IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 57

Civil Appeal 6 of 2017 (Summons No 14 of 2017)

Between

TMY

… *Applicant*

And

TMZ

… *Respondent*

JUDGMENT

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

TMY
v
TMZ

[2017] SGCA 57

Court of Appeal — Civil Appeal 6 of 2017 (Summons No 14 of 2017)
Sundaresh Menon CJ, Tay Yong Kwang JA and Steven Chong JA
6 July 2017

25 September 2017 Judgment reserved

Tay Yong Kwang JA (delivering the judgment of the court):

1 The parties before us are involved in matrimonial proceedings in the Family Court. After the Family Court decided the ancillary matters in the divorce, the Husband appealed to the Family Division of the High Court in District Court Appeal No 14 of 2016 ("DCA 14"). Judicial Commissioner Foo Tuat Yien ("the JC") heard DCA 14 in the High Court and made various orders. The Husband appealed to the Court of Appeal in Civil Appeal 6 of 2017 ("CA 6") against the JC's decision. The Wife then took out an application in CA Summons No 14 of 2017 ("SUM 14") to strike out CA 6 on the basis that the Husband had not obtained the requisite leave to appeal to the Court of Appeal. SUM 14 is the application that is now before this Court.

2 At the hearing before us, the Husband argued that there is a conflict between s 34(5) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev

Ed) ("SCJA") and s 137 of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC") concerning the right of appeal to the Court of Appeal from appellate decisions of the Family Division of the High Court. In particular, the question is whether leave to appeal is required to appeal against such appellate decisions.

The facts leading to SUM 14

3 To provide some context, we set out a brief procedural history of this case leading up to the application before us. The parties married in December 1989 in China. They do not have any children. In July 2009, they separated. In July 2013, the Wife commenced divorce proceedings on the ground of four years' separation. On 7 January 2015, the Wife was granted Interim Judgment by the Family Court. On 19 January 2016, the Family Court gave its decision on the ancillary matters which comprised various orders relating to the parties' assets in China and in Singapore.

4 On 27 January 2016, the Husband appealed in DCA 14 to the Family Division of the High Court against the decision on the ancillary matters. On 6 January 2017, the JC gave her decision in DCA 14, varying the orders made by the Family Court. After delivering her decision in DCA 14, in reply to the Husband's query, the JC informed the Husband that if he wished to appeal to the Court of Appeal against her decision, he would have to file an application for leave to appeal. This conversation was recorded in her notes of the hearing as follows:

> Note: In response to [the Husband's] query, court informs [the Husband] that if he wishes to appeal, he should file an application for leave to appeal.

5 However, the Husband, who holds degrees in engineering and in law and who practised law in Hong Kong, did not apply for leave to appeal. Instead, on 10 January 2017, he filed CA 6 appealing against the following parts of the JC's decision in DCA 14:

(a) The orders regarding division of the flat at xxx.

(b) The order that the Wife shall retain the assets in her sole name.

(c) The costs order.

6 On 12 January 2017, the Supreme Court Registry emailed the Husband to inform him that at the hearing before the JC, the JC had indicated to him that he would have to file an application for leave to appeal. The Husband replied to the Supreme Court Registry that same afternoon stating the following:

> On the day of hearing, I was not clear about the legal requirement about leave and raised the issue. I had only read the Supreme Court website on the procedure on leave to appeal. Her Honour FC *(sic)* Foo Tuat Yien asked me to seek legal advice but she did not say that I must file an application for leave to appeal.
>
> I have subsequently checked the Supreme Court of Judicature Act and found that no leave is required for my present appeal. Therefore, I am not applying for leave and want to proceed with the filing of Notice of Appeal.

7 On 16 January 2017, the Supreme Court Registry replied to the Husband stating the following:

> …
>
> 2. As stated earlier, our records of the hearing before Judicial Commissioner Foo Tuat Yien on 6 January 2017 show that the need to file an application for leave to appeal has been communicated to you. You may wish to apply for the certified transcripts of that hearing.

> 3. If you still wish to proceed with the filing, we will accept the Notice of Appeal without any prejudice to any application which the respondent may deem fit to take out. Please let us know by 18 January 2017 whether to proceed with the acceptance.
>
> 4. Thank you.

