasons accordingly.

Mr Mah's arrest and detention

5 On the evening of 7 July 2017, Staff Sergeant Mohamed Rosli Bin Mohamed of the Singapore Police Force ("SSgt Rosli") and a colleague were

dispatched to Suntec City in response to a call made by a female complainant to the police emergency line. The complainant reported that a Chinese male had touched her son's head and pulled his hair.[1] She called because she was worried about the safety of other children in the vicinity, reporting that the subject was still loitering in the area and observing other children.

6 After arriving at Suntec City, SSgt Rosli spoke with the complainant, who showed him a photograph of the Chinese male whom she had reported to the police emergency line. Suntec City security personnel then informed SSgt Rosli and his colleague that the said Chinese male was spotted at a taxi stand nearby.[2]

7 Having identified Mr Mah as the man in the photograph, SSgt Rosli and his colleague approached him and spoke to him. During their conversation, Mr Mah appeared fidgety and agitated, and was mumbling to himself.[3] He also gave what SSgt Rosli concluded were incoherent replies to questions that were asked of him, claiming initially that he was at Suntec City to collect a Straits Times Run "thing" for himself, before subsequently claiming that he was actually there to register for the Straits Times run for a friend.[4] When SSgt Rosli and his colleague asked Mr Mah about the name of his friend, Mr Mah changed his answer to SSgt Rosli's initial question, stating that he was at Suntec City to register for the Straits Times Run on behalf of his mother. When SSgt Rosli

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1 1st affidavit of Mohamed Rosli Bin Mohamed dated 13 September 2017, Defendant's Bundle of Documents, Tab 14, p 2.

2 1st affidavit of Mohamed Rosli Bin Mohamed dated 13 September 2017, Defendant's Bundle of Documents, Tab 14, p 2.

3 1st affidavit of Mohamed Rosli Bin Mohamed dated 13 September 2017, Defendant's Bundle of Documents, Tab 14, pp 2–3.

4 1st affidavit of Mohamed Rosli Bin Mohamed dated 13 September 2017, Defendant's Bundle of Documents, Tab 14, p 3.

requested for Mr Mah's particulars, he took out a plastic bag containing two identity cards, placed one on a stone seat, and told the police officers to take the card themselves.[5] While SSgt Rosli was searching Mr Mah's bag, Mr Mah told him that that he was "OCD", and that he had to spit into plastic bags because he was "OCD".[6] SSgt Rosli then witnessed Mr Mah spitting into a plastic bag.

8 Having assessed Mr Mah as being mentally disordered and a threat to the safety of children in the area due to the complainant's reports, SSgt Rosli obtained the approval of his Duty Investigation Officer to arrest Mr Mah under s 7 of the MHCTA.[7] SSgt Syahira and another officer then joined the team in order to make the arrest.

9 When SSgt Rosli informed Mr Mah that he would be placed under arrest, Mr Mah refused to cooperate.[8] Eventually, the police officers placed Mr Mah in an arm lock, handcuffed him, and transferred him to the police station.[9] The arrest took place from approximately 8.52pm to 8.56pm and was recorded on SSgt Syahira's body-worn camera.[10]

10 After Mr Mah was arrested and brought to the Police Cantonment Complex, he was referred to an in-house doctor from Healthway Medical

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5 1st affidavit of Mohamed Rosli Bin Mohamed dated 13 September 2017, Defendant's Bundle of Documents, Tab 14, p 3.

6 1st affidavit of Mohamed Rosli Bin Mohamed dated 13 September 2017, Defendant's Bundle of Documents, Tab 14, p 3.

7 1st affidavit of Mohamed Rosli Bin Mohamed dated 13 September 2017, Defendant's Bundle of Documents, Tab 14, p 3.

8 1st affidavit of Mohamed Rosli Bin Mohamed dated 13 September 2017, Defendant's Bundle of Documents, Tab 14, p 4.

9 1st affidavit of Mohamed Rosli Bin Mohamed dated 13 September 2017, Defendant's Bundle of Documents, Tab 14, p 4.

10 Reply (2nd) affidavit of Mohamed Rosli Bin Mohamed dated 24 October 2017, Defendant's Bundle of Documents, Tab 16, p 2.

Group, Dr Raymond Lim ("Dr Lim").[11] Dr Lim began his medical examination at 10.19pm, and concluded it at 10.30pm. Dr Lim's report listed that Mr Mah did not declare any injuries sustained and that he did not find any obvious injuries on Mr Mah, but that Mr Mah "did not seem to be making sense in his conversation and was constantly talking to himself".[12] Dr Lim thus recommended for Mr Mah to be referred to IMH.

11 Later that evening, Mr Mah was interviewed by Inspector Tan Bing Wen Kenneth ("Inspector Tan") at approximately 11.30pm. During this interview, Inspector Tan explained to Mr Mah that he had been arrested under s 7 of the MHCTA.[13]

12 Mr Mah was subsequently escorted to IMH at around 3am on 8 July 2017.[14] He was examined by Dr Tracey Wing Li Mun, and discharged later the same day.[15]

District Court Suit No 2430 of 2017

13 On 22 August 2017, Mr Mah filed District Court Suit No 2430 of 2017 ("DC 2430/2017") against the Singapore Police Force, claiming damages for loss of liberty, physical and mental hurt, and damage done to his personal property.

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11 1st affidavit of Tan Bing Wen Kenneth dated 13 September 2017, Defendant's Bundle of Documents, Tab 13, p 2.

12 1st affidavit of Tan Bing Wen Kenneth dated 13 September 2017, Defendant's Bundle of Documents, Tab 13, p 11.

13 1st affidavit of Tan Bing Wen Kenneth dated 13 September 2017, Defendant's Bundle of Documents, Tab 13, p 3.

14 1st affidavit of Tan Bing Wen Kenneth dated 13 September 2017, Defendant's Bundle of Documents, Tab 13, p 3.

15 Statement of Claim dated 22 August 2017, Defendant's Bundle of Documents, Tab 11, p 4.

14 Mr Mah had omitted to seek leave prior to commencing his action as required under s 25(2) of the MHCTA. The Attorney-General ("the AG") followed on, therefore, with Summons No 3131 of 2017 ("Summons 3131/2017"), to strike out Mr Mah's action. On 20 November 2017, a Deputy Registrar ("the DR") struck out Mr Mah's statement of claim, on the basis that it was frivolous or vexatious, an abuse of the process of the court, and disclosed no reasonable cause of action.[16] The court also granted costs of $5,000 inclusive of disbursements, to be paid to the AG within 7 days.

