IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 15

Originating Summons No 401 of 2017
Registrar's Appeal No 211 of 2017

Between

Ng Djoni

… *Plaintiff*

And

Miranda Joseph Jude

… *Defendant*

GROUNDS OF DECISION

[Courts and Jurisdiction] — [Magistrate's Court] — [Power to transfer proceedings from Magistrate's Court to High Court]

Ng Djoni
v
Miranda Joseph Jude

[2018] SGHC 15

High Court — Originating Summons No 401 of 2017 (Registrar's Appeal No 211 of 2017)
Hoo Sheau Peng J
19 September 2017

23 January 2018

Hoo Sheau Peng J:

1 By Originating Summons No 401 of 2017, Djoni Ng ("the plaintiff"), applied to transfer Magistrate's Court Suit No 24052 of 2015 ("the MC Suit") to the High Court under s 54B of the State Courts Act (Cap 321, 2007 Rev Ed). The transfer application was made on the ground that in the MC Suit, the damages claimed by the plaintiff from Miranda Joseph Jude ("the defendant") might exceed the jurisdictional limit of the State Courts. On 23 August 2017, the assistant registrar (the "AR") dismissed the transfer application. The AR's reasons are set out in *Ng Djoni v Miranda Joseph Jude* [2017] SGHCR 13 ("the AR's GD"). On 19 September 2017, I heard and dismissed the plaintiff's appeal against the AR's decision. The plaintiff has appealed against my decision. I substantially endorse the AR's views and set out my reasons here.

Background

2 On 27 December 2012, the plaintiff and the defendant were involved in a car accident ("the 2012 Accident"). Almost three years later, on 23 December 2015, the plaintiff commenced the MC Suit against the defendant to seek damages for personal injuries. The writ of summons was renewed twice. Finally, the writ and the statement of claim were served on the defendant on 16 March 2017. As pleaded in the statement of claim, while the plaintiff's car was stationary at a traffic light junction, the defendant's van collided into its rear, causing the plaintiff to suffer personal injuries.

3 On 11 April 2017, the plaintiff filed the transfer application, for a transfer of the MC Suit to the High Court on the ground that the damages would exceed the State Courts' jurisdiction of $250,000. In support of the transfer application, the plaintiff relied principally on the quantification of his claims for (a) loss of earnings and/or earning capacity and (b) past and future medical expenses. In essence, the plaintiff claimed that the 2012 Accident caused him new neck and back injuries, or aggravated certain existing neck and back injuries, to the extent that his job as a real estate agent has been affected.

4 An uncommon feature of this case is that the 2012 Accident was but one of many car accidents involving the plaintiff from 2003 to 2016. It was undisputed that prior to the 2012 Accident, the plaintiff had sustained some form of neck and/or back injuries from three accidents that occurred on 21 August 2003, 19 July 2005 and 10 August 2008. Based on the evidence before me, it was unknown whether six other car accidents on 22 December 2004, 25 October 2006, 7 June 2009, 31 October 2011, 3 April 2016 and 11 July 2016 caused or contributed to a worsening of the plaintiff's injuries. I should add that there was one other accident involving the plaintiff's car on 28 July 2012. However, the

plaintiff claimed that his wife was the driver at the material time. In any case, the plaintiff alleged that the 2012 Accident caused fresh injuries or aggravated pre-existing injuries.

The plaintiff's position

Medical evidence

5 In this regard, the plaintiff relied heavily on a medical report dated 27 June 2016 by his orthopaedic surgeon, Dr James Lee ("Dr Lee"), of James Lee Orthopaedic Surgery ("Dr Lee's 2016 Report"). Specifically, two days after the 2012 Accident, the plaintiff consulted Dr Lee. In Dr Lee's 2016 medical report, he made the following observations about the plaintiff's condition immediately after the 2012 Accident:

> The patient was involved in road traffic accident in 27/12/2012. He was apparently the driver of a vehicle, which was hit by another vehicle in the rear. He had immediate neck and back pain. He was seen at our clinic on 29/12/12 where he was treated. He had also seen his physiotherapist and had treatment done. When seen on 29/12/12, he was noted to have neck and back pain with stiffness. The range of motion of the neck and back was limited due to pain. X rays of the cervical and lumbar spine showed no fractures. He had persistent neck and back pain after the accident. When seen on 29/12/12, he was prescribed Tab Ibuprofen 800 mg bd, Tab Imovane 7.5 mg on and Tab Actifed 1/1 tds (for his cough). He was given a stat injection of IM Voltaren 75 mg.

According to Dr Lee's 2016 Report, after the 2012 Accident, the plaintiff continued to seek orthopaedic treatment and take regular medication for his persistent neck and back aches.