On 17 January 2017, the Husband replied to the Supreme Court Registry to confirm that he wished the Supreme Court Registry to proceed with the acceptance. On 24 January 2017, the Wife filed SUM 14 to strike out the Husband's Notice of Appeal in CA 6.

8 On 23 February 2017, the Husband, despite having taken the position that no leave to appeal was required, applied to the JC by way of Summons 87 of 2017 in DCA 14 for leave to appeal to the Court of Appeal. On 30 June 2017, about a week before the hearing before us in the Court of Appeal, the JC refused the Husband's application for leave to appeal. At the hearing of SUM 14 before us, the Husband reiterated his stand that he did not require leave to appeal in the first place. After we reserved judgment in this matter, the Husband filed an application to the Court of Appeal for leave to appeal. That application has not been heard yet.

Summary of the parties' arguments

9 In support of her striking out application, the Wife contended that s 34(5) of the SCJA requires leave to appeal to be obtained before any appeal can be brought from a decision of the Family Division of the High Court in the exercise of its appellate civil jurisdiction. Section 34(5) of the SCJA states:

> (5) Except with the leave of the Court of Appeal, or of a Judge of the Family Division of the High Court, no appeal shall be brought to the Court of Appeal from any decision, judgment or order of the Family Division of the High Court involving the exercise of the appellate civil jurisdiction referred to in section 23 of the Family Justice Act 2014.

10 Section 23 of the Family Justice Act (No 27 of 2014) ("FJA") provides:

> 23.—(1) The part of the appellate civil jurisdiction of the High Court which shall be exercised through the Family Division shall consist of —
>
> (*a*) the hearing of appeals from Family Courts when exercising jurisdiction of a quasi-criminal or civil nature; and
>
> (*b*) the hearing of appeals and special cases from the Tribunal for the Maintenance of Parents.
>
> (2) Subject to subsection (2A), an appeal shall lie to the High Court from any decision of a Family Court exercising jurisdiction of a quasi-criminal or civil nature.
>
> (2A) No appeal is to be brought to the High Court in any case where a Family Court makes an order specified in the Second Schedule, except in such circumstances as may be specified in that Schedule.
>
> …

The Wife argued that since DCA 14 was an appeal from a decision of the Family Court on ancillary matters, it fell squarely within the jurisdiction of the High Court under s 23(1)(*a*) of the FJA. Accordingly, she contended, pursuant to s 34(5) of the SCJA, the Husband required leave to appeal to the Court of Appeal against the JC's decision.

11 In response, the Husband contended that he could appeal as of right to the Court of Appeal against the JC's decision and that he did not need leave to appeal. In support of this, the Husband relied on s 29A of the SCJA and s 137 of the WC.

12 Section 29A(1) of the SCJA states:

> **Jurisdiction of Court of Appeal**

> 29A.—(1) The civil jurisdiction of the Court of Appeal shall consist of appeals from any judgment or order of the High Court in any civil cause or matter whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to the provisions of this Act or any other written law regulating the terms and conditions upon which such appeals may be brought.

Section 137 of the WC reads:

> **Appeals**
>
> 137.—(1) All judgments and orders made by the court in proceedings under this Part shall be enforced, and may be appealed from, as if they were judgments or orders made by the court in the exercise of its original civil jurisdiction.
>
> (2) There shall be no appeal on the subject of costs only.

13 The Husband contended that the jurisdiction of the Court of Appeal is not subject to s 34(5) of the SCJA but is subject instead to s 137 of the WC. This is because the WC is a statute dealing specifically with matters of divorce while the SCJA is a piece of general legislation. The Husband argued that as s 137 of the WC prescribes that all judgments and orders by the Family Court or the High Court "may be appealed from, as if they were judgments or orders made by the court in the exercise of its original civil jurisdiction", leave to appeal was not required. This is so, he argued, even when the judgment or order appealed against was made in the exercise of the appellate civil jurisdiction of the High Court.

Our decision

14 The sole question before us is whether leave to appeal is required to appeal to the Court of Appeal against a decision of the Family Division of the High Court exercising its appellate civil jurisdiction under s 23 of the FJA.

