IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 13

Magistrate's Appeal No 9110 of 2016/01

Between

Cher Ting Ting

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal procedure and sentencing] – [Bail] – [Show cause hearing] – [Principles on forfeiture]

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Cher Ting Ting
v
Public Prosecutor

[2017] SGHC 13

High Court — Magistrate's Appeal No 9110 of 2016/01
Chan Seng Onn J
4 November 2016

26 January 2017 Judgment reserved.

Chan Seng Onn J:

Introduction

1 It has been said that the forfeiture of a bond provided by a surety is "in no sense a penalty imposed on the surety for misconduct" and that it is "not a fine and it is not a punishment either": see *R v Horseferry Road Magistrates' Court, ex parte Pearson* [1976] 1 WLR 511 at 514 and *R v Tottenham Magistrates' Court, ex parte Riccardi* (1977) 66 Cr App R 150 ("*Riccardi*") at 155. Yet it is indisputable that the obligation entered into by a surety is a "very serious obligation indeed" and "the burden of satisfying a court that the full sum should not be forfeit is a very heavy one": see *R v Waltham Forest Justices, ex parte Parfrey* (1980) 2 Cr App Rep (S) 208 ("*Parfrey*") at 211. There is perhaps a tension between the characterisation of forfeiture as a non-criminal matter and the robust approach taken by the courts toward forfeiture.

The assessment of the surety's culpability – a concept that is central to the theoretical underpinnings of criminal law – have long played a role in the courts' decisions on whether, and to what extent, forfeiture is appropriate. A considerable amount of case law has accumulated regarding the approach towards forfeiture, both locally and abroad. This case presents an opportunity to re-examine the law on forfeiture and to restate, after an aggregation of the relevant principles, the method of analysis.

2 This is a surety's appeal against the decision of a District Judge that the bond executed by the surety be forfeited in full. The surety had stood bail for her younger brother, who failed to attend court and remains at large. The District Judge found that the surety had failed to comply with her duties of keeping in daily communication with her brother and ensuring that he was in attendance in court. The surety appeals on the basis that the District Judge erred in her findings and in her decision that the entire amount of the bond should be forfeited. I will explain my decision and my reasoning thereto.

Background facts

The accused and his surety

3 The accused is Albin Cher Koh Kiong ("the Accused"). The Accused faces a total of four charges under the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) for offences involving consumption and possession of controlled drugs and possession of drug-related utensils, and two charges for criminal breach of trust under s 408 of the Penal Code (Cap 224, 2008 Rev Ed).

4 On 2 October 2015, the Accused's sister Cher Ting Ting ("the Surety") stood bail for the sum of $60,000 for him. She signed the "Acknowledgement of Duties as Surety" form, in which she acknowledged that she was willing

and able to stand as surety for the Accused in respect of the charges against him. The Surety further expressed her understanding that, *inter alia*:[1]

(a) it was her duty to ensure the Accused's punctual attendance at all court dates and times;

(b) as surety, she was to find out in advance all dates and times when the Accused's attendance in court was required;

(c) she was to ensure that the Accused complied with all bail conditions, including the condition that the Accused would not leave Singapore unless prior permission from the court was obtained;

(d) she was to remain in constant contact with the Accused and be aware of his movements so as to ensure his compliance;

(e) if the Accused took ill on a court date, she was to ensure that the Accused consult a doctor immediately and obtain a medical certificate stating that the Accused was not fit to attend court, and thereafter attend court on the Accused's behalf to inform the court of the Accused's condition and tender the medical certificate to the judge; and

(f) she was required to keep in daily communication with the Accused and lodge a police report within 24 hours of losing contact with him.

The Surety also indicated her awareness, within the same form, that her duties as surety would continue until the conclusion of the proceedings or until she

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[1] Respondent's Bundle of Authorities at p 4.

was formally discharged as surety, and declared that she would faithfully discharge her duties as surety and would forfeit to the State the bail sum of $60,000 should she fail in her performance of those duties.

5 The Accused was scheduled to plead guilty before District Judge Jasvender Kaur ("the District Judge") on 30 March 2016 at 9.00am. The Accused failed to attend, and the Surety herself was also not present in court. Futile attempts were made by counsel and the court officer to contact the Accused and the Surety. Counsel informed the District Judge that he had arranged to meet the Accused on 8 March 2016 but the Accused did not turn up for that meeting and had since been uncontactable as his mobile phone was switched off. As a consequence of the Accused's failure to attend, the bail sum of $60,000 was forfeited. The District Judge also issued an arrest warrant against the Accused. The Accused remains at large. A notice was sent to the Surety directing her to pay the said penalty of $60,000 or to appear before the State Courts on 11 May 2016 to show cause as to why payment of the said sum should not be enforced against her.