6 Further, according to Dr Lee's 2016 Report, an MRI scan on 19 November 2015 showed that the plaintiff suffered from the following injuries:

> MRI of the cervical spine on 19/11/2015 showed multilevel degenerative changes at C3/4, C4/5, C5/6 and C6/7 levels. *C3/4 left central disc protrusion contacts the spinal cord and the small left ventral high signal focus my* [*sic*] *be cord edema. There is severe C5/6 exit foramina stenosis due to unco vertebral joint hypertrophy.*
>
> MRI of the lumbosacral spine on 19/11/2015 showed *mild degenerative disc disease at L4/5 and L5/S1.* There are *left postero-central annular fibrosus fissures at L4/5 and L5/S1.* There is mild L5/S1 central disc protrusion with stenosis on the left lateral recess.
>
> [emphasis added]

The plaintiff ascribed the injuries that I have placed in italics in the quote above to the 2012 Accident because they had not been observed in any medical reports or scans prior to the accident. He noted that it was only in Dr Lee's 2016 Report that his injuries were classified as Grade 3 of the Quebec Task Force Classification, the second most severe grading of whiplash injuries. Dr Lee's earlier report dated 28 November 2011, presumably relating to injuries pre-dating 2012, did not provide such a classification.

Claim for loss of earnings and/or earning capacity

7 Since the transfer application turned on the plaintiff's claims for loss of earnings and/or earning capacity, the plaintiff relied on Dr Lee's 2016 Report as evidence that his persistent neck and back aches since the 2012 Accident had affected his job as a real estate agent. The report concluded as such:

> The patient sustained a neck and back contusion. He sustained them in 3separate [*sic*] accidents, i.e. in 19/7/2005, 10/10/2008 and 27/12/2012. He has persistent neck and backache since the accident. The pain is worse on carrying heavy objects, prolonged standing, and walking. He is unable to carry his young children. *His neck and back pain comes on with prolonged standing and walking and he is thus unable to do more showing of his properties. The neck and back pain is also worse when he has to do prolonged driving from point to point. He is thus affected in his job as a housing agent.* [emphasis added]

In his affidavits, the plaintiff claimed that his injuries have prevented him from showing big houses to potential clients, viewing properties and carrying his children.

8 According to the plaintiff, his claims for loss of earnings and/or earning capacity would exceed $200,000 because his income has dropped by about $60,000 annually after the 2012 Accident. In his first affidavit dated 20 March 2017, he stated that he earned an average of about S$181,415.75 per year between 2009 and 2011. Based on Notices of Assessment ("NOAs") issued by the Inland Revenue Authority of Singapore ("IRAS"), he set out the following table of his income from 2009 to 2015:

Year	Amount
2009	$116,631
2010	$114,713
2011	$208,704
2012	$285,614.23 (est)
2013	$127,836
2014	$129,529
2015	$44,134.36

The plaintiff qualified in affidavits dated 20 March 2017 and 31 May 2017 that his NOA for 2012 had not been finalised, and his NOA for 2013 was being amended. He did not disclose his NOA for 2015 in these two affidavits.

9 In subsequent affidavits, the plaintiff produced his NOAs for years 2012, 2013 and 2015 which reflected incomes that differed vastly from his original estimates in the table above. In contrast to his earlier claim on affidavit that his "income in 2012 is in excess of S$285,000 … if not also in excess of S$300,000 having re-looked at the income documents", IRAS's final assessment stated that he earned $99,839 in 2012. Instead of a drastic fall in income in 2013, the NOA for year 2013 showed that his income increased fourfold to $418,000.

10 To address the apparent discrepancies, the plaintiff explained that he had estimated the income in earlier affidavits using his commission statements and had computed his commissions as accruing in the years in which the commissions were *earned* rather than *paid*. He also explained that a substantial proportion of commissions earned in 2012 and 2013 were only paid in 2013 and 2014 respectively and therefore fell to be assessed by IRAS as income in the next year. Thus, in his reply affidavits dated 29 June 2017 and 12 July 2017, the plaintiff tendered his commission statements from 2007 to 2016 as evidence that he earned less in commission and closed fewer transactions, particularly from 2014 onwards.

11 The following table, exhibited at [23] of the AR's GD, sets out the plaintiff's income from 2007 to 2016 as shown in the NOAs and commission statements:

Year	Income assessed by IRAS in NOAs	Income in Commission Statements
2007	$59,904	$128,830.21
2008	$75,172	$111,757.59
2009	$116,631	$354,645.41
2010	$114,713	$260,869.69
2011	$208,704	$369,382.65
2012	$99,839	$440,150.27
2013	$418,000	$299,485.69
2014	$129,529	$65,055.70
2015	$50,169	$80,372.65
2016	$34,190	$44,996.66

Claim for medical expenses

12 In terms of his medical expenses, the plaintiff quantified his claim at $182,944. This included past medical expenses of $22,944, costs of $90,000 for prospective surgery for the cervical spine and lumbar spine, as well as a sum of $70,000 for future medical expenses (based on a multiplier of 14 years applied to a multiplicand of $5,000, which is the average medical expenses incurred per year since the 2012 Accident).