Having considered the parties' submissions, we are of the view that leave to appeal is required.

15 The Court of Appeal is a creature of statute and possesses only such jurisdiction as is conferred upon it by the statute which creates it and, in this case, it is the SCJA (see *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 ("*Dorsey*") at [10] citing *Blenwel Agencies Pte Ltd v Tan Lee King* [2008] 2 SLR(R) 529 at [23]). The civil jurisdiction of the Court of Appeal is set out in s 29A(1) of the SCJA, reproduced at [12] above.

16 As we held in *Dorsey* at [11], "[t]he effect of s 29A(1) of the SCJA is that any judgment or order of the High Court is ordinarily appealable as of right. This however, is subject to any contrary provisions in the Supreme Court of Judicature Act or any other written law". The use of the word "or" before the words "any other written law" in s 29A(1) of the SCJA means that the civil jurisdiction of the Court of Appeal may be qualified so long as there is either a provision in the SCJA itself or in any relevant written law which qualifies it.

17 In the present case, we understand the Husband as submitting that s 29A(1) of the SCJA is qualified by only s 137 of the WC which confers an independent right of appeal for judgments and orders made under Part X of the WC. Part X of the WC covers the subject of divorce. This means, as the Husband argued, that s 137 of the WC allows all decisions, including appellate ones, of the Family Division of the High Court to be appealed from as of right and without the filtering mechanism of leave to appeal. In his view, therefore, s 34(5) of the SCJA does not apply to his appeal.

Legislative history of s 34(5) of the SCJA

18 A careful examination of the legislative history of s 34(5) of the SCJA and its related provisions shows that the Husband's interpretation of the statutory provisions cannot be correct. It is clear that Parliament intended that leave is required for appeals from appellate decisions of the Family Division of the High Court to the Court of Appeal.

19 Section 34(5) of the SCJA was enacted as a consequential amendment under s 74(*q*) of the FJA which came into operation on 1 October 2014. The purpose of s 34(5) can be gleaned from para 108 of the *Recommendations of the Committee for Family Justice on the framework of the family justice system* (4 July 2014) which proposed, among other things, the enactment of the FJA:

> 108. The High Court's decisions in appeals from the Family Court may be appealed to the Court of Appeal only if the Court of Appeal or a High Court Judge of the High Court (Family Division) grants leave to do so.

20 Even before the enactment of the FJA and s 34(5) of the SCJA, provisions were in place requiring leave to appeal to be obtained before a further appeal in matrimonial cases could be brought to the Court of Appeal. These provisions were introduced through the Supreme Court of Judicature (Amendment) Act (No 36 of 2004) and the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order 2005 (S 855/2005) ("2005 Transfer Order").

21 The Supreme Court of Judicature (Amendment) Act (No 36 of 2004) amended the then s 28A of the SCJA (Cap 322, 1999 Rev Ed) by introducing paragraph (2)(*b*) to allow the Chief Justice to make provisions governing

appeals relating to proceedings transferred to the District Court (including provisions restricting the right of appeal). Section 28A at the time read:

> **Allocation of proceedings to District Court**
>
> 28A.—(1) The Chief Justice may, where he considers it necessary or expedient to improve efficiency in the administration of justice and to provide for more speedy disposal of proceedings commenced in the High Court, by order direct such class or classes or description of proceedings as may be specified in the order to be heard and determined by the District Court.
>
> (2) Notwithstanding any other written law, any order under subsection (1) —
>
> (*a*) may confer jurisdiction on a District Court to hear and determine —
>
> (i) any proceedings specified in the order which, but for the order, the District Court would not have jurisdiction to hear and determine by reason only of the fact that the amount involved exceeds the monetary limit of its jurisdiction; or
>
> (ii) any proceedings relating to any of the matters referred to in section 17(a) to (e);
>
> (*b*) may make such provision governing appeals relating to proceedings transferred to the District Court (*including provisions restricting the right of appeal*) as the Chief Justice thinks fit; and
>
> (*c*) may make such incidental provision for the transfer of the proceedings to the District Court (including matters relating to procedure and costs) as the Chief Justice thinks fit.
>
> [emphasis added]

22 Pursuant to s 28A(2)(*b*) of the SCJA, para 6 of the 2005 Transfer Order provided that:

> **Appeals**
>
> 6.—(1) An appeal shall lie to the High Court from a decision of a District Court in any proceedings heard and determined by the District Court pursuant to this Order, regardless of the amount in dispute or the value of the subject-matter.

