

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

[2023] SGHC 53

Suit No 654 of 2019 (Registrar's Appeal No 334 of 2022)

Between

Cheng Hoe Soon

... Plaintiff /Appellant

And

Ezekiel Peter Latimer
(formerly practicing in the
style of M/S Peter Ezekiel &
Co)

... Defendant /Respondent

JUDGMENT

[Tort — Negligence — Professional negligence]

[Civil Procedure — Striking out]

[Civil Procedure — Costs — Personal liability of solicitor for costs]

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Cheng Hoe Soon
v
Ezekiel Peter Latimer
(formerly practicing in the style of M/S Peter Ezekiel & Co)

[2023] SGHC 53

General Division of the High Court — Suit No 654 of 2019 (Registrar's Appeal No 334 of 2022)

Tan Siong Thye J

13 January, 22 February 2023

3 March 2023

Judgment reserved.

Tan Siong Thye J:

Introduction

1 This is a Registrar's Appeal by Cheng Hoe Soon (the "Plaintiff"), where the Plaintiff sought to reverse an order imposed by the Assistant Registrar (the "First AR") to strike out the Plaintiff's Statement of Claim in HC/S 654/2019 ("Suit 654") arising from an "unless order". This prevented the Plaintiff from pursuing his claim against his previous solicitor, Ezekiel Peter Latimer (the "Defendant") for negligence in Suit 654.

2 The Defendant was the solicitor who represented the Plaintiff when he took out a suit to claim for damages arising from a road traffic accident. The Defendant commenced an action in the District Court between 2010 and 2015 (the "District Court suit"). The Defendant was negligent in handling the

Plaintiff's District Court suit and this resulted in the striking out of the District Court suit. Accordingly, the Plaintiff engaged another law firm, S K Kumar Law Practice LLP ("SKK"), to commence Suit 654 against the Defendant for his negligent handling of the District Court suit.

3 What is particularly ironic in this case is that the order imposed by the First AR which struck out the Plaintiff's Statement of Claim in Suit 654 arose because of the irresponsible and lackadaisical conduct of SKK, the Plaintiff's new solicitors, in the handling of Suit 654. As a result of the order, the Plaintiff is unable to pursue a claim against the Defendant simply because of the errant conduct of SKK. Effectively, the Plaintiff's District Court suit and Suit 654 were struck out as a result of the errant conduct of the Plaintiff's two sets of solicitors. Thus, the Plaintiff was gravely disadvantaged *twice* in his attempts to seek recourse and justice for his road traffic accident case. I find the First AR's striking-out order draconian and disproportionate in the circumstances because the Plaintiff was not at fault, but yet had to bear the consequences of the misconduct of SKK's solicitors in Suit 654.

The facts

The parties

4 In 2008, the Plaintiff was the hirer of a motor taxi bearing vehicle plate number SHC6348Y belonging to Premier Taxis Pte Ltd (the "motor taxi").¹ He was involved in a road traffic accident and he engaged the Defendant, a solicitor

¹ Plaintiff's Statement of Claim (Amendment No. 1) filed on 13 January 2020 ("SOC") at para 5.

practicing in the style of M/S Peter Ezekiel & Co,² to commence a suit in the District Court against the other party.

Background of the Plaintiff's dispute

The Defendant's conduct of the Plaintiff's claim for damages in the District Court suit

5 On or about 31 January 2008, the Plaintiff was driving the motor taxi along Beach Road towards Rochor Road at the extreme left lane. There was a collision between the motor taxi and a motor lorry bearing vehicle plate number GX8291P (the “motor lorry”).³ The driver of the motor lorry was one Chua Yeo Meng (“Mr Chua”).⁴ The Plaintiff sustained severe personal injuries and suffered loss and damages as a result of the road traffic accident.⁵ The Plaintiff alleged that the road traffic accident was caused by Mr Chua’s negligence.⁶ Thus, the Plaintiff engaged solicitors to commence the District Court suit, DC 1462/2009 (“DC 1462”). A Writ of Summons was issued on 24 April 2009 against Mr Chua.⁷ In the course of the proceedings in the District Court, the Plaintiff discharged his original solicitors and eventually engaged the Defendant.⁸

² SOC at para 2 and Defendant’s Defence (Amendment No. 2) filed on 12 January 2022 (“Defendant’s Defence”) at para 2.

³ SOC at para 5.

⁴ SOC at para 5.

⁵ SOC at para 8.

⁶ SOC at para 6.

⁷ SOC at para 9.

⁸ SOC at para 11.