The defendant's position

13 In response, the defendant did not dispute the evidence of the plaintiff's medical condition. However, the defendant argued that the plaintiff had failed to show that the claim was likely to exceed $250,000. First, given the multiple accidents the plaintiff had been involved in, he submitted that the quantum of

the plaintiff's claim for the 2012 Accident was likely to be substantially reduced (see the AR's GD at [15]). Second, the defendant initially disputed the reliability of the plaintiff's declared income for 2012. Subsequently, after the plaintiff disclosed all his final NOAs and commission statements, the defendant suggested that the plaintiff's earlier disclosures had been selective and self-serving. The final disclosures showed that the plaintiff's earlier estimations had no credible basis. Third, the defendant disagreed that the fall in the plaintiff's income was attributable to injuries caused by the 2012 Accident. Similar symptoms had already been observed prior to the 2012 Accident. Although the plaintiff claimed that he was no longer able to show landed properties due to his neck and back aches, landed properties were a negligible proportion of his closed transactions prior to 2013. The fall in income could also have been due to external market factors. Finally, on the issue of prejudice, the defendant stated that he had not taken steps to conduct medical re-examination of the plaintiff because he believed that his maximum exposure would be $60,000 (the maximum sum payable under the Magistrate Court's jurisdictional limit). He claimed that he was no longer in a position to conduct a reliable medical re-examination given the lapse of time since the 2012 Accident.

Decision below

14 The AR held that the plaintiff failed to demonstrate a *prima facie* case that his claim would exceed the jurisdictional limit of the State Courts. In respect of his claims for loss of earnings and/or earning capacity, the AR noted that the plaintiff had initially based his case on the NOAs but subsequently abandoned them because the final NOAs contradicted his position. As a result, the plaintiff's case now relied on his commission statements instead. However, neither the NOAs issued by IRAS nor the commission statements supported the plaintiff's allegation that his income dropped significantly after the 2012

Accident (see [22]–[25] of the AR's GD). Moreover, considering the plaintiff's pre-existing ailments and undisclosed alternative source of income, it could not be shown even on a *prima facie* basis that the drop in commissions from 2014 onwards was caused by the 2012 Accident (at [26]–[30] of the AR's GD). As for his claims for medical expenses, the AR pointed out that the plaintiff's computation had included the costs of a potential back surgery that was not presently required (at [32] of the AR's GD). Furthermore, his future medical expenses were computed without regard to the fact that he had not sought medical treatment for almost two years from 24 January 2014 to 19 November 2015 (at [33] of the AR's GD). Therefore, the AR was not satisfied, even on a *prima facie* basis, that the plaintiff's damages were likely to exceed $250,000.

15 Even if it could be said that the plaintiff's damages were likely to exceed $250,000, the AR was of the view that there would be irreparable prejudice to the defendant if the transfer application were allowed. The AR found that there was a lengthy delay in the plaintiff's prosecution of this claim. The defendant did not conduct a medical re-examination or further investigation of the plaintiff's claim because he was given to believe that his exposure would be within the Magistrate's Court's jurisdictional limit. The loss of the opportunity to conduct earlier medical re-examination was particularly prejudicial because the plaintiff already had a pre-existing medical condition. Furthermore, the substantial lapse of time since the 2012 Accident would lead to practical difficulties in conducting the defence on the issues of both liability and assessment of damages.

Arguments on appeal

16 On appeal, the plaintiff relied on the same grounds to assert that his damages were likely to exceed $250,000, *ie*, his loss of earnings and/or earning

capacity and his past and future medical expenses. He quantified his claims as such:

(a) pre-trial loss of earnings: $250,000;

(b) loss of future earnings or earning capacity: $150,000 and above;

(c) past and future medical expenses: $182,944.

The plaintiff argued that the AR applied the wrong legal test in requiring *prima facie* proof of damages exceeding $250,000; the correct legal test required only a *possibility* that damages might exceed $250,000. Consequently, it was erroneous for the AR to have scrutinised the evidence of the quantum of his claims to a degree that was appropriate only at the stage of assessment of damages.

17 Further, he submitted that the AR erred in finding that the defendant would be caused irretrievable prejudice. There was no express agreement between the parties to limit the damages payable to $60,000. This was not a case in which the defendant or his insurer had relied on a consent interlocutory judgment to set aside a reserve sum limited to $60,000 for the litigation. Finally, there was no delay in filing the transfer application and no prejudice caused by the timing of the transfer application. No practical difficulties stood in the way of obtaining a medical re-examination of the plaintiff, which would typically be done at a later stage of proceedings.