15 Mr Mah filed a notice of appeal against the decision of the DR on 23 November 2017, in Registrar's Appeal No 95 of 2017 ("Registrar's Appeal 95/2017"), but neglected to serve the notice of appeal on the AG. On 20 March 2018, a District Judge ("the first DJ") held that, because the notice of appeal had not been validly served within the time prescribed under the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"), Mr Mah had to demonstrate that an extension of time to serve the notice of appeal should be granted.[17] She declined to grant such an extension, citing as a key reason the fact that Mr Mah's appeal was doomed to fail, due to Mr Mah not having obtained leave under s 25(2) of the MHCTA to institute civil proceedings.[18] A costs order of $2,500, inclusive of disbursements, was ordered against Mr Mah.

16 Subsequently, on 30 July 2018, Mr Mah filed Summons No 2755 of 2018 ("Summons 2755/2018") seeking an extension of time to file an application for leave to appeal to a Judge of the High Court in Chambers against

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16 Notes of Evidence (DC/SUM 3131/2017) – 20 November 2017, Defendant's Bundle of Documents, Tab 18, pp 12–13.

17 Notes of Evidence (DC/RA 95/2017) – 20 March 2018, Defendant's Bundle of Documents, Tab 31, p 7.

18 Notes of Evidence (DC/RA 95/2017) – 20 March 2018, Defendant's Bundle of Documents, Tab 31, p 11.

the total costs orders of $7,500. On 24 August 2018, another District Judge ("the second DJ") dismissed Mr Mah's application, holding that the length of delay in making the application was significant, and that the chance of success of obtaining leave to appeal was extremely low.[19] He ordered costs against Mr Mah, fixed at $1,000, inclusive of disbursements.

Originating Summons No 1084 of 2018

17 On 31 August 2018, Mr Mah filed a High Court Originating Summons No 1084 of 2018 ("the OS"), which came before me on 14 January 2019.

18 Mr Mah sought the following relief in the OS:

> 1. Pursuant to s 21(1)(b) of the Supreme Court of Judicature Act read with O 55C r 1 and 2(1) of the ROC, and O 3 r 4 of the ROC; the Plaintiff be granted an extension of time to file the application for leave to appeal to a Judge of the High Court in Chambers against the costs orders of $7,500: $5,000 in the Deputy Registrar hearing and $2,500 in the Registrar's Appeal hearing.
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> 2. Pursuant to s 21(1)(b) of the Supreme Court of Judicature Act read with O 55C r 1 and 2(1) of the ROC, the Plaintiff be granted leave to appeal to a Judge of the High Court in Chambers against the costs orders of $7,500.
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> 3. Pursuant to s 21(1)(b) of the Supreme Court of Judicature Act read with O 55C r 1 and 2(1) of the ROC, the Plaintiff be granted leave to appeal to a Judge of the High Court in Chambers against the decision of [the second DJ] made on the 24th day of August 2018 in Summons No.: SUM 2755/2018 of DC Suit No.: 2430/2017.
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> 4. Pursuant to s 25(2) of the Mental Health (Care and Treatment) Act (Cap 178A, 2012 Rev Ed.), the Plaintiff be granted leave to bring civil proceedings.

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[19] Notes of Evidence (DC/SUM 2755/2018) – 24 August 2018, Defendant's Bundle of Documents, Tab 37, p 6.

> 5. The costs of and occasioned by this application be paid by the Defendants to the Plaintiff; and
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> 6. Such further or other relief as this Honourable Court deems fit.

Issues

19 Distilling the above, Mr Mah essentially requested the following four remedies:

(a) An extension of time to file the application for leave to appeal to a Judge of the High Court in Chambers in respect of orders made by the first DJ in Registrar's Appeal 95/2017 on 20 March 2018. The DR's first costs order against him was the subject of his appeal in Registrar's Appeal 95/2017. His prayer 1 therefore concerned two specific aspects of the first DJ's orders: costs of $2,500 awarded against him for Registrar's Appeal 95/2017, and in effect, the dismissal of an extension of time to appeal the DR's order for costs of $5,000 made against him in Summons 3131/2017 on 20 November 2017.

(b) Leave to appeal against the above two orders.

(c) Leave to appeal to a Judge of the High Court in Chambers against the costs order of $1,000 made by the second DJ in Summons 2755/2018 on 24 August 2018; and

(d) Leave to bring civil proceedings under s 25(2) of the MHCTA for his arrest and detention on 7 July 2017.

Decision

20 My decision on the four issues were as follows. First, I dismissed the application for an extension of time to file an application for leave to appeal to

the High Court for the costs order made in Summons 3131/2017 and the order disallowing any extension of time to appeal the costs order in Registrar's Appeal 95/2017. As a result, the second request for leave to appeal against the same two orders was no longer relevant. Third, I dismissed the application for leave to appeal against the costs order made in Summons 2755/2018. The last application was for leave to bring civil proceedings under s 25(2) of the MHCTA. I dismissed this as well. I deal with each of these issues in turn.

Application for extension of time for leave to appeal

21 The first costs order of $5,000 was made by the DR when he struck out Mr Mah's action on 20 November 2017. Mr Mah appealed from this order to the first DJ, but did not serve the notice of appeal on the AG in time. The first DJ considered that he required an extension of time to appeal against the DR's orders and refused this extension. She then imposed the second costs order on 20 March 2018. In effect, while Mr Mah's originating summons framed this appeal as against two costs orders, this appeal involved the first DJ's costs order (of $2,500) and her order refusing any extension of time to appeal against the first costs order made by the DR (of $5,000). Mr Mah was of the view that he ought not to have to pay the $7,500. In order to appeal against these orders of the first DJ, which were made on 20 March 2018, Mr Mah required the leave of the District Court under s 21(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"). He had to first file an application for leave within 7 days from the date of her orders. As her orders were made on 20 March 2018, the deadline for Mr Mah to apply for leave was hence 7 days from that date, 27 March 2018.[20] He did not file an application for leave or an application for an extension of time to apply for leave by 27 March 2018. Mr Mah only filed

[20] Notes of Evidence (DC/RA 95/2017) – 20 March 2018, Defendant's Bundle of Documents, Tab 31, p 2.

Summons 2755/2018, seeking an extension of time to file an application for leave to appeal to a Judge of the High Court in Chambers against the two costs orders of $2,500 and $5,000, on 30 July 2018.[21] He filed this application in the District Courts. The second DJ's costs order on that application is the subject of prayer 3 and I deal with that separately. The issue at hand raised in prayer 1 is Mr Mah's renewal of an application for leave that was refused by the court below. Under O 3 r 4 of the ROC, the High Court may, in the present circumstances, grant an extension of time on such terms as it thinks just.