6 It is undisputed that, in the course of having conduct of DC 1462, the Defendant was required to set down DC 1462 for trial by 31 March 2015.⁹ This was pursuant to an Order of Court (DC/ORC 1349/2015) dated 3 February 2015 which stated that the Defendant's failure to do so would result in the Plaintiff's claim in DC 1462 being struck off.¹⁰ It is also undisputed that the Defendant failed to set down the matter for trial and the Plaintiff's claim in DC 1462 was accordingly struck off.¹¹ The Defendant then sought an extension of time to set down the matter for trial.¹² However, this was rejected by the court.¹³ The Defendant filed an appeal against this decision, but failed to attend the appeal hearing on 24 February 2016.¹⁴ The Defendant then wrote to the court to request for the appeal hearing to be restored.¹⁵ This request was refused by way of a letter dated 3 March 2016 from the court.¹⁶

7 In view of the Defendant's misconduct which led to the Plaintiff's claim in DC 1462 being struck off, the Plaintiff initiated Suit 654 against the Defendant in July 2019. In Suit 654, the Plaintiff alleged that the Defendant had acted negligently in his conduct of DC 1462, in breach of the retainer and duty of care owed to the Plaintiff.¹⁷

⁹ SOC at para 12 and Defendant's Defence at para 14.

¹⁰ SOC at para 12 and Defendant's Defence at para 14.

¹¹ SOC at para 13 and Defendant's Defence at para 14.

¹² SOC at para 13 and Defendant's Defence at para 14.

¹³ SOC at para 13 and Defendant's Defence at para 14.

¹⁴ SOC at para 13 and Defendant's Defence at para 14.

¹⁵ SOC at para 13 and Defendant's Defence at para 14.

¹⁶ SOC at para 13 and Defendant's Defence at para 14.

¹⁷ SOC at para 17.

8 Thereupon, the Plaintiff engaged SKK to act as his solicitors in Suit 654. A Notice of Appointment of Solicitor indicating SKK’s appointment as the Plaintiff’s solicitors was filed on 13 September 2019.

SKK’s conduct of the Plaintiff’s suit against the Defendant in Suit 654

9 In the course of Suit 654 between April 2022 and August 2022, the solicitors from SKK repeatedly failed to either attend pre-trial conferences (“PTC”) on the Plaintiff’s behalf or have a person with a valid practising certificate to attend the PTCs:

(a) At the PTC on 12 April 2022, Mr Charles Yeo (“Mr Yeo”) from SKK appeared on behalf of the Plaintiff. However, Mr Yeo did not have a valid practising certificate at that time. In view of this, the PTC was adjourned to 26 April 2022.

(b) At the PTC on 26 April 2022, Mr Yeo once again appeared on behalf of the Plaintiff without a valid practising certificate. In view of this, the PTC was adjourned to 17 May 2022.

(c) At the PTC on 17 May 2022, no solicitor from SKK appeared on behalf of the Plaintiff. The PTC was, therefore, adjourned to 23 May 2022. The First AR having conduct of the PTC also directed SKK to explain its absence from the PTC. The First AR also indicated that he may consider striking out the Plaintiff’s Statement of Claim (“SOC”) at an appropriate stage if there was a further non-attendance at the PTC. In a letter filed by SKK on 18 May 2022, SKK stated that its solicitor, Mr Foo Ho Chew (“Mr Foo”), was occupied with other matters in the Family Justice Court and was therefore late for the PTC. The letter also stated that Mr Yeo was waiting for a conditional practising

certificate to be issued. In its letter, SKK also stated that it would ensure attendance at all future court dates.

(d) At the PTC on 23 May 2022, no solicitor from SKK appeared on behalf of the Plaintiff. The PTC was, therefore, adjourned to 30 May 2022. The First AR having conduct of the PTC stated that he would proceed to strike out the Plaintiff's SOC if a solicitor from SKK was not present at the PTC on 30 May 2022. The PTC on 30 May 2022 was subsequently rescheduled to 14 June 2022.

10 At the PTC on 14 June 2022, Mr Yeo appeared on behalf of the Plaintiff with a valid practising certificate. The Plaintiff was ordered to pay costs of \$3,000 to the Defendant in view of the wasted costs arising from the four adjournments granted at the PTCs between 12 April 2022 and 23 May 2022.¹⁸ Directions were also given in relation to a summons filed by the Defendant. The matter was fixed for a further PTC on 19 July 2022. This was subsequently rescheduled to 23 August 2022.

11 At the PTC on 23 August 2022, no solicitor from SKK appeared on behalf of the Plaintiff. The PTC was, therefore, adjourned to 27 September 2022. The First AR having conduct of the PTC stated that he would proceed to strike out the Plaintiff's SOC if a solicitor from SKK was not present at the PTC on 27 September 2022.

12 At the PTC on 27 September 2022, no solicitor from SKK appeared on behalf of the Plaintiff. Instead, Mr Foo, who was practising under H C Law Practice at that time, appeared at the PTC. Mr Foo stated that he had been instructed by SKK to take directions at the PTC pertaining to the Affidavits

¹⁸ Order of Court HC/ORC 3544/2022 dated 14 June 2022.

of Evidence-in-Chief (“AEICs”).¹⁹ Mr Foo was not a solicitor on record for the Plaintiff at the time of the PTC. The First AR having conduct of the PTC found that Mr Foo was not aware of the stage of case management for Suit 654.²⁰ In view of the above, the First AR proceeded to strike out the Plaintiff’s SOC on the basis that no counsel on record was present²¹ and ordered for costs payable by the Plaintiff to the Defendant to be agreed upon or taxed (hereinafter referred to as the “27 September 2022 Order”).²²

13 SKK thereafter requested a further hearing or review of the First AR’s 27 September 2022 Order by way of a letter dated 27 September 2022. This request was refused on 29 September 2022.