18 The defendant's submissions canvassed arguments that were similar to those made at the hearing below and in the AR's GD.

Applicable law

19 Section 54B of the State Courts Act sets out the circumstances in which proceedings may be transferred from the State Courts to the High Court:

> **General power to transfer from State Courts to High Court**
>
> **54B.**—(1) Where it appears to the High Court, on the application of a party to any civil proceedings pending in a State Court, that the proceedings, by reason of its involving some important question of law, or being a test case, or for any other sufficient reason, should be tried in the High Court, it may order the proceedings to be transferred to the High Court.
>
> (2) An order under subsection(1) may be made on such terms as the court sees fit.

20 The plaintiff relied on the ground of "any other sufficient reason" for the transfer. *Keppel Singmarine Dockyard Pte Ltd v Ng Chan Teng* [2010] 2 SLR 1015 ("*Keppel Singmarine 2010*") establishes that there are two stages to the court's analysis when this ground is invoked. First, the court examines if there is a "sufficient reason". In this regard, the likelihood that a plaintiff's damages would exceed the jurisdictional limit of the District Court would, ordinarily, be regarded as "sufficient reason" for the transfer of proceedings to the High Court under s 54B of what was then the Subordinate Courts Act (at [16]). Second, the court undertakes a holistic evaluation of all the material circumstances to consider if its discretion should be exercised to transfer the proceedings to the High Court. The mere existence or presence of a "sufficient reason" does not automatically entitle a party to have the proceedings transferred from the District Court to the High Court (at [17]). In its holistic evaluation, the court should in particular consider the prejudice that might be visited upon the party resisting a transfer. Such prejudice could not simply be the fact that the damages awarded could exceed the inferior court's jurisdictional limit.

21 In relation to the first stage, as I mentioned at [16] above, the plaintiff contended that the applicable threshold for a "sufficient reason" was a lower one. He submitted that there would be "sufficient reason" for the transfer if he could demonstrate merely the *possibility*, and not the *likelihood* or a *prima facie* case, that his damages would exceed the jurisdictional limit of the inferior court. In support of this argument, he relied on the Court of Appeal's *obiter* remarks in an earlier judgment, *Keppel Singmarine Dockyard Pte Ltd v Ng Chan Teng* [2008] 2 SLR(R) 839 ("*Keppel Singmarine 2008*").

22 In *Keppel Singmarine 2008*, the Court of Appeal overturned the specific holding in *Ricky Charles s/o Gabriel Thanabalan v Chua Boon Yeow* [2003] 1 SLR(R) 511 ("*Ricky Charles*") that an action commenced in the District Court could not be transferred to the High Court where interlocutory judgment had already been entered in the District Court. In the course of doing so, the Court of Appeal opined, as an aside, that the *possibility* of damages exceeding the jurisdictional limit would ordinarily be regarded as a "sufficient reason" for a transfer of proceedings (at [38]):

> In a similar vein, this court in *Ricky Charles* … opined at [15] that the *possibility* of the plaintiff's damages exceeding the jurisdictional limit of the District Court would ordinarily be regarded as a "sufficient reason" for a transfer of proceedings under s 38 of the 1999 Act [now s 54B of the State Courts Act]. As this view is in line with the practice in other common law jurisdictions and is moreover consistent with what was stated in Parliament when the Subordinate Courts (Amendment) Bill 2005 was introduced … we could not agree more. [emphasis in original]

23 This iteration of the legal test was applied by the High Court in *Ng Chan Teng v Keppel Singmarine Dockyard Pte Ltd* [2009] 2 SLR(R) 647 ("*Keppel Singmarine 2009 HC*") when the same plaintiff's subsequent application for a transfer of proceedings came before the High Court. From the medical reports

on the plaintiff's severe injuries, Tay Yong Kwang J (as he then was) was satisfied that there was a "real possibility" that the plaintiff's damages would exceed $250,000 (*Keppel Singmarine 2009 HC* at [24]). When this decision went on appeal, the Court of Appeal delivered its judgment in *Keppel Singmarine 2010*, which I cited at [20] above as authority for the applicable law. The Court of Appeal described the applicable standard for a "sufficient reason" in these terms (*Keppel Singmarine 2010* at [16]):

> We were *in agreement with the [High Court] Judge* that the *likelihood* that a plaintiff's damages would exceed the jurisdictional limit of the District Court would, ordinarily, be regarded as "sufficient reason" for the transfer of proceedings to the High Court under s 54B of the [Subordinate Courts Act]. As the respondent's claim here was *likely* to exceed the $250,000 mark (see [24] of the GD), we found that the respondent had given sufficient reason to *prima facie* satisfy the transfer threshold. [emphasis added]

24 The Court of Appeal agreed with the standard applied by Tay J in *Keppel Singmarine 2009 HC* notwithstanding that Tay J had expressed the requisite standard in different terms. In *Keppel Singmarine 2009 HC*, Tay J had required the plaintiff to demonstrate a "possibility" of damages exceeding $250,000, whereas the Court of Appeal required a "likelihood" to be shown. On the facts, the Court of Appeal was satisfied that the plaintiff's claim was likely to exceed the $250,000 mark given the severity of the injuries suffered by him (see *Keppel Singmarine 2010* at [16] and *Keppel Singmarine 2009 HC* at [24]). Thus, the plaintiff had given sufficient reason to *prima facie* satisfy the threshold for a transfer, subject to him showing that a transfer would not cause irreparable prejudice to the defendant.