22 It is common ground that principles applicable to the grant of an extension of time are set out in the Court of Appeal's decision of *Lee Hsien Loong v Singapore Democratic Party and others* [2008] 1 SLR(R) 757 ("*Lee Hsien Loong*") at [18]. The factors to be considered are the following: the length of delay; the reasons for the delay; the chances of the appeal succeeding if time for appealing were extended; and the prejudice caused to the would-be respondent if an extension of time was in fact granted. The overriding concern in the context of appeals was the need for finality; grants of extensions of time should be the exception, rather than the norm (see *Lee Hsien Loong* at [33]).

Chances of the intended appeal succeeding

23 I begin with the question of the chance of any appeal succeeding. It was of particular significance to the case at hand.

24 In *Lee Hsien Loong,* the Court of Appeal noted at [28] that "all four factors are of equal importance, and must be taken into account". Regarding the merits of the intended appeal, the Court noted at [19] that a low threshold is applied, and the court asks only whether the appeal is "hopeless", citing *Nomura*

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[21] Summons for Extension of Time, Defendant's Bundle of Documents, Tab 34, p 1.

Regionalisation Venture Fund Ltd v Ethical Investments Ltd [2000] 2 SLR(R) 926 ("*Nomura*") at [32]. I shall refer to this threshold as "the *Nomura* threshold". Andrew Phang Boon Leong JA further explained this threshold with reference to *Aberdeen Asset Management Asia Ltd and another v Fraser & Neave Ltd and others* [2001] 3 SLR(R) 355 ("*Aberdeen*") (at [43]), where the Court of Appeal stated that the examination of the appeal's merits ought not to require a full-scale examination of the issues involved, nor should it be necessary for the applicant to show that he will succeed in the appeal. Unless there are no prospects of the applicant succeeding on the appeal, the merits of any appeal should be considered a neutral factor. On the other hand, where an appeal is truly hopeless, the Court of Appeal's guidance, at [20], was that this factor assumes critical importance:

> This third factor nevertheless becomes of signal importance where the appeal is a truly hopeless one. In such a situation, notwithstanding even a very short delay, an extension of time will generally not be granted by the court simply because to do so would be an exercise in futility, resulting in a waste of time as well as resources for all concerned. As Yong Pung How CJ put it in this court's decision in *Pearson Judith Rosemary v Chen Chien Wen Edwin* [1991] 2 SLR(R) 260 ("*Pearson*") at [17]:
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> > [T]he chances of the appeal succeeding should be considered, as it would be a waste of time for all concerned if time is extended when the appeal is utterly hopeless.

25 Every case turns on its facts: *Lee Hsien Loong*, at [28]. In order to explain how this *Nomura* threshold is applicable to the facts of this case, I turn first to the principles governing the grant of leave to appeal. These are set out in *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 at [16] and reiterated in the Court of Appeal's decision of *Virtual Map (Singapore) Pte Ltd v Singapore Land Authority and another application* [2009] 2 SLR(R) 558 at [32]. There are three limbs which a party can rely upon when seeking leave to appeal: (a) a *prima facie* case of error; (b) a question of general principle

decided for the first time; and (c) a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

26 Here there was no attempt to argue that these costs orders concerned questions to be decided for the first time or were of public importance. Mr Mah sought to argue that on the facts the costs ordered were excessive. The only potentially applicable limb was thus that of a *prima facie* case of error. Mr Mah submitted that he had a high chance of successfully obtaining the leave of court to appeal against Summons 3131/2017 and Registrar's Appeal 95/2017.[22] He argued that the legal costs imposed against him were "on the high side for a striking out application", and that previous cases demonstrated that the appropriate quantum for costs in a striking out application should be lower. He also asserted that, as detailed arguments were not mounted in Summons 3131/2017 and Registrar's Appeal 95/2017, the Court could have easily disposed of his applications without much effort.

27 The starting point of any discussion concerning costs orders must be O 59 r 2(2) of the ROC, which states that costs are "in the discretion of the Court, and the Court shall have full power to determine by whom and to what extent the costs are to be paid". This has been affirmed by the Court of Appeal in *Law Society of Singapore v Top Ten Entertainment Pte Ltd* [2011] 2 SLR 1279 at [15] that "[c]osts are at the discretion of the judge or the court, to be awarded whenever and against whom it is just to do so".

28 The DR and the first DJ had awarded costs of $5,000 and $2,500 respectively, inclusive of disbursements. The sum of $5,000 was below the recommended range prescribed in Appendix G to the Supreme Court Practice

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22 Affidavit of Mah Kiat Seng dated 30 July 2018, Defendant's Bundle of Documents, Tab 35, p 2.

Directions for costs where the entire suit is struck out: the provisions suggest costs in the range of $6,000–$20,000, excluding disbursements. The first DJ did not disturb this order, and for the application before her awarded costs of $2,500. From the transcript, a number of good reasons may be discerned. The arguments concerned ss 7 and 25(2) of the MHCTA, references to English case law on English provisions in *pari materia*, as well as local precedents on the issue of extension of time.[23] It was also important to note that the parties had appeared a total of 4 times before the first DJ by the time she gave her decision. Her decision on costs was reasonable and could not be said to be in error.

29 I should mention that Mr Mah argued that he should not have been liable for costs in Summons 3131/2017 despite his application having been struck out. This was because he could not have sought leave under s 25(2) of the MHCTA before commencing proceedings against the AG, as he did not know that he had been arrested under the MHCTA.[24] This was an unsustainable assertion. SSgt Rosli's affidavit was clear that he informed Mr Mah that he was under arrest at the time of the arrest. While none of his affidavits state whether he informed Mr Mah of the specific provision used for the arrest, Mr Mah was later examined by Dr Lim, and the content of the medical examination would have been clear to him. At the very latest, Mr Mah would have found out that he was arrested under the MHCTA when he was interviewed by Inspector Tan at around 11.30pm on 7 July 2017. Inspector Tan had explicitly explained to Mr Mah that he had been arrested under s 7 of the MHCTA.[25] Mr Mah was also subsequently sent to IMH, where he was again examined and observed. It would have been

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23 Notes of Evidence (DC/RA 95/2017) – 20 March 2018, Defendant's Bundle of Documents, Tab 31, pp 4–14.

24 HC/OS 1084/2018 Minute Sheet of 14 January 2019, p 3.

25 1st affidavit of Tan Bing Wen Kenneth dated 13 September 2017, Defendant's Bundle of Documents, Tab 13, p 4.

plain to him by the time of his discharge therefrom.