Show cause proceedings

6 On 11 May 2016, the Surety appeared in person. She stated that the amount of $60,000 came from her savings and were meant for her daughter's education and her mother's medical expenses. Upon questioning by the District Judge, the Surety also indicated that:[2]

> (a) She had been unaware of the Accused's non-attendance in court until counsel called her at her office following the Accused's failure to appear at the plead guilty mention.

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[2] Record of Proceedings ("ROP") at pp 14–15.

(b) She "really did not contact [the Accused]". It was their mother Mdm Tan Yien Leng ("Mdm Tan") who had been in contact with him. Two days before the court mention date, Mdm Tan had called him to remind him to attend court.

(c) She had "no idea" where the Accused was staying. Their family members had asked him about this but he refused to tell them where he was staying, indicating only that he was with his friend.

(d) The Accused did not like the Surety (and the rest of their family) to "question him or interfere with his personal life". He did not want them to "control him".

7 The Surety also stated that she "really [could not] find [the Accused], There [was] nothing much [she could] do". The $60,000 represented all her savings and was needed "to feed the whole family".

The District Judge's decision

8 The District Judge forfeited the entire sum of $60,000 and ordered that the forfeited sum was to be recovered from the monetary security.

9 The District Judge's written grounds of decision are found in *Public Prosecutor v Cher Ting Ting* [2016] SGDC 146 ("the GD"). After considering the authorities, the District Judge found at [11], on the question of fault, that the Surety had "completely failed to exercise any due diligence to ensure that the accused would be in attendance". She observed that although the bail bond stated that the Accused's residential address was the same as that of the Surety, the Surety had admitted that the Accused did not reside with her.

Further, the Surety did not know where or with whom the Accused was staying.

10 The District Judge also noted at [12] of the GD that Mdm Tan was the person who contacted the Accused and reminded him to attend court hearings. The District Judge found that this fact did not assist the Surety because a surety's duties are personal. The Surety had breached her personal duty to keep in daily communication with the Accused. Further, the Surety did not even know that the Accused had failed to attend court, nor had she made efforts to look for the Accused. The District Judge concluded at [14] that the conduct of the Surety could be "best described as woeful and cavalier". It was not enough for her simply to rely on faith that the Accused would turn up (citing *Public Prosecutor v Ram Ghanshamdas Mahtani and another action* [2003] 1 SLR(R) 517 ("*Ram Mahtani*")).

11 Regarding the Surety's plea that the $60,000 represented all her savings and were meant for her daughter's education and mother's medical expenses, the District Judge expressed some sympathy for the Surety. However, the District Judge agreed with Lord Widgery CJ's observations in *R v Southampton Justices, ex parte Corker* (1976) 120 SJ 214 ("*Corker*") and held at [15] of the GD that "[i]n the circumstances, [the court] was not persuaded that this was an exceptional case where the *prima facie* position [*ie*, that the amount for which the person concerned has stood surety will be forfeited in full] should be modified".

12 The Surety appealed against the decision of the District Judge to forfeit the whole bond amount. The appeal was fixed before me.

The parties' submissions on appeal

13 The Surety appears in person. She submits that the Accused respects and listens to their mother, who is the matriarch of the family, and that their mother would remind the Accused of court appointments. She suggests that their mother is "like the alter ego of [herself] in that if [her mother] had the funds, [her mother] would have been the bailor in name as well".[3] On this basis, the Surety disagrees that she had a cavalier attitude towards her responsibilities as a surety, because "as part of the family unit, [her] mother Mdm Tan [was] exercising the bailor's responsibilities with [the Surety]".

14 The Surety also states that the Accused had been attending court "countless times without fail: more than 10 times if [she] can recall". She therefore argues that she cannot be said to have been irresponsible given that she and Mdm Tan "had ensured his past attendance in Court on so many occasions". Finally, she pleads for sympathy on the basis that the $60,000 represents her life savings and is meant for her daughter's education and Mdm Tan's medical expenses. She expresses remorse and regret.

15 Upon my questions to the Surety at the hearing, she informed me that it was not her practice to ask Mdm Tan about what the Accused had said after Mdm Tan's conversations with the Accused. The reason the Surety provided was that she was working and was very busy. She stated that she had accompanied the Accused to court "three or four times" before, but could not consistently do so due to her work. She had not accompanied the Accused to court the last few times before he absconded.

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[3] Petition of Appeal found in ROP at pp 8–9.

16 As the respondent in the appeal, the Public Prosecutor argues that the Surety was "absolutely derelict" in her duties as surety and that the District Judge was correct to make such a finding.[4] The plea concerning the Surety's means is insufficient to rebut the *prima facie* position that the entire amount of bail monies should be forfeited. There is nothing exceptional to warrant a departure from that position.