25 In the later case of *Tan Kee Huat v Lim Kui Lin* [2013] 1 SLR 765 ("*Tan Kee Huat*"), Judith Prakash J (as she then was) applied *Keppel Singmarine 2010* and was satisfied that there was "*prima facie*, credible evidence" to support the

assertions underlying the substantial loss of earnings, so as to justify crossing the jurisdictional limit of the State Courts.

26 From this brief review, it seems that what is ostensibly the same criterion has been described by the courts using different terms that suggest varying degrees of proof, *ie*, "possibility", "likelihood" and a "*prima facie*" case. Nonetheless, it would appear that the courts have used these terms synonymously, without observing any tension between them. On this basis, I am of the view that the correct test was applied by the AR, who followed the approach in *Keppel Singmarine 2010* and *Tan Kee Huat*. *Keppel Singmarine 2010* is, moreover, the most recent Court of Appeal authority determining the applicable law as part of its holding, not merely as an aside.

27 As for how the standard is to be satisfied in practice, I find it helpful to refer to the court's approach in *Tan Kee Huat*. In that case, the parties had entered into interlocutory judgment by consent against the defendant for 85% of liability. After the damages assessment hearing before the District Court was adjourned twice, the plaintiff applied to transfer the proceedings to the High Court on the basis that damages would exceed the jurisdiction of the District Court. The plaintiff adduced medical reports detailing his injuries and the recommended procedures to ease his pain. His medical specialist also opined that he was unable to work as a taxi driver anymore. His claims were quantified on the basis of his loss of earning capacity or loss of future earnings, as well as the costs of the recommended procedures. The defendant disputed the plaintiff's medical evidence. The defendant's specialist re-examined the plaintiff and concluded that the plaintiff was able to drive a taxi and did not need to undergo the recommended procedures.

28 In *Tan Kee Huat*, the court noted the defendant's criticisms of the medical evidence relied on by the plaintiff, but was of the view that the hearing of the application was not the correct forum to determine which doctor's evidence was more credible (at [33]). Without the benefit of cross-examination at a full trial, the court was not able to reach any conclusion on the true physical condition and abilities of the plaintiff. Nonetheless, there was, *prima facie*, sufficient reason for a transfer of proceedings because, on the basis of the medical reports, there was "*prima facie*, credible evidence to support the plaintiff's assertion of continuing disability leading to an inability to return to work and a substantial loss of earnings" (at [34]).

29 In the present case, the plaintiff placed great emphasis on the court's view in *Tan Kee Huat* that the hearing of the transfer application was not the correct forum to determine whose evidence of the plaintiff's physical condition and abilities was more credible. He argued that, likewise, the AR erred in scrutinising the evidence of his injuries, abilities and loss of income, because such scrutiny was to be reserved for the trial itself. However, this argument failed to grasp that the court in *Tan Kee Huat* required minimally the existence of "*prima facie*, credible evidence" to substantiate the assertions underlying the quantification of the claims. A "*prima facie*" standard assumes that the conclusion reached is subject to further evidence and cross-examination. Nonetheless, to show a *prima facie* case, the evidence must at first appearance be capable of supporting the desired conclusion. *A priori*, if the *plaintiff's own evidence* is incapable of supporting the desired quantification of the claims, the plaintiff would have failed to demonstrate a possibility or likelihood that the claims would exceed the jurisdictional threshold of the State Courts.

30 In this case, the defendant did not adduce competing evidence of the plaintiff's medical condition and income. Rather, it was on the basis of

deficiencies in the plaintiff's own evidence of his medical condition and income alone that the AR concluded that the evidence did not, *prima facie*, support a quantification of his claims in excess of $250,000.

31 I now consider how the courts have approached the second stage, *ie*, the holistic evaluation, and in particular the issue of irretrievable prejudice to the party resisting the transfer. As noted at [20] above, it is clear that prejudice cannot consist of the fact that the damages awarded would exceed $250,000 if the transfer of proceedings were allowed (*Keppel Singmarine 2010* at [17]). In *Keppel Singmarine 2008*, the Court of Appeal opined (at [39]):

> [S]ome form of irreversible change of position or deviation from a prior express agreement on damages must be shown in order to demonstrate that the transfer of proceedings would cause the defendant real prejudice that cannot be compensated by costs.