30 I accordingly was of the view that the *Nomura* threshold was met: this was the kind of appeal envisaged in *Nomura* at [32], *Aberdeen* at [43], and *Lee Hsien Loong* at [20]. There was nothing to suggest that there had been a *prima facie* case of error in the previous proceedings that justified granting leave to appeal, and no basis to believe that Mr Mah would succeed in obtaining leave to appeal.

Remaining factors relevant to extension of time

31 For completeness, I deal with the three remaining factors relevant to the extension of time for leave to appeal.

32 The first is the length of delay. The first DJ's orders were made on 20 March 2018.[26] Pursuant to O 55C r 2 of the ROC, the deadline for Mr Mah to apply for leave was 7 days from 20 March 2018. This would be 27 March 2018. Mr Mah did not file his application for leave or for an extension of time within this period of time but on 30 July 2018.[27]

33 The delay in issue here was 17 weeks and 6 days after the time prescribed. Mr Mah submitted that the length of this delay was "rather short".[28] Case precedents illustrate the opposite. A delay of 14 days in making an application for further arguments under the old s 34(1)(c) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) was considered by the Court of

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26 Notes of Evidence (DC/RA 95/2017) – 20 March 2018, Defendant's Bundle of Documents, Tab 31, p 2.

27 Summons for Extension of Time, Defendant's Bundle of Documents, Tab 34, p 1.

28 Affidavit of Mah Kiat Seng dated 30 July 2018, Defendant's Bundle of Documents, Tab 35, p 2.

Appeal at [18] of *Denko-HLB Sdn Bhd v Fagerdala Singapore Pte Ltd* [2002] 2 SLR(R) 336 to be "substantial". In a similar vein, in *Management Corporation Strata Title Plan No 2911 v Tham Keng Mun and others* [2011] 1 SLR 1263 ("*Tham Keng Mun*"), Woo Bih Li J held at [24] that a delay of nine days in serving a notice of appeal was not *de minimis*, and that the Court had to thus consider the reasons for the delay. In like vein, I considered, then, Mr Mah's reasons for the delay.

34 Mr Mah produced a number of reasons to explain his delay. He claimed the following:[29]

(a) As a litigant in person, he was unsure of the procedure to appeal, and could not decide whether to appeal against the substantive aspects of the judgments below or the cost orders;

(b) He was busy with caring for his family, who were suffering from cataracts, cancer and dementia;

(c) He was defending himself against criminal charges that the police and the Attorney-General had proffered against him; and

(d) He had been unwell due to problems with his eyesight and back pain.

35 I was of the opinion that being unrepresented is not in and of itself a good reason for delay. Mr Mah has been involved in litigation previously and is not a stranger to the judicial process. Rules and procedures exist for the good order of court litigation. Time norms are central to fairness between parties and

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[29] Affidavit of Mah Kiat Seng dated 30 July 2018, Defendant's Bundle of Documents, Tab 35, p 2.

"must *prima facie* be obeyed" (see the remarks of Lord Guest in the Privy Council case of *Ratnam v Cumarasamy* [1965] 1 WLR 8 at 12). Of course, extensions of time may be sought and litigants, whether acting in person or not, may seek the indulgence of the court. But good reasons are required to support each request, because each extension given is a deviation from the standards and expectations that have been set for parties in order to ensure fair play and due expedition. Whilst I was sympathetic to the various issues that Mr Mah faced, they did not satisfactorily explain his delay. First, Mr Mah did not demonstrate with any specificity how these personal difficulties caused the delay of 17 weeks and 6 days. Second, Mr Mah failed to substantiate his personal circumstances with any form of evidence. He made mere assertions without supporting material. These assertions could not form a sufficient basis for me to exercise my discretion.

36 The last factor is that of prejudice to the respondent. Mr Mah argued that there would be no prejudice caused to the AG as any sense of closure that the AG would have had would not be jeopardised by virtue of him appealing only the costs orders rather than the substantive aspects of Summons 3131/2017 and Registrar's Appeal 95/2017.[30] He also pointed out that the AG had not yet incurred any expense enforcing the costs orders. State Counsel disagreed, submitting that the grant of an extension of time despite Mr Mah's dilatory conduct and unsatisfactory reasons would set a bad precedent for other litigants who bring lawsuits against the AG.[31] In the alternative, it was argued that any lack of prejudice does not, in itself, justify an extension of time.

37 The onus of demonstrating prejudice must be upon the respondent who

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30 Affidavit of Mah Kiat Seng dated 30 July 2018, Defendant's Bundle of Documents, Tab 35, p 2.

31 Defendant's Written Submissions, p 17.

wishes to rely on its existence. Such a respondent must adequately satisfy the court that he would suffer substantial prejudice if an extension of time were allowed; bare assertions of prejudice are insufficient: see *Tham Keng Mun* at [32]–[33]). Moreover, the court is only concerned with prejudice that is tangibly proven (see *Lee Hsien Loong* at [25]; *Tham Keng Mun* at [31]). And further, the prejudice suffered must not be one that cannot be compensated by an appropriate order as to costs (see *Lee Hsien Loong* at [27]). An example of a party being prejudiced would be where there is a change of position on the part of the respondent pursuant to the judgment below (*Lee Hsien Loong* at [25]; *Tham Keng Mun* at [31]). In *Tham Keng Mun*, the appellants had served an appeal nine days late. The respondent claimed that it had been substantially prejudiced by the appellants' delay because it thought that the appellants "were abandoning the appeal against the learned District Judge's decision", given that they were out of time to file the notice of appeal (see *Tham Keng Mun* at [32]). Woo J held that being led to think that the appeal was abandoned was insufficient to amount to prejudice.

38 In the present case, there was no prejudice suffered. State Counsel's argument that an extension of time would embolden future litigants to flirt with the boundaries of civil procedure when bringing claims against the AG was not persuasive. Extensions of time are only granted where valid ground is shown; litigants would be foolhardy to ignore the rules of court. Notwithstanding, I accept State Counsel's contention that the lack of material prejudice to a respondent does not automatically entitle the applicant to an extension of time. Here, as in *Falmac Ltd v Cheng Ji Lai Charlie and another matter* [2014] 4 SLR 202, the merits of the applicant's case must take centre stage. In that case, the Court of Appeal dismissed the plaintiff's application for an extension of time despite there being no prejudice caused to the defendant because the Court was

of the view that it was "plain beyond question" that the plaintiff's case had no merit.

Conclusion on the request for an extension of time for leave to appeal.

39 In the present case, the length of delay cannot be said to be negligible nor could the reasons for the delay be said to be cogent. While there was no prejudice caused to the AG, the appeal is one with no prospect of success. I therefore dismissed Mr Mah's application for an extension of time to apply for leave.