14 On 19 October 2022, SKK filed a summons on behalf of the Plaintiff, HC/SUM 3828/2022 (“SUM 3828”), praying for: (a) the 27 September 2022 Order to be set aside; and (b) the Plaintiff’s SOC to be reinstated. In the alternative, the Plaintiff sought leave to file his notice of appeal against the 27 September 2022 Order out of time.

The parties’ submissions in SUM 3828 and the decision below

15 The hearing for SUM 3828 took place on 4 November 2022 before a different Assistant Registrar (the “Second AR”).

¹⁹ Certified Transcript of Pre-Trial Conference on 27 September 2022 at page 2, lines 7–8 and 20–22.

²⁰ Certified Transcript of Pre-Trial Conference on 27 September 2022 at page 2, line 24 to page 3, line 7.

²¹ Certified Transcript of Pre-Trial Conference on 27 September 2022 at page 3, lines 4–9.

²² Certified Transcript of Pre-Trial Conference on 27 September 2022 at page 3, lines 7–15. See also, Order of Court HC/ORC 4954/2022 dated 27 September 2022.

16 The Plaintiff argued that the First AR’s decision to impose the 27 September 2022 Order was incorrect since Mr Foo was present at the PTC on 27 September 2022.²³ In this regard, the Plaintiff claimed that while Mr Foo was not fully cognisant of the facts of the Plaintiff’s case,²⁴ his request for directions pertaining to the AEICs was not entirely out of place.²⁵ The Plaintiff stated that it was the Defendant who was applying for the Plaintiff’s past medical reports and an examination of the Plaintiff by the Defendant’s doctors.²⁶ In contrast, the Plaintiff was ready to take directions pertaining to the AEICs.²⁷

17 Further, the Plaintiff cited the Court of Appeal case of *Mitora Pte Ltd v Agritrade International (Pte) Ltd* [2013] 3 SLR 1179 (“*Mitora*”) and submitted that the order to strike out the Plaintiff’s SOC was a “draconian sanction” which deprived the Plaintiff of his “substantive rights on account of a procedural fault”.²⁸

18 In contrast, the Defendant’s position was as follows:

- (a) The Plaintiff’s summons was procedurally flawed.²⁹ Given that the Plaintiff’s SOC had been struck out, the proceedings in Suit 654 was

²³ Plaintiff’s Written Submissions for HC/SUM 3828/2022 dated 11 February 2022 (*sic*) (“Plaintiff’s HC/SUM 3828/2022 Submissions”) at para 5.

²⁴ Plaintiff’s HC/SUM 3828/2022 Submissions at para 6.

²⁵ Plaintiff’s HC/SUM 3828/2022 Submissions at para 6. See also, Affidavit of Mohan Singh s/o Gurdial Singh dated 19 October 2022 (“Mohan Singh’s Affidavit”) at paras 6(D)(1)–6(D)(6).

²⁶ Plaintiff’s HC/SUM 3828/2022 Submissions at para 7.

²⁷ Mohan Singh’s Affidavit at para 6(D)(5).

²⁸ Plaintiff’s HC/SUM 3828/2022 Submissions at paras 10–12.

²⁹ Defendant’s Written Submissions for HC/SUM 3828/2022 dated 2 November 2022 (“Defendant’s HC/SUM 3828/2022 Submissions”) at para 2.

deemed as concluded. Therefore, the only option available to the Plaintiff was to file an appeal against the 27 September 2022 Order.³⁰

(b) The Second AR did not have the power to grant the Plaintiff's prayer to set aside the 27 September 2022 Order. Pursuant to O 56 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), such an order could only be made by a judge in chambers in the High Court.³¹

(c) The Second AR did not have the power to grant the Plaintiff's prayer for leave to file his Notice of Appeal against the 27 September 2022 Order out of time. Such an application had to be heard by the court with jurisdiction to hear the appeal, *ie*, a judge in chambers in the High Court.³²

19 Having considered the parties' submissions, the Second AR dismissed the application, on the basis that the Plaintiff's prayers to set aside the 27 September 2022 Order or for an extension of time to file a notice of appeal had no merit.³³

20 Further, while the Defendant had initially sought for a costs order to be made personally against the Plaintiff's solicitor from SKK,³⁴ Mr Mohan Singh ("Mr Singh"), this position was abandoned when the Second AR stated that he would have to give Mr Singh from SKK an opportunity to explain why he

³⁰ Defendant's HC/SUM 3828/2022 Submissions at para 3.

³¹ Defendant's HC/SUM 3828/2022 Submissions at para 4.

³² Defendant's HC/SUM 3828/2022 Submissions at para 5.

³³ Certified Transcript of Pre-Trial Conference on 4 November 2022 at page 3, lines 20–22.

