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

[2024] SGHC 69

Originating Application No 902 of 2023

Between

Lee Hui Chin

… *Applicant*

And

Chubb Insurance Singapore Limited

… *Respondent*

GROUNDS OF DECISION

[Arbitration — Commencement — Extension of time]

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v
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Chua Lee Ming J:

Introduction

1 The applicant, Mdm Lee Hui Chin, applied under s 10 of the Arbitration Act 2001 (2020 Rev Ed) ("AA") to extend the time fixed by the terms of an arbitration agreement to refer disputes to arbitration. I granted the application for the reasons set out below.

Facts

2 The applicant was the policyholder of two insurance policies (the "Policies") taken out with the respondent, Chubb Insurance Singapore Limited. The insured person under the Policies was the applicant's spouse (the "Deceased"). The Policies provided for Accidental Death Benefits ("ADB"), which was payable in the event that death occurs as a result of an accidental

injury. The Policies also provided that any dispute was to be referred to arbitration, and that such arbitration must be commenced three months from the day such parties were unable to settle the dispute. On 2 April 2021, the Deceased fell while riding his bicycle and was found unconscious in an uncovered drain. He was brought to Ng Teng Fong General Hospital ("NTFGH"). He remained unconscious until he was removed from life support on 9 April 2021, and he passed away thereafter.

3 According to the Deceased's daughter Ms Rachel Teng ("Ms Teng"):

(a) the treating doctors at NTFGH had said that the Deceased died as a consequence of the injuries sustained in the accident, and

(b) an MRI scan on 4 April 2021 showed a spinal cord injury; the MRI report also referenced changes in the Deceased's lungs, chest fractures, hypoxic-ischemic encephalopathy and cardiac arrest, and reflected that the matter was referred to the coroner in view of "unknown aetiology of cardiac arrest in the community".

4 A death certificate was issued on 10 April 2021, in which the forensic pathologist certified that the cause of death was "Coronary Artery Disease with Pneumonia". The State Coroner (the "Coroner") issued a certificate on the same

day stating that as the cause of death was due to natural causes, it was unnecessary to hold an inquiry. Thus, no autopsy was performed.

5 On 20 April 2021, the applicant submitted claims to the respondent under the Policies. The respondent obtained a report from NTFGH dated 27 May 2021 in which the Attending Physician's Statement stated that:

(a) the primary cause of death was likely cervical spine injury leading to cardiac arrest; and

(b) although the Coroner had reported coronary artery disease with pneumonia, there was no evidence of acute myocardial infarct on initial presentation.

6 On 19 August 2021, the respondent rejected the applicant's claims on the ground that the cause of the Deceased's death was due to sickness (*ie*, coronary artery disease with pneumonia), which was not covered under the Policies.

7 Ms Teng then consulted lawyers and obtained a further medical report dated 7 July 2022 by a neurologist, Dr Ho King Hee ("Dr Ho"). In his opinion:

(a) the radiological evidence was consistent with the presence of a vertebral fracture;

(b) with respect to cause of death, the evidence was most consistent with sudden aspiration, not with community acquired pneumonia;

(c) there was clear evidence that no heart attack (myocardial infarction) occurred to cause cardiac arrest, and

(d) there was no evidence that the Deceased died of coronary artery disease.

Dr Ho disagreed with the Coroner's certification that the cause of death was due to natural causes, noting that no autopsy was performed.

8 On 26 July 2022, Letters of Administration were granted to Ms Teng as the administratrix of the Deceased's estate (the "Estate").

9 On 26 August 2022, the Estate's solicitors wrote to the respondent enclosing a copy of Dr Ho's report. It is not disputed that the respondent took time to review the claims and agreed to extend the time bar for commencement of arbitration until 30 June 2023.

10 On 30 December 2022, the respondent confirmed its previous position that the claims were not covered by the Policies.

11 On 10 February 2023, Ms Teng filed two notices of arbitration with the Singapore International Arbitration Centre ("SIAC") in connection with the two Policies. On 28 February 2023, the respondent filed its responses to the notices of arbitration. Among other things, the respondent stated that Ms Teng had no *locus standi*. On 31 March 2023, the SIAC Court of Arbitration consolidated both sets of proceedings. On 19 June 2023, the arbitrator for the consolidated arbitration proceedings was appointed.

12 The arbitrator called for a preliminary meeting on 28 June 2023. During that preliminary meeting, Ms Teng's solicitors applied for leave for the applicant to be joined as co-claimant in the arbitration. On 6 July 2023, the respondent objected to the application and requested a dismissal of the

proceedings instead. On 27 July 2023, the arbitrator dismissed the joinder application on the basis that only the applicant (as the policy holder) had the *locus standi* to commence arbitration proceedings against the respondent.

13 On 4 August 2023, the respondent filed an application for the early dismissal of the arbitration proceedings, and the arbitrator allowed this application on 15 September 2023.

14 On 6 September 2023, the applicant filed the present application to extend the time for her to commence arbitration against the respondent.