Applications for leave to appeal

The DR's and first DJ's costs orders

40 In prayer 2, Mr Mah asked for leave to appeal the costs orders in Summons 3131/2017 and Registrar's Appeal 95/2017. As I dismissed the application for an extension of time to apply for leave, there was no need to consider whether leave to appeal should be granted for the same orders.

The second DJ's costs order

41 In prayer 3, Mr Mah asked for leave to appeal the costs order made by the second DJ in Summons 2755/2018 when dismissing Mr Mah's application for an extension of time to file an application for leave to appeal against the costs orders. The merits of the substantive application is the subject of prayer 1. This application for leave to appeal under prayer 3 was filed within time, and was for leave to appeal the second DJ's order of costs of $1,000.

42 In fact, the second DJ had no jurisdiction to deal with the extension of time. Because the time for leave had already expired, Mr Mah ought to have

applied to the High Court at the time he applied for the extension of time. The High Court in *Chen Chien Wen Edwin v Pearson Judith Rosemary* [1991] 1 SLR(R) 348 ("*Chen Chien Wen Edwin*") considered a similar provision in the form of the then O 57 r 17 of the Rules of the Supreme Court 1970 (Cap 322, R 5, 1990 Rev Ed) ("RSC"), which was also concerned with the power to extend time.

43 O 57 r 17 of the RSC states:

> Without prejudice to the power of the Court of Appeal under Order 3, Rule 5, to extend the time prescribed by any provision of this Order, the period for serving notice of appeal under Rule 4 or for making application *ex parte* under Rule 16(3) may be extended by the Court below on application made before the expiration of that period.

44 In *Chen Chien Wen Edwin*, "without prejudice to the power of the Court of Appeal under Order 3, Rule 5, to extend the time prescribed by any provision of this Order…" was understood by Chao Hick Tin J (as he then was), at [8], to mean that the extension of any time prescribed under O 57 may only be done by the Court of Appeal, and that O 57 r 17 merely stated exceptions where the court below was permitted to grant extensions of time. Thus, where an applicant was out of time and required an extension, only the Court of Appeal could grant the said extension. This decision was subsequently affirmed in *Wee Soon Kim Anthony v UBS AG and others* [2005] SGCA 3 at [34] and *Lioncity Construction Co Pte Ltd v JFC Builders Pte Ltd* [2015] 3 SLR 141 at [32]) in the context of an extension of time required for filing notices of appeal after the expiry of the specified 14-day period for appeals against a decision of the High Court and a decision of a District Court respectively.

45 Here, the present O 55C r 4 is in *pari materia* with O 57 r 17 of the RSC, and states:

> 4. Without prejudice to the power of the High Court under Order 3, Rule 4, to extend the time prescribed by any provision of this Order, the period for issuing and serving the notice of appeal under paragraph (4) of Rule 1 may be extended by the Court below on application made before the expiration of that period.

A District Court is only permitted to grant extensions of time for leave to appeal where an application is made before the expiration of the relevant period for such applications for leave to appeal.

46 Nevertheless, and notwithstanding the above, Mr Mah's prayer 3 was about the second DJ's costs order of $1,000. Although the second DJ dismissed the application on the basis that there were no grounds for an extension, rather than on the basis of a lack of jurisdiction, the fact remains that the application was incorrectly brought and could in any event have been properly dismissed. That being the case, Mr Mah should justifiably be asked to pay the costs of the application. As an illustration, in the case of *Chen Chien Wen Edwin*, Chao Hick Tin J (as he then was), in dismissing the application on the basis that the High Court did not have jurisdiction to grant an extension of time, fixed costs at $1,200. Regarding the quantum ordered in the present case, the second DJ's order of $1,000 was fair. Where the issue of costs is concerned, there is no *prima facie* error; nor any question of general principle decided for the first time or a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

47 I therefore dismissed this request for leave to appeal the second DJ's costs order.

Application for leave under s 25(2) of the MHCTA to commence action

48 The final form of relief that Mr Mah sought in these proceedings was for leave to commence civil proceedings under s 25(2) of the MHCTA. He was

of the view that the police officers had abused their power under s 7 of the MHCTA when they apprehended him. This substantive complaint was previously the subject of DC 2430/2017, which Mr Mah had commenced without the requisite leave, resulting in the action being struck out and the costs orders complained of in this OS.

49 Under s 7 of the MHCTA, police officers have a duty to apprehend any person who is reported to be mentally disordered and believed to be dangerous to himself or other persons. It states:

> **Apprehension of mentally disordered person**
>
> 7. It shall be the duty of every police officer to apprehend any person who is *reported to be mentally disordered and is believed to be dangerous to himself or other persons by reason of mental disorder* and take the person together with a report of the facts of the case without delay to –
>
> (a) any medical practitioner for an examination and the medical practitioner may thereafter act in accordance with section 9; or
>
> (b) any designated medical practitioner at a psychiatric institution and the designated medical practitioner may thereafter act in accordance with section 10.
>
> [emphasis added in italics]

50 Section 25 of the MHCTA grants legal protection to persons enforcing the MHCTA. The relevant provisions state:

> **Protection of person enforcing Act**
>
> 25(1) Where a person has –-
>
> (a) Made a request for the reception of any patient, or signed or carried out or done any act with a view to signing or carrying out any report, application, recommendation, or certificate purporting to be a report, application, recommendation or certificate under this Act; or
>
> (b) done anything under this Act,

> he shall not be liable to any civil or criminal proceedings, whether on the ground of want of jurisdiction or on any other ground, unless he has acted in bad faith or without reasonable care.
>
> (2) No proceedings, civil or criminal, shall be brought against any person in any court in respect of any such matter as is mentioned in subsection (1) without the leave of the court, and leave shall not be given unless the court is satisfied that there is substantial ground for the contention that the person, against whom it is sought to bring the proceedings, has acted in bad faith or without reasonable care.

51 Three issues were raised by Mr Mah. First, that the applicable standard to be met before leave would be granted required only reasonable suspicion of bad faith or lack of reasonable care. Second, that SSgt Rosli had demonstrated sufficient bad faith or lack of reasonable care to justify granting such leave. And third, that SSgt Lawrence had shown the same. I deal with these in turn.

Applicable standard for leave

52 As set out above, s 25(2) of the MHCTA requires the court to be "satisfied that there is substantial ground" that one has acted in bad faith or without reasonable care under the MHCTA before leave is granted.