³⁴ Certified Transcript of Pre-Trial Conference on 4 November 2022 at page 3, lines 28–32.

should not be ordered to pay personal costs.³⁵ The Second AR, therefore, ordered the Plaintiff to pay costs of \$2,000 to the Defendant.³⁶

21 Dissatisfied with the decision of the Second AR, the Plaintiff filed an appeal which I heard on 13 January 2023. Ahead of the appeal, the Plaintiff discharged SKK as his solicitors and engaged Mr Foo as his solicitor.

The parties' cases on appeal

The Plaintiff's case

22 On appeal, the Plaintiff makes the following arguments:

(a) The Defendant's suggestion that the Second AR did not have the powers to decide on the merits of SUM 3828 was incorrect.³⁷ In support of this position, the Plaintiff relied on the High Court decision of *The "MMM Diana" ex "Able Director"* [2004] 3 SLR(R) 611 (*"The "MMM Diana"'"*) to make the submission that the Second AR was in a position to set aside the 27 September 2022 Order issued by the First AR.³⁸ While Mr Foo had referred to the 27 September 2022 Order as an "unless order or a default judgment" in the Plaintiff's written submission for this appeal,³⁹ Mr Foo conceded at the hearing before me that the 27 September 2022 Order was an order striking out the

³⁵ Certified Transcript of Pre-Trial Conference on 4 November 2022 at page 4, lines 2–7.

³⁶ Certified Transcript of Pre-Trial Conference on 4 November 2022 at page 4, lines 9–10.

³⁷ Plaintiff's Written Submissions for HC/RA 334/2022 dated 12 January 2023 ("Plaintiff's HC/RA 334/2022 Submissions") at paras 6–7.

³⁸ Plaintiff's HC/RA 334/2022 Submissions at para 7.

³⁹ Plaintiff's HC/RA 334/2022 Submissions at paras 7 and 9(d).

Plaintiff's SOC and acknowledged that he had made an error in his written submission.

(b) Further, the First AR's decision to impose the 27 September 2022 Order was incorrect since Mr Foo was instructed by SKK to attend the PTC on 27 September 2022.⁴⁰ In addition, the Plaintiff argued that the Defendant should be in a position to furnish the court with all updates about the status of the matter.⁴¹

(c) The Plaintiff's claim against the Defendant was not one without merits⁴² and the 27 September 2022 Order adversely affected the Plaintiff's claim, despite the absence of any fault on the Plaintiff's part.⁴³

The Defendant's case

23 The Defendant makes the following arguments on appeal:

(a) The Second AR should not have heard SUM 3828 on its merits. The Second AR lacked jurisdiction to vary another Assistant Registrar's order, *ie*, the 27 September 2022 Order.⁴⁴ The Defendant cited the High Court decision of *Changhe International Investments Pte Ltd (formerly known as Druidstone Pte Ltd) v Banque Internationale A Luxembourg Bil (Asia) Ltd* [2000] 2 SLR(R) 798 ("*Changhe*") in support of this position.⁴⁵ Further, the Second AR was not empowered to grant the

⁴⁰ Plaintiff's HC/RA 334/2022 Submissions at paras 8(1)–8(3).

⁴¹ Plaintiff's HC/RA 334/2022 Submissions at paras 8(3)–8(7).

⁴² Plaintiff's HC/RA 334/2022 Submissions at paras 9(d) and 11.

⁴³ Plaintiff's HC/RA 334/2022 Submissions at para 9(g).

⁴⁴ Defendant's Written Submissions for HC/RA 334/2022 dated 10 January 2023 ("Defendant's HC/RA 334/2022 Submissions") at paras 3–5.

⁴⁵ Defendant's HC/RA 334/2022 Submissions at paras 5–8.

Plaintiff an extension of time to file a notice of appeal, since such an application was to be heard by the court with jurisdiction to hear the appeal, *ie*, a judge in chambers in the High Court.⁴⁶

(b) The 27 September 2022 Order was justified because no solicitor from SKK was present at the PTC. While Mr Foo appeared at the PTC, he was not instructed by the Plaintiff to represent him and was wholly unaware of the ongoings for the matter.⁴⁷

(c) The 27 September 2022 Order was not too draconian, given the continued absence of SKK’s solicitors in the course of the conduct of Suit 654 and the lack of explanation by SKK to account for the absence of its solicitor from the PTC on 27 September 2022.⁴⁸

(d) Further, the Plaintiff had no basis to ask for leave to file a notice of appeal out of time given the Plaintiff’s lack of explanation on why the notice of appeal was not filed in a timely manner.⁴⁹

Issues to be determined

24 At this appeal, there are primarily two issues for me to address:

(a) First, the preliminary issue of whether the Second AR had jurisdiction to decide on the merits of the prayers sought by the Plaintiff in SUM 3828.

⁴⁶ Defendant’s HC/RA 334/2022 Submissions at paras 9–11.

⁴⁷ Defendant’s HC/RA 334/2022 Submissions at para 19.