32 In *Keppel Singmarine 2010*, despite finding that the plaintiff's damages were likely to exceed $250,000, the Court of Appeal declined to transfer the proceedings to the High Court because the defendant would be prejudiced by the transfer. First, the parties had entered into interlocutory consent judgment apportioning 70% of liability to the defendant on the understanding that the extent of the defendant's liability would be capped at the District Court's jurisdictional limit. This mutual understanding was premised on the prevailing law at the time that they entered into the interlocutory consent judgment – that is, that an interlocutory consent judgment constituted an affirmation of the District Court's jurisdiction and a bar to an application for transfer (see *Ricky Charles* at [16]). Had the defendant known of his potential exposure, he would not have agreed to a consent order on the same terms. Moreover, the application to transfer was made almost four years after the consent interlocutory judgment and six to seven years after the accident. This meant that the parties had relied on the consent interlocutory judgment for a substantial period of time. The

defendant's insurers had relied on it to set aside only a reserve of $250,000. The significant lapse of time since the accident also meant that the defendant would encounter many practical difficulties if the consent order were to be set aside and the parties were to re-litigate their liabilities at that stage.

33 In contrast, the court in *Tan Kee Huat* was not persuaded that the defendant would be irretrievably prejudiced by a transfer even though the parties had similarly entered into an interlocutory consent judgment in the District Court. Though the parties had prepared for an assessment hearing in the District Court, such preparatory work would be useful to an assessment in the High Court as well. The defendant did not raise any particular practical problems that would be encountered in re-litigating the case if the consent order were to be set aside. Any prejudice that the defendant might sustain would be adequately addressed by setting aside the consent judgment so that the defendant could re-litigate the extent to which he was liable for the accident.

Decision

Whether damages are likely to exceed $250,000

34 Applying the test set out above to the present appeal, I agreed with the AR's assessment that the plaintiff has not shown a possibility or likelihood that his damages would exceed the jurisdictional limit of the State Courts.

Claim for loss of earnings and/or earning capacity

35 I found that there was no credible evidence supporting the plaintiff's quantification of his claims for loss of earning and/or earning capacity so as to show a possibility or likelihood that the damages would exceed $250,000. The AR has provided a detailed analysis of the plaintiff's evidence in this regard. I

substantially adopt her reasons, which I briefly restate here with some elaboration where necessary.

36 First, while the plaintiff's case was initially premised on the NOAs issued by IRAS, the final NOAs did not support his case that he suffered a significant fall in income after the 2012 Accident. The 2012 Accident occurred on 27 December 2012, so the crucial comparison was between his income before and after December 2012. IRAS assessed that he earned $99,839 in 2012 and $418,000 – more than four times more – in 2013.

37 Second, the commission statements showed that that plaintiff did not suffer loss of earnings or earning capacity immediately after the 2012 Accident. The plaintiff's commission earnings of $299,485.69 in 2013 were comparable to that earned in previous years – an average figure of approximately $280,000 between 2007 and 2012. Given the nature of the work of real estate agents, I thought it was reasonable to expect commission earnings to fluctuate from year to year. Therefore, I was of the view that a comparison of the 2013 commission earnings with the average figure from 2007 to 2012 was more appropriate than a direct comparison with the 2012 commission earnings of $440,150.27 (especially since this was by far the highest figure for the various years).

38 Third, I accepted that the commission statements showed that the plaintiff's commission earnings fell significantly to below $100,000 from 2014 onwards. However, the plaintiff had not shown credible evidence that the fall in commissions from 2014 onwards was attributable solely to the 2012 Accident rather than the earlier accidents involving the plaintiff.

39 The plaintiff's own evidence showed that the plaintiff experienced persistent neck and back aches with a restricted range of motion even before the

2012 Accident. After the car accident on 19 July 2005, the plaintiff consulted Dr Yeo Khee Quan ("Dr Yeo") of Yeo Orthopaedic Centre. In his medical report dated 5 May 2007, Dr Yeo observed that the plaintiff was involved in the car accident of 21 August 2003, and sustained a whiplash injury. Then, in the accident on 19 July 2005, the plaintiff suffered another whiplash injury of the neck and soft tissue injury of the back. Thereafter, *inter alia,* he suffered from pain in the neck and back, and had difficulties carrying heavy loads.

40 Dr Lee's medical report dated 28 November 2011 ("Dr Lee's 2011 Report") concluded that the plaintiff sustained a neck and back contusion in two separate accidents in 2005 and 2008. These two accidents had "precipitated and aggravated [the plaintiff's] degenerative cervical spine condition" because he "had no history of chronic or persistent neck pain" before these accidents.