The law

15 Section 10 of the AA reads:

> **Powers of Court to extend time for beginning of arbitral proceedings**
>
> 10.—(1) Where the terms of an arbitration agreement to refer future disputes to arbitration provide that a claim to which the arbitration agreement applies is barred unless —
>
> (*a*) some step has been taken to begin other dispute resolution procedures which must be exhausted before arbitral proceedings can be begun;
>
> (*b*) notice to appoint an arbitrator is given;
>
> (*c*) an arbitrator is appointed; or
>
> (*d*) some other step is taken to commence arbitral proceedings,
>
> within a time fixed by the agreement and a dispute to which the agreement applies has arisen, the Court may, if it is of the opinion that in the circumstances of the case undue hardship would otherwise be caused, extend the time for such period and on such terms as the Court thinks fit.
>
> (2) An order of extension of time made by the Court under subsection (1) —

> (*a*) may be made only after any available arbitral process for obtaining an extension of time has been exhausted;
>
> (*b*) may be made even though the time so fixed has expired; and
>
> (*c*) does not affect the operation of section 9 or 11 or any other written law relating to the limitation of actions.

16 Section 10 of the AA was a substantial re-enactment of s 37 of the Arbitration Act (Cap 10, 1985 Rev Ed). This was, in turn, *in pari materia* with s 27 of the Arbitration Act 1950 (c 27 of 1950) (UK) ("AA 1950 (UK)").

17 In *Liberian Shipping Corporation "Pegasus" v A King & Sons Ltd* [1967] 2 QB 86 ("*The Pegasus*"), the English Court of Appeal considered the meaning of "undue hardship" in the context of s 27 of the AA 1950 (UK), and the majority explained (at 98) that:

> "Undue" there simply means excessive. It means greater hardship than the circumstances warrant. Even though a claimant has been at fault himself, it is an undue hardship on him if the consequences are out of proportion to his fault.

This definition of "undue hardship" was endorsed by the Singapore Court of Appeal decision of *Recovery Vehicle 1 Pte Ltd v Industries Chimiques Du Senegal and another appeal and another matter* [2021] 1 SLR 342 at [123], albeit in a different context (*ie*, whether an application of the foreign limitation period would cause undue hardship under the Foreign Limitation Periods Act (Cap 111A, 2013 Rev Ed)).

18 The term "undue hardship" should not be construed too narrowly: *Comdel Commodities Ltd v Siporex Trade S A* [1991] 1 AC 148 at 166. Whether there is "undue hardship" is necessarily dependent on the facts of each case. Ultimately, the decision involves balancing the hardship that would be caused

to the applicant (if an extension of time is refused) against the fact that the respondent would lose the protection of a contractual limitation period (if an extension of time is granted).

19 That said, the following *non-exhaustive* factors are likely to be relevant:

(a) the reasons for the delay in commencing arbitration; in this regard, the degree of fault on the applicant's part is relevant but not necessarily fatal;

(b) the duration of the delay in making the application for extension of time;

(c) the value of the dispute;

(d) whether the intended claim can be said to be obviously unsustainable such that granting an extension of time would be pointless; an extension of time should not be denied on this ground save in an obvious case; and

(e) whether the respondent has taken any steps in reliance of the fact that the contractual limitation period has expired and if so, the prejudice that would be suffered by the respondent if an extension of time is granted.

My decision

20 I granted the application for an extension of time for the applicant to commence arbitration proceedings against the respondent for the following reasons.

21 First, this was not a case in which the applicant had sat idly by. Arbitration was commenced well before the expiry of the extended time bar of 30 June 2023. The problem was that the arbitration notices were issued in Ms Teng's name instead of the applicant's. The respondent pointed out that it had objected to Ms Teng's standing in its responses to the notices of arbitration dated 28 February 2023, but Ms Teng's lawyers applied to join the applicant only on 28 June 2023. The respondent submitted that the applicant should have commenced fresh arbitration proceedings in her own name before the extended time bar expired; alternatively, the joinder application should have been made earlier and the applicant could then have commenced fresh arbitrations proceedings after the joinder application was dismissed.

22 I accepted that the acts or omissions by Ms Teng's lawyers should be attributed to the applicant in this case. However, in my view, there were two mitigating factors: (a) there was an element of hindsight in the respondent's submissions, and (b) I noted that the arbitrator for the consolidated arbitration proceedings was appointed only on 19 June 2023. At the end of the day, in my view, refusing an extension of time in this case would result in hardship to the applicant that was out of proportion to whatever fault that was attributable to her.

23 Second, in my view, the applicant had acted expeditiously in filing the present application. The extended time bar expired after 30 June 2023. However, it should be noted that the arbitrator dismissed the joinder application on 27 July 2023, the application for early dismissal of the arbitration proceedings was made on 4 August 2023 and the order dismissing the arbitration proceedings was made on 15 September 2023, *ie*, after this application was filed on 6 September 2023.

24 Third, the amount involved was significant. The value of the claims under the Policies amounted to $406,000.

25 Fourth, in the light of Dr Ho's opinion, it was by no means clear that the applicant's claims were obviously unsustainable.

26 Fifth, there was no evidence that the respondent had taken any step in reliance of the fact that the extended time bar had expired.

27 In my view, the hardship that would be caused to the applicant, if an extension of time was not granted, far outweighed the fact that granting the extension of time would deprive the respondent of its contractual time bar.

Conclusion

28 For the reasons above, I allowed the application. The applicant agreed that it should be liable to the respondent for the costs of this application. Accordingly, I ordered the applicant to pay costs to the respondent fixed at $10,000, including disbursements.

Chua Lee Ming
Judge of the High Court

Raj Singh Shergill and Chua Gek Yee
(Lee Shergill LLP) for the applicant;
Kevin Kwek Yiu Wing, Tan Yiting Gina and Sourish Sinha (Legal Solutions LLC) for the respondent.