⁴⁸ Defendant’s HC/RA 334/2022 Submissions at para 20.

⁴⁹ Defendant’s HC/RA 334/2022 Submissions at paras 28–31.

(b) Second, whether the striking out of the Plaintiff’s SOC as a result of the 27 September 2022 Order was proportionate to the facts of the case.

My decision

Whether the Second AR had jurisdiction to decide on the merits of the prayers sought by the Plaintiff in SUM 3828

25 The Defendant argues that the Second AR lacked the jurisdiction to decide on the merits of the three prayers sought by the Plaintiff. The Defendant contends that the Plaintiff was effectively appealing against the 27 September 2022 Order imposed by the First AR.⁵⁰ The Defendant relies on the court’s finding in *Changhe* that an assistant registrar could not normally vary another assistant registrar’s order as he lacked jurisdiction to do so.⁵¹

26 In *Changhe*, the Registrar also issued an “unless order” which required both parties to file their respective list of documents by a particular date. The “unless order” set out that the plaintiffs’ failure to comply with the order would lead to the action being dismissed with costs, while the defendants’ failure to comply with the order would lead to the defence being struck out and judgment being entered for the plaintiffs. The defendants filed their documents on time, but the plaintiffs failed to do so. The defendants’ solicitors then made an *inter partes* application by summons in chambers to perfect the “unless order” and dismiss the plaintiffs’ action. The assistant registrar hearing the application dismissed the plaintiffs’ claim with costs ordered against the plaintiffs. No appeal was filed by the plaintiffs’ solicitors. Thereafter, the plaintiffs engaged new solicitors who made an application before a different assistant registrar

⁵⁰ Defendant’s HC/RA 334/2022 Submissions at para 3(b).

⁵¹ Defendant’s HC/RA 334/2022 Submissions at paras 5–8.

asking for the previous assistant registrar's order to be set aside. The assistant registrar hearing the second application dismissed the plaintiffs' application without hearing the merits on the basis that he lacked jurisdiction to do so.

27 On appeal, the High Court agreed that the assistant registrar's decision to dismiss the plaintiffs' application without hearing the merits was correct (*Changhe* at [5]). The High Court in *Changhe* noted that the matter had already been litigated once by the plaintiffs before the assistant registrar where the plaintiffs' solicitor was in attendance and had made his submission to the assistant registrar. The High Court held that the plaintiffs, therefore, could not "re-litigate the same matter save by way of an appeal" (*Changhe* at [6]). In the present case, no solicitor from SKK was present at the PTC on 27 September 2022, although Mr Foo was there to represent SKK. Neither SKK nor Mr Foo was given an opportunity to be heard or to address the court on whether the striking out of the Plaintiff's SOC was an appropriate consequence for SKK's solicitors' failure to comply with the earlier direction at the PTC on 23 August 2022. SKK did seek a re-hearing or review of the 27 September 2022 Order by way of a letter dated 27 September 2022, but this was refused. It was, therefore, not a case where the Plaintiff was asking, in effect, the Second AR to give a different ruling on a point that had already been taken before and decided by the First AR.

28 The Plaintiff, on the other hand, relies on the High Court decision of *The "MMM Diana"* to argue that the Second AR was in a position to decide on the merits of the Plaintiff's prayers.⁵² In *The "MMM Diana"*, an assistant registrar had issued an "unless order" requiring the defendants to exchange their AEICs with the plaintiff within ten days, failing which the re-amended defence and

⁵² Plaintiff's HC/RA 334/2022 Submissions at para 7.

counterclaim of the defendants were to be struck out and judgment entered against them. The defendants failed to comply with the prescribed timeline and the plaintiff obtained a default judgment pursuant to the “unless order”. The defendants filed a notice of appeal to a judge in chambers in the High Court.

29 The High Court made no order on the appeal, finding that the appeal was in substance an application for an extension of time to comply with the “unless order” and to set aside the default judgment (*The “MMM Diana”* at [12]). The High Court found that an assistant registrar had jurisdiction to hear the application for an extension of time and that an appeal was possible only after an assistant registrar had decided on the merits of the application. Further, the High Court in *The “MMM Diana”* stated that the proposition in *Changhe* would apply in the context of applications where an assistant registrar was being asked to give a different ruling on a point *which had already been argued before* and decided by another assistant registrar (*The “MMM Diana”* at [10]).

30 In the present case, although SKK’s solicitor was absent at the PTC on 27 September 2022, SKK had asked Mr Foo to attend to the matter on its behalf. Mr Foo did appear before the First AR, but the latter refused to acknowledge that Mr Foo was representing the Plaintiff and ordered the “unless order” to be operative and struck out the Plaintiff’s SOC. The First AR did not allow Mr Foo to make a submission. It is understandable that the First AR was very frustrated and at his wit’s end as SKK’s solicitors kept on disobeying the court’s directions. The absence of SKK’s solicitors was due to their own unacceptable conduct and defiance of numerous court warnings issued in the course of the PTCs. There were no arguments made at that time on the merits of whether the consequences of the absence of SKK’s solicitor on 27 September 2022 should justify a striking out of the Plaintiff’s SOC. Therefore, the Second AR had the jurisdiction to hear the parties on whether a further extension of time should be

granted to the Plaintiff, and whether the 27 September 2022 Order should be set aside and the Plaintiff's SOC reinstated.