41 In Dr Lee's 2016 Report, he observed that in a clinic visit on 22 September 2012 (which was before the 2012 Accident), the plaintiff "complained of persistent backache and neck ache", with numbness radiating down both lower and upper limbs and limb weakness. Already, he was "unable to pull an object up or carry his children". Dr Lee did not observe a significant worsening of the plaintiff's condition immediately after the 2012 Accident or ascribe any further degeneration specifically to the 2012 Accident. Dr Lee also did not mention any significant worsening in 2014 – the time when the plaintiff's commissions experienced the sharpest year-on-year fall – because the plaintiff did not visit Dr Lee between 27 May 2013 and 19 November 2015.

42 Significantly, in medical reports pre-dating the 2012 Accident, it was already observed that the plaintiff's neck and back aches affected his job as a housing agent. In Dr Lee's 2011 Report, Dr Lee described the plaintiff's condition as at the time of reporting, as follows:

> **Present situation**
>
> The patient complained of persistent backache and neck ache. … *The backache affects his job as a housing agent with DTZ Realtors. The backache and neck ache is worse with prolonged standing and walking and climbing of stairs as required in his job.* … [emphasis added]

Similarly, Dr Lee's 2016 Report recorded that in a clinic visit on 26 July 2012, the plaintiff's neck and back condition were found to be affecting his job:

> **Clinic visit on 26/7/12**
>
> The patient complained of persistent backache. … He saw a physiotherapist and also self medicated with Arcoxia. … *The backache affects his job as a housing agent with DTZ Realtors. He has to take his Arcoxia if he has to do any showing of the properties. The backache and neck ache is worse with prolonged standing and walking and climbing of stairs as required in his job.* … [emphasis added]

43 Furthermore, in considering whether the alleged fall in earnings is attributable to the 2012 Accident, it was important to bear in mind *how*, according to the plaintiff, his injuries from the 2012 Accident have affected his job and earning capacity. Besides general averments in the medical reports that he experienced aches with prolonged standing, walking and climbing of stairs, the plaintiff alleged that his income fell specifically because he "could not manage to show the *landed properties and other private properties* as [he] was in pain and could not move around as much as a result of the injuries from the [2012 Accident]" [emphasis added]. He averred that from 2014 onwards, none of his closed transactions involved landed properties and were mostly rental transactions because he "could not handle the moving around … as a result of the pain" which he attributed directly to the 2012 Accident.

44 In my view, these allegations were not credible. The commission statements showed that between 2010–2012, only a small proportion of the plaintiff's earnings were from transactions involving landed properties. In

2010–2012, only one transaction out of 20, 30 and 25 transactions respectively involved a landed property, with the one in 2012 being for a lease and not a sale. The net commissions generated from these transactions were $$18,630, $18,000 and $4,500 respectively. It was only in 2009 that seven out of 34 transactions involved a sale or purchase of a landed property. Even if it is accepted that the plaintiff was unable to show landed properties after the 2012 Accident, the fall in commissions from 2014 onwards could not have been due to the loss of income from transactions involving landed properties.

45 Lastly, as the AR noted, the plaintiff stated in his affidavit dated 29 June 2017 that he "managed to secure other income" in 2014. The plaintiff did not explain what the source of this other income was. In the absence of fuller disclosure by the plaintiff, who was the party in the best position to disclose information and documents about his own income, the existence of an alternative source of income suggested that the plaintiff had diverted his time and energies from being a property agent towards this other source of income in 2014. If so, the sharp fall in commissions in 2014 would not be attributable to his injuries from the 2012 Accident.

Claim for medical expenses

46 In relation to the claim for medical expenses, I agreed with the AR's assessment that the provision of $90,000 for the cost of future surgery was speculative and provisional on the presently available evidence. Dr Lee's 2016 Report stated that as of June 2016, "[n]o surgical intervention is needed for [the plaintiff's] cervical or lumbar spine [and none] is planned for the present moment".

47 I also agreed with the AR that the figure of $70,000 for future medical expenses did not have sound basis. The plaintiff's receipts showed that he did not seek treatment from Dr Lee between 27 May 2013 and 19 November 2015 at all. He also did not seek physiotherapy treatment from Kinesis Physio & Rehab Pte Ltd between 24 January 2014 and 24 November 2015. Notwithstanding this gap in time, the total expenses of $22,944 occurred between 28 December 2012 and 27 September 2016 were divided by 4.5 years to arrive at a multiplicand of $5,000 per year. That said, I noted from Dr Lee's 2016 Report that the plaintiff had apparently also sought treatment from a pain control specialist, traditional Chinese medicine and acupuncture. Such treatment might have been attempted during the intervening years when the plaintiff did not visit his physiotherapist or Dr Lee. If so, the costs of such treatment attempts were not in evidence and have not been accounted for.

48 Nonetheless, the claims for past and future medical expenses, even if established, would not be sufficient to take the plaintiff's claims above the State Court's jurisdictional limit.