> (2) Except with the leave of the Court of Appeal or a Judge of the High Court, no appeal shall be brought to the Court of Appeal from a decision of the High Court in respect of any appeal heard by the High Court pursuant to sub-paragraph (1), regardless of the amount in dispute or the value of the subject matter.
>
> …

23 At the second reading of the Supreme Court of Judicature (Amendment) Bill (No 36 of 2004) leading to the legislative changes mentioned at [20] and [21] above, then Deputy Prime Minister and Minister for Law Prof S Jayakumar noted that in the interests of finality, there should be only one tier of appeal as a matter of right for family cases, with a second appeal available only with the leave of court (Singapore Parliamentary Debates, Official Report (21 September 2004) vol 78 at cols 682 to 683). We reproduce below the relevant extracts of the Minister's speech:

> This Bill seeks to amend the Supreme Court of Judicature Act to provide that in all family law cases heard in the Subordinate Courts, there will be an automatic right of appeal to the High Court, *with a further appeal to the Court of Appeal only with the leave of court.*
>
> …
>
> The parties in family law proceedings can currently appeal against an order made by the Subordinate Courts to the High Court and lodge further appeals against the decision of the High Court to the Court of Appeal.
>
> …
>
> These amendments were proposed by the Supreme Court to address an anomaly. With respect to civil proceedings (other than family law matters), which are heard in the Subordinate Courts, a party has, subject to certain statutory conditions, the right to appeal to the High Court. Leave is needed for a further appeal to the Court of Appeal. However, in family law cases, parties currently have the right to appeal from the Subordinate Courts to the High Court and then make a further appeal to the Court of Appeal, without having to seek leave. This is an anomaly which needs correction.

> In the interests of finality, *there should be only one tier of appeal as a matter of right for family cases, with a second appeal only with the leave of court.* The general position in Singapore for civil cases, other than family cases, is only one tier of appeal as a matter of right. This is because having an automatic second tier of appeal delays a final decision on the matter and increases costs for litigants.
>
> [emphasis added]

24 The legislative changes were considered by this Court in *IW v IX* [2006] 1 SLR 135 at [6] to [8]. In that case, this Court stated:

> 6 Section 28A(1) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA") empowers the Chief Justice, "where he considers it necessary or expedient to improve efficiency in the administration of justice and to provide for more speedy disposal of proceedings commenced in the High Court" to, by order, direct that such proceedings be heard and determined by the district court. Section 28A(2)(*b*) of the SCJA further provides that the Chief Justice may, in any such order, make provision governing appeals relating to proceedings so transferred to the district court.
>
> 7 Pursuant to the powers under s 28A, the Chief Justice made the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order 2003 (S 557/2003) which is the Order now in force. Under para 2 of this Order, proceedings under Part X of the Women's Charter (Cap 353, 1997 Rev Ed), which covers divorce, custody and maintenance matters, commenced in the High Court, are transferred to be heard and determined by a district court. However, under the same paragraph, where the gross value of the matrimonial assets is asserted by any party to the proceedings to be of or above the value of $1.5m, the application for division of matrimonial assets must be transferred to and be heard and determined by the High Court.
>
> 8 Finally, in para 6 of the same Order, it is provided that an appeal shall lie to the High Court in respect of a decision of the district court in relation to any proceedings heard and determined by the district court pursuant to the Order. The paragraph further provides that no further appeal shall lie against such a decision of the High Court "[e]xcept with the leave of the Court of Appeal or a Judge of the High Court".

In that appeal, there was no dispute between the parties that leave to appeal must be obtained in order to appeal against the custody order made by the High Court there.