Whether the order to strike out the Plaintiff's SOC was proportionate on the facts of the case

31 I next consider whether the 27 September 2022 Order was proportionate, given that the repeated procedural breaches were attributable to the failure on the part of SKK's solicitors to attend the PTCs, and not because of the Plaintiff's own conduct.

32 The conduct of SKK's solicitors was plainly contumelious and unsatisfactory. Their repeated absences from the scheduled PTCs while having conduct of Suit 654 were clearly unacceptable.

33 However, the fact that there was an "unless order" in place and that the solicitors' conduct was contumelious did not automatically mean that the striking out of the Plaintiff's SOC would follow. As was stated by the Court of Appeal in *Mitora*, even where it was established that an intentional and contumelious breach of an "unless order" had been committed, the court had to determine what sanction ought to follow; this would be guided by considerations of proportionality (*Mitora* at [37], [39] and [40]). In *Mitora*, the Court of Appeal cited with approval (at [39]) the guidance issued by Chan Seng Onn J (as he then was) in *Teen Enterprise Pte Ltd v Singco Pte Ltd* [2008] SGHC 115 (at [64]):

Clearly, the court must balance the need to ensure compliance with court orders which are made to be adhered to and not ignored, and the need to ensure that a party would not be summarily deprived of its cause of action or have default judgment entered against it without any hearing of the merits especially when the non-compliance or breach, having regard to all the relevant circumstances, was not so serious or aggravating as to warrant such a severe consequence: see

Wellmix Organics (International) Pte Ltd v Lau Yu Man [2006] 2 SLR 117 at [4]. The discretionary power to enforce the unless order according to its strict terms must therefore be exercised judiciously and cautiously after carefully weighing everything in the balance.

34 On the facts, the striking out of the Plaintiff’s SOC because of the failure of SKK’s solicitors to attend the PTCs was a disproportionate consequence. There was no suggestion by the parties before the Second AR or on appeal that the conduct of SKK’s solicitors was instigated by the Plaintiff himself or attributable to the Plaintiff’s conduct. The evidence suggests that the Plaintiff was not even aware of the obstinate misconduct of his solicitors in refusing to attend the PTCs. It was the disrespectful misconduct of SKK’s solicitors that resulted in the Plaintiff’s SOC being struck out.

35 When the case came before the First AR on 27 September 2022, Mr Foo should have been given an opportunity to explain the reasons for the absence of SKK’s solicitors and why the “unless order” should not be allowed to be operative. These were not done and the “unless order” was allowed to be operative. The First AR was understandably displeased, but he should not have allowed the “unless order” to be operative as it would adversely affect the Plaintiff’s claim. Having the Plaintiff’s SOC struck out, the Plaintiff would thus be unable to obtain justice for his road traffic accident case for the second time. I should emphasise that none of this is attributed to the fault of the Plaintiff, but rather a result of his errant solicitors’ contumelious conduct. On this basis, it would have been wholly disproportionate to pin the consequences of the solicitors’ misconduct on the Plaintiff. This was especially so when the effect of doing so meant that the Plaintiff would no longer be able to hold the Defendant accountable for the Defendant’s conduct in DC 1462.

36 More significantly, it was clear that the Defendant had not suffered any irreparable prejudice due to the delay arising from the failure by SKK's solicitors to attend the PTCs. Further, the Plaintiff had already been ordered to pay costs to the Defendant on three previous occasions:

(a) First, at the PTC on 14 June 2022, the Plaintiff had been ordered to pay costs of \$3,000 to the Defendant in view of the wasted costs arising from the four adjournments granted at the PTCs between 12 April 2022 and 23 May 2022.

(b) Second, following the 27 September 2022 Order, the First AR had ordered costs of the action payable by the Plaintiff to the Defendant to be agreed upon or taxed. When I allow the appeal, the errant solicitors for the Plaintiff will nevertheless have to bear the costs. The quantum of the costs will be determined after submissions are made by the parties.

(c) Third, the Plaintiff had also been ordered to pay costs of \$2,000 to the Defendant after the hearing of SUM 3828 on 4 November 2022.

The Defendant's argument that SKK's solicitors should have been aware of the consequences of failing to attend court hearings

37 In the Defendant's written submission, he argues that SKK's solicitors should have been cognisant of the consequences of failing to attend hearings fixed by the court. In particular, the Defendant highlighted the recent High Court decision of *Pakirisamy Rajoo and another v Sheila Devi d/o Pakirisamy Rajoo* [2022] SGHC 285 ("*Pakirisamy*"), where See Kee Oon J had warned one of SKK's solicitors, Mr Singh, about his unacceptable conduct in failing to attend trial without giving prior notice to the court.⁵³

⁵³ Defendant's HC/RA 334/2022 Submissions at paras 21– 27.