53 Mr Mah argued that despite the express wording of "substantial ground", the threshold required for leave is a low one.[32] Reliance was placed on three cases: *Seal (FC) (Appellant) v Chief Constable of South Wales Police (Respondent)* [2007] 1 WLR 1910 ("*Seal*"); *TW v Enfield London Borough Council* [2014] 1 WLR 3665 ("*TW*"); and *Winch v Jones* [1985] 3 WLR 729 ("*Winch*"). These cases concerned the interpretation of s 139 of the Mental Health Act 1983 (c 20) (UK) ("Mental Health Act 1983").

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[32] Plaintiff's Written Submissions dated 7 January 2019, Plaintiff's Bundle of Documents, p 1.

54 The AG disagreed with Mr Mah's contention. Emphasis was placed on the decision of *Carter v Commissioner of Police of the Metropolis* [1975] 1 WLR 507 ("*Carter*").

55 *Carter* was a case concerning s 141 of the Mental Health Act 1959 (c 72) (UK) ("Mental Health Act 1959"). In introducing the predecessor statute of the MHCTA, the Mental Disorders and Treatment Act, Mr Chua Sian Chin, then Minister for Health and Home Affairs highlighted that the local provisions were "probably modelled on the provisions of the Mental Treatment Act, 1930, of England and Wales" (*Singapore Parliamentary Debates, Official Report* (28 August 1973) vol 32 at col 1274). The (English) Mental Treatment Act 1930 was, in turn, the predecessor statute of the (English) Mental Health Act 1959.

56 Section 141(2) of the Mental Health Act 1959 states the following:

> No civil or criminal proceedings shall be brought against any person in any court in respect of any such act without the leave of the High Court, and the High Court shall not give leave under this section unless satisfied that there is *substantial ground for the contention that the person to be proceeded against has acted in bad faith or without reasonable care.*
>
> [emphasis added in italics]

57 Similar to s 25(2) of the MHCTA, s 141(2) of the Mental Health Act 1959 requires "substantial ground" for any contention of bad faith or lack of reasonable care prior to leave being granted. As there was no local decision interpreting s 25(2), English decisions on s 141(2) were useful in considering this threshold requirement.

58 In *Carter*, the English Court of Appeal had to consider whether to grant leave under s 141(2) of the Mental Health Act 1959 to a woman who was arrested by police officers. She had been first brought to a police station, then

to a mental hospital, and was eventually allowed to return home after the doctors found no evidence indicating that she suffered from any mental disorder. The Court of Appeal noted, at 512, that the protection afforded to prospective defendants under the Mental Health Act was "not to be construed narrowly", and that there had to be "solid grounds for thinking that there was want of reasonable care or of bad faith". Clearly, the Court in *Carter* understood the provision to mean that leave would not be lightly granted.

59 Mr Mah argued that *Carter* was no longer good law given the pronouncements of the English Court of Appeal in the subsequent case of *Winch*. In *Winch*, which concerned an application by Miss Mary Winch to the High Court for leave to bring two actions alleging negligence on the part of three doctors, the Court held that said leave under the Mental Health Act 1983 should be granted as, on the material immediately available to the court, the applicant's complaint of the doctors' failure to exercise reasonable care "deserve[d] fuller investigation" (see *Winch* at 736). The raising of a "reasonable suspicion that the authority has committed some wrong" was said to be sufficient (see *Winch* at 737). Additionally, the pronouncements in Winch were affirmed by the subsequent cases of *Seal* and *TW*, which meant that *Carter* was "antiquated" and no longer good law.[33] In *Seal*, the House of Lords granted leave to an applicant complaining that he had been unjustifiably detained under the Mental Health Act 1983 – the Court reasoned at [20] that following *Winch*, the threshold for obtaining leave "has been set at a very unexacting level". In a similar vein, the Court of Appeal in *TW* affirmed at [32] that the low threshold of *Winch* and *Seal* continued to apply.

60 The Mental Health Act 1959 had, however, been amended by the Mental

[33] Affidavit of Mah Kiat Seng dated 31 August 2018, Defendant's Bundle of Documents, Tab 2, p 12.

Health Act 1983. Section 139(2) of the Mental Health Act 1983 states:

> *No civil proceedings shall be brought against any person in any court in respect of any such act without the leave of the High Court*; and no criminal proceedings shall be brought against any person in any court in respect of any such act except by or with the consent of the Director of Public Prosecutions.
>
> [emphasis added in italics]

61 The key difference between this provision, and the earlier s 141(2) of Mental Health Act 1959 is the fact that the words "substantial ground" were removed. The lower standard espoused in *Winch*, *Seal* and *TW* must be seen in the context of this legislative change. This was recognised by the very cases that Mr Mah cited. Parker LJ in *Winch* noted at 736 that when Parliament "removed the words at the end of the subsection in the Act of 1959, there can be no question but that it was intended that the protection afforded to those purporting to act under the Mental Health Acts should be reduced …". Similarly, in *Seal*, Baroness Hale of Richmond confirmed at [47] that "leave could now be granted without showing substantial grounds for the contention that the defendant had acted in bad faith or without reasonable care …".

62 In contrast, in Singapore, Parliament has chosen to maintain the threshold of "substantial ground" for leave, in favour of the protection of those who serve to assist in the treatment of the mentally impaired and the protection of the public at large. Substantial ground, and not reasonable suspicion, must form the premise of a grant of leave to commence action.

Scope of protection

63 Before turning to Mr Mah's specific allegations regarding the two police officers, I should highlight that s 25 of the MHCTA contains two layers of protection for officers who act under its provisions. At the first level, the

mechanism of s 25(2) acts as an initial filter by granting leave upon substantial ground being shown. This is to weed out unmeritorious suits. Section 25(1) thereafter applies to grant immunity to officers who have acted in good faith and with reasonable care. Applying this statutory protection to actions taken under s 7 of the MHCTA, s 25 does not demand absolute correctness in such action taken, but rather, reasonable care and good faith. The very purpose and rationale of s 25(1) is to accord a measure of immunity to officers who have acted without bad faith and with a reasonable amount of care while assisting with patients under the various sections of the MHCTA.