25 Having considered the legislative history of s 34(5) of the SCJA and its related provisions as set out above, we conclude that Parliament's intention was clearly to allow only one tier of appeal as a matter of right for family cases. Further appeals to the Court of Appeal are possible only with leave of the Family Division of the High Court or of the Court of Appeal. There is nothing to indicate that this position has changed with the introduction of the FJA and the consequential amendments to the SCJA. In fact, the general rule that there is only one tier of appeal as a matter of right in matrimonial disputes has been reinforced by s 34(5) of the SCJA.

26 For completeness, we observe that there are two cases which have interpreted s 137 of the WC and which have not been referred to by the parties. They are *Sivakolunthu Kumarasamy v Shanmugam Nagaiah and another* [1987] SLR(R) 702 ("*Sivakolunthu*") and *Eng Poh Su (now known as Eddy Eng Poh Su) v Yap Ah Ho (now known as Yap Yujing Josephine)* [2001] 1 SLR(R) 546 ("*Eng Poh Su*"). *Sivakolunthu* is a decision in which this Court dealt with s 137 of the WC in the context of enforcement of orders made by a court in the exercise of its divorce jurisdiction. The only part of the Court's judgment in that case that has any relation to the issue in the present matter is at [35] where the Court made the statement that "[f]or the purposes of enforcement or appeal, any decree or order made by a court in exercise of its divorce jurisdiction is treated as if made in the exercise of its original civil jurisdiction". This is self-evident from the statutory provision and does not assist the Husband in this case in any way where the question of leave to appeal is concerned.

27 *Eng Poh Su* is a decision of the High Court which dealt with the issue of whether an earlier version of s 21 of the SCJA applied to appeals to the High Court arising from matrimonial proceedings in the Family Court of the then Subordinate Courts, in particular, an interim maintenance order made against the husband in that case. The said s 21 provided that an appeal shall lie to the High Court from a decision of a District Court or Magistrate's Court in any civil action where the amount in dispute or the value of the subject matter exceeded $50,000 or with the leave of court if under that amount. The High Court, relying on the earlier decision of *Zaleha bte A Rahman v Chaytor Alan James* [2000] 3 SLR(R) 612, concluded that s 137 of the WC could be construed as conferring a right of appeal independently of and unaffected by the said s 21. Accordingly, the Court held that leave to appeal to the High Court was not required in that case. Although that was said in the context of an appeal to the High Court, the decision assists the Husband in the present matter in his contention that s 137 of the WC confers a right of appeal to the Court of Appeal independently of and unaffected by s 34(5) of the SCJA.

28 However, *Eng Poh Su* is a decision given in early 2001 and it predates the legislative changes described earlier. It has been shown that the clear intention of those changes in the law is to permit an appeal from an appellate decision of the Family Division of the High Court to the Court of Appeal only if leave of court has been obtained from the Family Division of the High Court or from the Court of Appeal. Even if s 137 of the WC conferred an independent right of appeal to the Court of Appeal in the past, it must now be read in conjunction with s 29A(1) and s 34(5) of the SCJA. The Husband's understanding that s 29A(1) of the SCJA is qualified by only s 137 of the WC and not by s 34(5) of the SCJA ignores the words "subject nevertheless to the provisions of this Act" (that is the SCJA) and focuses solely on the words "or

any other written law" in the said s 29A(1) (set out at [12] above). In our view, such a reading of the statutory provisions is clearly mistaken. Since the Husband had not obtained the requisite leave to appeal from the JC before he filed CA 6, it follows that his notice of appeal in CA 6 before us is bad in law and cannot be allowed to stand.

Conclusion

29 We therefore grant an order in terms of SUM 14 taken out by the Wife and order that the Husband's notice of appeal in CA 6 be struck out forthwith. We also order the Husband to pay the Wife $7,500 costs (inclusive of disbursements) for SUM 14. As requested in prayer 3 of SUM 14, this amount of costs may be deducted from any money that is due and payable by the Wife to the Husband under the order of court dated 6 January 2017 made by the JC in the Family Division of the High Court. We also give the usual consequential orders in relation to any security for costs furnished by the parties.

Sundaresh Menon Chief Justice	Tay Yong Kwang Judge of Appeal	Steven Chong Judge of Appeal

Leong Choi Fun (Tan Kim Seng & Partners) for the applicant;
The respondent in person.