49 For these reasons, I found that the plaintiff has failed to show that there was a possibility or likelihood that his damages would exceed the State Courts' jurisdictional limit. On this ground alone, the appeal should be dismissed.

Holistic evaluation of all the circumstances

50 Even if I had found that there was a possibility or likelihood that the plaintiff's damages would exceed the jurisdictional limit of the State Courts, I agreed with the AR that the MC Suit should not be transferred to the High Court because there would be irreparable prejudice to the defendant.

51 In examining prejudice to the defendant, two arguments made by the plaintiff need to be addressed. The plaintiff argued that, unlike in *Keppel Singmarine 2010*, the parties did not reach an express agreement or a consent interlocutory judgment on which the defendant could have relied. Second, he stated that he did not delay in applying to transfer the MC Suit to the High Court. Compared to *Keppel Singmarine 2010* and *Tan Kee Huat*, he claimed to have acted expeditiously in applying for a transfer.

52 I acknowledged that the parties did not enter into an express agreement about the limit to the defendant's liability; the defendant relied simply on the jurisdictional limit of the courts in which the plaintiff commenced the MC Suit. I also noted that the substantial delay between the time of the 2012 Accident and the present application was mostly attributable to the plaintiff's late commencement of the MC Suit rather than the plaintiff's late application for a transfer after commencing the MC Suit. However, I disagreed that there was no delay in making the transfer application. In my view, a transfer would be prejudicial at this time given the plaintiff's delay in pursuing his claims and crystallising the quantum of damages, as well as the plaintiff's history of prior car accidents resulting in neck and back injuries.

53 To reiterate, the plaintiff filed the writ for the MC Suit on 23 December 2015, a mere few days before the limitation period for the action expired. In November 2016, the plaintiff stated in an affidavit in support of his application to renew the writ that the quantum of his claims appeared to exceed the jurisdictional limit of the Magistrate's Court. Despite this, the plaintiff did not expedite matters. The writ and statement of claim were served about four months later in March 2017, more than four years after the 2012 Accident, and the transfer application was eventually made in April 2017. While there was a

substantial delay was in the commencement of the action, there was also a delay in crystallising the plaintiff's position on the quantum of damages claimed.

54 Further, it was material that the transfer application was not prompted by any change in circumstances or any further deterioration in the plaintiff's condition. Due to the delay in commencing the claim, it would have been clear to the plaintiff what the extent of his injuries were and how his injuries had affected his income and earning capacity by the time the writ was filed in December 2015. This was not a case where the plaintiff's injuries allegedly worsened such that he had to revise his claim after having mistakenly filed it in a lower court based on incomplete information. Notwithstanding this, the plaintiff delayed in commencing his claim, and did so in the Magistrate's Court instead of the High Court in December 2015. Even after Dr Lee's 2016 Report (which was dated 27 June 2016) and the indication in November 2016 when the plaintiff sought to renew the writ that the damages might exceed $250,000, the plaintiff did not quickly proceed to finalise its position on the quantum of damages. By the time the writ and statement of claim were served in March 2017 (with Dr Lee's 2016 Report attached to the statement of claim), it was reasonable for the defendant to rely on the fact that his liability would be limited to the Magistrate's Court's jurisdiction.

55 Until March 2017, the defendant did not appear to have been aware of the MC Suit pending against him and would not have sought re-examination of the plaintiff's condition. When the defendant was finally made aware of the MC Suit, he did not seek to re-examine the plaintiff's condition because he reasonably believed his liability would be limited to $60,000. If the transfer application were to be granted, the defendant would have to carry out a re-examination of the plaintiff more than five years after the 2012 Accident. The considerable lapse in time was significant because, to be of evidential value, the

medical opinion would have to disentangle the injuries caused by the 2012 Accident from the plaintiff's pre-existing condition. Moreover, since the 2012 Accident, the plaintiff had been involved in two more car accidents in 2016. I found it disturbing that the tentative quantification of the damages at above $250,000 occurred only *after* the car accidents in 2016. While it was not clear on the evidence before me whether these two additional accidents have worsened his injuries, this fact suggested that re-examination *now* to determine the state of his injuries due to the 2012 Accident was very likely to be unfruitful.

56 In my view, these were the material circumstances that I should take into account in my holistic evaluation of the case, and they led me to the view that there would be irreparable prejudice to the defendant should there be a transfer to the High Court.

Conclusion

57 For the foregoing reasons, I dismissed the plaintiff's appeal and awarded costs of $1,500 with reasonable disbursements to be paid by the plaintiff to the defendant for the appeal.

Hoo Sheau Peng
Judge

Lee Wei Yung (Pacific Law Corporation) for the plaintiff;
Kwok-Chern Yew Tee (Foo Kwok LLC) for the defendant.