64 Coming then to bad faith and the lack of reasonable care, these limbs deal with two different and alternative kinds of conduct. The requirement of bad faith was referred to in *Shackleton v Swift* [1913] 2 KB 304 at 314, in the context of the Lunacy Act 1890 (c 100), a predecessor statute to the Mental Health Act 1959, as an act of "malice", or the "conscious doing of anything that the officers knew to be wrong or supposed to be wrong". This is consistent with the manner in which the Singapore courts have interpreted the concept of bad faith. In *Muhammad Ridzuan Mohd Ali v Attorney-General* [2015] 5 SLR 1222 ("*Muhammad Ridzuan*"), which concerned the application of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), the appellant argued that the Public Prosecutor's decision not to grant him a certificate of substantive assistance pursuant to s 33B(2)(*b*) of the MDA was made in bad faith (see *Muhammad Ridzuan* at [29]). In this regard, the appellant had to demonstrate that, pursuant to s 33B(4), the Public Prosecutor's decision was done in "bad faith or with malice". The Court of Appeal, in dismissing his application, held, at [70], that the "touchstone of 'bad faith' in the administrative law context is the idea of dishonesty". Where there was no dishonesty involved, the mere taking into account of legally irrelevant considerations, or failing to take into

account legally relevant considerations, would not suffice. On that basis, the appellant failed to adduce any evidence to demonstrate any dishonesty on the part of the Public Prosecutor.

65 "Without reasonable care", on the other hand, refers to negligence. Thus the European Commission (at p 74, para 93) agreed with parties in *Ashingdane v United Kingdom* (1983) 6 EHRR 69, where an applicant's case related to s 141 of the Mental Health Act 1959, the English provision in *pari material* with s 25 of the MHCTA, that the leave provision restricted the applicant's claim in tort (referenced by Lord Walker of Gestingthorpe in *Matthews v Ministry of Defence* [2003] 2 WLR 435 ("*Matthews*") at [131]).

66 Regarding the standard of care, the Court of Appeal, in the context of explaining the standard of care expected of an auditor, has held the standard as that of reasonable care and skill of an ordinary skilled person embarking on the same engagement. An auditor's duty, therefore, is not to provide a warranty that the company's accounts are substantially accurate, but to take reasonable care to ascertain that they are so. The precise degree of scrutiny and investigative effort which constitutes reasonable care is to be determined on the facts of each individual case and is objectively assessed on the basis of knowledge then reasonably available and measures that could have been reasonably adopted at the material time (see *JSI Shipping (S) Pte Ltd v Teofoongwonglcloong (a firm)* [2007] 4 SLR(R) 460 at [47] and [69]). In ascertaining whether SSgt Rosli and SSgt Lawrence Tan have exercised reasonable care in their duties under s 7 of the MHCTA, therefore, I used the standard of the reasonable care and skill expected of police officers acting in the circumstances and context of Mr Mah's arrest and detention.

Whether SSgt Rosli acted in bad faith or without reasonable care

67 Mr Mah alleged that SSgt Rosli, in wrongfully arresting him at Suntec City and taking him into custody at the Police Cantonment Complex, had acted in bad faith and without reasonable care. His many arguments could be distilled into four main points. First, SSgt Rosli acted in bad faith by lying about Mr Mah demonstrating symptoms of mental disorder. Second, even if he were demonstrating symptoms of mental disorder, SSgt Rosli acted unreasonably in arresting him as he was not engaged in dangerous behaviour. When Mr Mah was represented by counsel in Registrar's Appeal 95/2017, counsel made two further arguments. Third, that SSgt Rosli arrested him without reasonable basis as he was not "reported to be mentally disordered", and fourth, that SSgt Rosli acted unreasonably by failing to ensure that Mr Mah was taken "without delay" to a medical practitioner for an examination. The first contention deals with an allegation of bad faith while the other three contentions relate to the lack of reasonable care. For completeness I deal with all four arguments as Mr Mah had tendered his counsel's submissions in Registrar's Appeal 95/2017 as part of his submissions.

Whether SSgt Rosli acted with bad faith

68 Mr Mah's affidavit made the point that he thought the action against SSgt Rosli somewhat self-evident:[34]

> To avoid missing the wood for the trees, I find it imperative to highlight here that as I was definitely sane, and so could not have displayed the symptoms of insanity, Rosli's apprehending of me is definitely "in bad faith or without reasonable care". No further analysis is necessary.

69 Mr Mah concluded, for the reasons he set out, that SSgt Rosli must have

[34] Affidavit of Mah Kiat Seng dated 31 August 2018, Defendant's Bundle of Documents, Tab 2, p 2.

lied about the whole incident. Mr Mah's account was, he had been at Suntec City to collect race packs for the Straits Times Run.[35] During this time, he did not touch the head or pull the hair of any boy. SSgt Rosli had allegedly lied about Mr Mah's symptoms of mental disorder; Mr Mah did not tell SSgt Rosli that he was suffering from OCD, he did not spit into a plastic bag, and he did not speak to himself.[36]

70 There is no basis to suggest that SSgt Rosli had lied about his interaction with Mr Mah. SSgt Rosli's evidence was consistent with the opinion of the female complainant and the Suntec City security personnel. Moreover, SSgt Rosli's observation of Mr Mah's incoherence was corroborated by Dr Lim's medical notes. After examining Mr Mah, Dr Lim noted that Mr Mah "did not seem to be making sense in his conversation and was constantly talking to himself".[37]

71 During the course of oral proceedings, Mr Mah asked to view the video recording by SSgt Syahira's body cameras as he was adamant that SSgt Rosli had been laughing at him during his arrest. State Counsel made the recording available and it was viewed with the consent of both parties. The recording did not show SSgt Rosli laughing.

72 There was no ground for the allegation that SSgt Rosli had acted in bad faith.

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35 Reply Affidavit of Mah Kiat Seng dated 2 March 2018, Defendant's Bundle of Documents, Tab 29, p 5.

36 Affidavit of Mah Kiat Seng dated 4 October 2017, Defendant's Bundle of Documents, Tab 15, p 2; Affidavit of Mah Kiat Seng dated 31 August 2018, Defendant's Bundle of Documents, Tab 2, p 3.

37 1st affidavit of Tan Bing Wen Kenneth dated 13 September 2017, Defendant's Bundle of Documents, Tab 13, p 11.

Whether reasonable care had been exercised by Sgt Rosli

73 Section 7 of the MHCTA, set out at [49] above, envisages three steps. An officer would first act on a report. He would then form a belief that a person ought to be apprehended. Having done so, he or she would take the person apprehended to a medical practitioner or to a psychiatric institution. Mr Mah's assertions related to each of these three steps.