38 In *Pakirisamy*, the case was scheduled for a two-day trial. However, both the plaintiffs and their counsel, Mr Singh, were absent on the first day of trial without any prior notice given to the court. Following the brief submissions from the defendant's counsel, See J dismissed the plaintiffs' claim. Medical certificates covering one plaintiff and Mr Singh were subsequently produced during a summons hearing which sought to set aside See J's dismissal of the claim. However, these medical certificates did not excuse the plaintiff or Mr Singh from court proceedings. In arriving at his decision, See J considered the following:

- (a) The plaintiffs and Mr Singh did not have good reasons for being absent from trial. The medical certificates did not operate to excuse the plaintiffs or Mr Singh from court attendance. Further, no notice was given to the court ahead of the trial (*Pakirisamy* at [34], [35] and [39]).
- (b) The plaintiffs' claim did not appear to have a real prospect of success. No objective evidence was put forth by the plaintiffs to support their allegations. Further, one of their claims was time-barred under s 6 of the Limitation Act 1959 (2020 Rev Ed) (*Pakirisamy* at [44]–[48]).
- (c) Although the plaintiffs had applied promptly to set aside the judgment dismissing their claim, this appeared to undermine their claims that they were so ill that they could not be present for trial (*Pakirisamy* at [50]–[51]).

39 The Defendant, in this case, argues that Mr Singh and SKK's solicitors should have been especially mindful of the need to attend court hearings following See J's decision in *Pakirisamy*. The facts in *Pakirisamy* and this case are significantly different. In particular, there are two key differences between *Pakirisamy* and the present case:

(a) In *Pakirisamy*, both the plaintiffs and the solicitor failed to attend the trial on the scheduled date. The plaintiffs were also unable to satisfactorily account for their absence from trial. One plaintiff produced a medical certificate that See J observed was obtained under questionable circumstances and which did not excuse the plaintiff from court proceedings. The second plaintiff failed to produce any medical certificate to explain her absence from trial. This was quite unlike the present case where the contumelious conduct was only on the part of the solicitors from SKK. No evidence was adduced before me to show that the Plaintiff was complicit in the contumelious conduct of the solicitors from SKK.

(b) Further, and more significantly, See J opined that the plaintiffs' claim in *Pakirisamy* lacked a real prospect of success. On the contrary, the Plaintiff appears to have a strong case to claim for damages arising from the road traffic accident involving his motor taxi's collision with a motor lorry. The Plaintiff also appears to have a strong case against the Defendant for the latter's negligent handling of his road traffic accident claim. This is especially so since the Defendant does not dispute in the pleadings that it was his own failure to set down DC 1462 for trial which caused the Plaintiff's road traffic accident claim to be struck off in the District Court.⁵⁴ Therefore, to strike out the Plaintiff's SOC which *prima facie* appears to have a real substantial prospect of success would be a wholly disproportionate response to address the misconduct of the Plaintiff's solicitors.

⁵⁴ Defendant's Defence at para 14.

40 While SKK's solicitors should have been aware of the consequences of failing to attend court hearings, the Defendant has not satisfactorily explained why the Plaintiff, who was innocent of the failure of SKK's solicitors to attend the PTCs, should bear the brunt of his solicitors' misconduct and to have his SOC struck out.

The Defendant's suggestion that the Plaintiff would continue to have recourse was unsatisfactory

41 In the course of the oral submissions on 13 January 2023, the Defendant suggested that the striking out of the Plaintiff's SOC was not fatal to the Plaintiff's claim as he could then proceed with another action against SKK for its solicitors' negligent conduct of his case in Suit 654. The Defendant readily acknowledged, however, that the Plaintiff would have to jump through additional hurdles before the Plaintiff would be able to successfully obtain justice.

42 This is a wholly unsatisfactory, unjust and prejudicial recourse available to the Plaintiff. The Plaintiff was already denied access to justice in DC 1462 because of the errant conduct of his previous solicitor, the Defendant. By striking out the Plaintiff's SOC in Suit 654, the Plaintiff would have once again been denied access to justice simply because of the misconduct of another set of errant solicitors, *ie*, SKK, his current solicitors in Suit 654. It did not appear to be in the interests of justice to place the burden on the Plaintiff to commence fresh proceedings against SKK, when the present breach in Suit 654 was through no fault of his.

Show Cause

43 I adjourned the proceedings to allow the parties to show cause and to address me on whether costs should be awarded personally against the errant solicitors in this case and whether they should be referred to the Law Society of Singapore (“LSS”) for any actions it deems fit. I issued these directions because it was unfair that the Plaintiff was made to bear the previous costs orders for: (a) SKK’s absence from the four PTCs; and (b) SUM 3828 on 4 November 2022. This deplorable state of affairs was attributable primarily to the solicitors of SKK in mishandling the case. Further, as I have explained above, the present appeal was necessitated by the contumelious conduct of the solicitors from SKK. Therefore, while costs would ordinarily follow the event when I allow the appeal, it would be unfair to make a costs order against the Defendant in relation to this appeal. Further, it also would be unfair to hold the Plaintiff liable for costs arising from this appeal when it was the contumelious conduct of the solicitors from SKK which made this appeal necessary.