74 I deal first with the report that Sgt Rosli responded to. Mr Mah's complaint related to the requirement in s 7 of the MHCTA that he first be "reported to be mentally disordered". He submitted that s 7 requires that a person be reported by a competent psychiatrist as defined in s 2 of the MHCTA; this requirement would not be satisfied even if a medical practitioner who was not a competent and qualified psychiatrist was the person making the report.[38]

75 In my view, such an interpretation would be inconsistent with a plain reading of the relevant provisions in the MHCTA. Under s 7(*a*) of the MHCTA, after a person is apprehended pursuant to s 7, he is to be brought to "any medical practitioner for an examination". In a similar vein, s 7(*b*) provides that, in the alternative, after a person is apprehended pursuant to s 7, he is to be brought to "any designated medical practitioner at a psychiatric institution". If Mr Mah's interpretation were indeed correct, then s 7(*a*) would be rendered otiose. There would be no need for the purportedly mentally disordered person to be brought to "any medical practitioner", who would invariably be less experienced than a competent psychiatrist. In addition, during the Second Reading of the Mental Health (Care and Treatment) Bill, Mr Ang Mong Seng, Member for Hong Kah, interpreted the Bill as allowing for police officers to act "in the event a member

[38] Plaintiff's Written Submissions dated 9 March 2018, Plaintiff's Bundle of Documents, p 6.

of the public lodges a complaint" and suggested earlier intervention on the part of the police. Mr Khaw, then Minister for Health, did not disagree with his interpretation in reply, commenting instead that society could play a greater role in supporting the needs of the mentally ill, while police assistance could be sought where necessary (see *Singapore Parliamentary Debates, Official Report* (15 September 2008) vol 85 at col 92 and 104). This suggests that the phrase should be read according to its plain and ordinary meaning: that any member of the public may report a person who appears to be mentally disordered.

76 Mr Mah's second complaint was that his conduct did not amount to dangerous behaviour that would be caught under s 7 of the MHCTA.[39]

77 During the Second Reading of the Mental Health (Care and Treatment) Bill, dangerous behaviour was explained to include "arming oneself with a knife or other sharp object, threatening others, or putting oneself in a precarious position" (see *Singapore Parliamentary Debates, Official Report* (15 September 2008) vol 85 at col 104 (Mr Khaw Boon Wan, then Minister for Health)). These examples are clearly not exhaustive. Mr Mah was reported by the complainant to be mentally disordered and believed by the complainant to be a danger to young children, on the basis of his behaviour toward a young boy that was witnessed by the complainant. Officers arriving at the scene formed the same view after questioning him. Sgt Rosli also consulted the Duty Investigation Officer. In making the decision to apprehend Mr Mah, Sgt Rosli had in my view acted with reasonable care.

78 The third action envisaged by s 7 of the MHCTA was for Mr Mah to be brought, "without delay", to a medical practitioner or a psychiatric institution.

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[39] Plaintiff's Written Submissions dated 9 March 2018, Plaintiff's Bundle of Documents, p 11.

Mr Mah asserted that there was undue delay in SSgt Rosli's arrangement for him to be examined by a medical practitioner.[40]

79 Mr Mah was arrested between approximately 8.52pm to 8.56pm at Suntec City. Subsequently, he was brought to the Police Cantonment Complex, and interviewed by Dr Lim at 10.19pm. This was a period of approximately one hour and twenty minutes. This was a reasonable time period for procuring Dr Lim's attendance having regard to the late hour. Mr Mah's conduct would not have helped to make the process more efficient either. He was continually uncooperative with the police, and his arrest was also a protracted process, requiring in the end the police officers placing him in an arm lock. Even after arriving at the Police Cantonment Complex, he continued to resist the police officers by shouting and challenging them when he was brought to the lock-up area.[41] No doubt, time was necessary to make the necessary arrangements for his examination.

Whether SSgt Lawrence Tan acted in bad faith or without reasonable care

80 Mr Mah's final contention was that SSgt Lawrence Tan had acted in bad faith and without reasonable care in abusing and mistreating him whilst he was held in a lock-up cell within the Police Cantonment Complex.[42] Mr Mah contended that SSgt Lawrence Tan had pulled on his handcuffs repeatedly, effectively bruising him.

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40 Plaintiff's Written Submissions dated 9 March 2018, Plaintiff's Bundle of Documents, p 14.

41 1st Affidavit of Tan Thiam Chin Lawrence dated 16 November 2018, Defendant's Bundle of Documents, Tab 3, p 3.

42 Reply Affidavit of Mah Kiat Seng dated 29 November 2018, Defendant's Bundle of Documents, Tab 5, pp 1-2.

81 SSgt Lawrence Tan's account, on the other hand, was that he did not have any verbal or physical contact with Mr Mah on the night of 7 July 2017. He had not been in charge of the lock up area on that night as contended by Mr Mah, but had been assigned to an external escort team designated to receive arrested persons from the Police Cantonment Complex and transfer them to either Singapore General Hospital or alternative lock-up facilities.[43] As he walked past the lock-up area on that evening, because Mr Mah was challenging the officers with a loud voice, he turned and looked at him. He made brief eye contact with Mr Mah but did not speak to him or enter the room and he left the area immediately to attend to his duties. After SSgt Lawrence Tan's first affidavit was filed on 16 November 2018, Mr Mah then replied by affidavit of 29 November 2018 that SSgt Lawrence Tan had been responsible in taking him to a urinal in an opposite cell, when the injuries occurred. Vulgarities were also purportedly shouted at him. SSgt Lawrence Tan reiterated his earlier account in his reply of 28 December 2018. Inspector Tan, the Investigation Officer assigned, also affirmed that SSgt Lawrence Tan was not one of the officers who escorted Mr Mah on 7 July 2017, nor was there any need to escort Mr Mah to any other cell for toilet facilities as there was a toilet in the cell where Mr Mah was placed in custody.

82 Regarding the injuries alleged, Dr Lim's medical report showed that there were no obvious injuries on Mr Mah, and that Mr Mah himself did not declare any injuries sustained.[44] Inspector Tan, who interviewed Mr Mah after Dr Lim's examination, also did not see any injuries. At the oral hearing, I was asked to view, and did view, a photograph of Mr Mah's wrist and forearm,

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43 1st Affidavit of Tan Thiam Chin Lawrence dated 16 November 2018, Defendant's Bundle of Documents Tab 3, p 3.

44 1st Affidavit of Tan Bing Wen Kenneth dated 13 September 2017, Defendant's Bundle of Documents, Tab 13, p 11.

which did not show any bruising beyond that expected from the ordinary use of handcuffs. While Mr Mah's affidavit contended that the handcuff rough-housing had resulted in cuts, there were no cuts visible from the photograph.

Conclusion on leave to commence proceedings

83 For the reasons above, I declined to grant Mr Mah leave to commence proceedings.

Orders

84 The originating summons was dismissed with no order on costs.

Valerie Thean
Judge

The plaintiff in person;
Gordon Lim Wei Wen and Jessie Lim for
the Attorney-General's Chambers.