44 At the show cause hearing on 22 February 2023, however, Mr Foo stated that the Plaintiff would not be made to bear the costs arising from the previous costs orders. Mr Foo also assured the Court that the Plaintiff would also not be liable to any costs order arising from this appeal. Mr Foo categorically stated that the past and present solicitors would be bearing these costs.

45 Upon my direction that such an undertaking should be made in writing, Mr Foo provided a letter dated 23 February 2023 (“Mr Foo’s 23 February 2023 Letter”). In Mr Foo’s 23 February 2023 Letter, Mr Foo states that, following his discussions with Mr Singh, he and Mr Singh undertake to personally bear and be liable for the costs arising from the previous costs orders as well as costs

arising from this appeal. Though the dates of the previous costs orders in Mr Foo's 23 February 2023 Letter were incorrect, Mr Foo has since clarified that SKK will be liable for the costs order of \$3,000 payable to the Defendant which was made at the PTC on 14 June 2022. Mr Foo also undertakes to personally bear and be liable for: (a) the costs payable to the Defendant for the absence of SKK's solicitor from the PTC on 27 September 2022; (b) the costs order of \$2,000 payable to the Defendant which was made after the hearing of SUM 3828 on 4 November 2022; and (c) the costs arising from this appeal. For completeness, Mr Foo also states that the Plaintiff would not be charged for the work related to this appeal.

46 In view of the undertaking in writing by Mr Foo, it is not necessary to consider whether costs should be awarded personally against the errant solicitors in this case. Since the errant solicitors of the Plaintiff have taken full responsibility for the mishandling of the Plaintiff's case, it is not necessary to refer the errant solicitors to the LSS for any action.

47 As stated in Mr Foo's 23 February 2023 Letter, therefore, the Plaintiff's solicitors and not the Plaintiff are to bear the costs arising from the previous costs orders as well as costs arising from this appeal.

Conclusion

48 In summary, I make the following findings:

- (a) The Second AR had the jurisdiction to decide on the merits of the prayers sought by the Plaintiff in SUM 3828. An assistant registrar generally does not have jurisdiction when he is asked to give another ruling on a point which has already been argued before and decided by a different assistant registrar. However, this was not the situation in the

present case. Rather, at the PTC on 27 September 2022 before the First AR, neither SKK nor Mr Foo was given an opportunity by the First AR to be heard or to submit on whether the striking out of the Plaintiff's SOC was an appropriate consequence for SKK's failure to comply with the earlier direction at the PTC on 23 August 2022. The First AR refused to acknowledge that Mr Foo was representing the Plaintiff and ordered the "unless order" made on 23 August 2022 to be operative and struck out the Plaintiff's SOC. There were no arguments made at that time on the merits of whether the consequence of the solicitor's absence on 27 September 2022 should be a striking out of the Plaintiff's SOC. Therefore, the Second AR had the jurisdiction to hear the parties on whether further extension of time should be granted to the Plaintiff, and whether the 27 September 2022 Order should be set aside and the Plaintiff's SOC be reinstated.

(b) The conduct of SKK's solicitors was plainly contumelious and unsatisfactory. Their repeated absences from the PTCs while having conduct of Suit 654 were clearly unacceptable. However, the striking out of the Plaintiff's SOC due to the failure of SKK's solicitors to attend the PTCs was a disproportionate consequence in this case. There was no suggestion by the parties before the Second AR or on appeal that the conduct of SKK's solicitors was instigated by the Plaintiff himself or attributable to the Plaintiff's conduct. The First AR was understandably displeased with the conduct of SKK's solicitors, but he should not have allowed the "unless order" to be operative as it would adversely affect the Plaintiff's claim. The effect of having his SOC struck out would lead to the Plaintiff being unable to obtain justice for his road traffic accident case for the second time. This was surely through no fault of the Plaintiff but the result of his errant solicitors' contumelious conduct. More

significantly, it was clear that the Defendant had not suffered any irreparable prejudice due to the delay arising from the failure of SKK's solicitors to attend the PTCs.

(c) On the issue of costs, Mr Foo, in his letter dated 23 February 2023, rightly acknowledges that the past and present solicitors for the Plaintiff will bear all costs including the costs of this appeal. Accordingly, it may not be necessary for this Court to refer the errant solicitors to the LSS for any action.

49 For the reasons above, I allow the appeal. I shall now hear the parties on the appropriate quantum of costs to be paid by the past and present solicitors for the Plaintiff for the absence of SKK's solicitor from the PTC on 27 September 2022, as well as this appeal.

Tan Siong Thye
Judge of the High Court

Foo Ho Chew (H C Law Practice) for the plaintiff/appellant;
Wee Anthony and Christine Chiam (Titanium Law
Chambers LLC) for the defendant/respondent.