17 After hearing the submissions of the Surety, the Prosecution and the young *amicus curiae* Mr Justin Chan ("Mr Chan"), I reserved judgment.

The law on forfeiture of bonds

The nature of sureties' duties

18 I begin with a word on the nature of the duties of sureties. The source of these obligations is, of course, statutory. They are set out in no uncertain terms in s 104(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"), which reads as follows:

> **Duties of surety**
>
> **104.**—(1) A surety must –
>
> (*a*) ensure that the released person surrenders to custody, or makes himself available for investigations or attends court on the day and at the time and place appointed for him to do so;
>
> (*b*) keep in daily communication with the released person and lodge a police report within 24 hours of losing contact with him; and
>
> (*c*) ensure that the released person is within Singapore unless the released person has been permitted by the police officer referred to in section 92 or 93 (as the case may be) or the court to leave Singapore.

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4 Respondent's Submissions at para 22.

19 Courts in Singapore and England have taken pains to underscore the cardinal importance of sureties' obligations. It is therefore unsurprising that consequences of significant gravity potentially attach to any breach of such obligations. As Yong Pung How CJ observed in *Ram Mahtani* at [4], "[i]t has often been emphasised by the courts that the obligation which comes with standing bail for an accused is not merely a moral one, but *has serious legal consequences attached with it*. The bailor undertakes real risks, when an accused fails to surrender to his bail." [emphasis added]. Similarly, in *R v York Crown Court, ex parte Coleman and How* (1988) 86 Cr App R 151 ("*Coleman*"), May LJ held as follows (at 156–157):

> … The standard in these bail cases has been shown by the authorities to be a heavy one. I respectfully agree, bearing in mind, in particular, the serious nature of the obligation which is undertaken by sureties in these cases. It is indeed, as has been said in one of the authorities, *one of the foundations of the proper administration of criminal justice*. It should not be thought that it is otherwise than very difficult for a surety to escape the basic obligation of his recognizance willingly undertaken.
>
> [emphasis added]

20 Indeed, the importance of sureties' obligations has received parliamentary affirmation. In reply to a question by Member of Parliament Mr Lim Biow Chuan on the duties imposed on sureties during the debate on the Criminal Procedure Code Bill, Minister for Law Mr K Shanmugam provided the following response (*Singapore Parliamentary Debates, Official Report* (19 May 2010) vol 87 at cols 560–561):

> Insofar as the duties of the sureties in the Bill are concerned, we do not think they are too onerous. A surety has to maintain daily contact with the offender. It is also not unreasonable to require the surety to take steps to ensure that the offender does not leave the country, for instance, by taking custody of the offender's travel documents. Ultimately, the Courts still retain the discretion to take into account the totality of the facts in determining whether to forfeit the whole

> or any part of the bond. But, people must also understand that *taking on the duties of a surety can have consequences and they must be aware of those consequences before they voluntarily become sureties*.
>
> [emphasis added]

Procedure on forfeiture

21 Under s 104(2) of the CPC, if the surety is in breach of any of his duties, the court "may, having regard to all the circumstances of the case, forfeit the whole or any part of the amount of the bond". Section 107(1) then sets out the procedure to be followed on forfeiture of the bond:

> **Procedure on forfeiture of bond**
>
> **107.**—(1) If it is proved to a court's satisfaction that a bond taken under this Code has been forfeited, the court –
>
> (*a*) must record the basis of such proof;
>
> (*b*) may summon before it the person bound by the bond; and
>
> (*c*) may call on him to pay the amount of the bond or to explain why he should not pay it.

Section 107(2) confers on the court the power to recover the amount, if it finds the surety's explanation to be inadequate and if he fails to pay the amount of the bond, by issuing an order for the attachment of any property belonging to him. Under s 107(4), if the amount of the bond is not paid or cannot be recovered by attachment and sale, the court is also empowered to commit to prison the person bound by the bond for a term not exceeding 12 months. Section 107(5) states that any unsatisfied amount of the bond is to constitute a judgment debt in favour of the Government, which the Government may accordingly seek to recover.

22 The power of the court to commit to prison a person who does not pay the bond upon forfeiture and the statutory entitlement of the Government to

recover any unsatisfied amount serve, in my view, to highlight the gravity of a surety's obligations. The penalties that a surety may suffer if he fails to make good on his bond are commensurate with the weight that the law places on his compliance with his obligations as surety.

Principles governing forfeiture

23 The language of s 104(2) of the CPC (which I have reproduced in part at [21] above) makes it clear that the court has a discretion regarding the forfeiture of the bond. It may decide to forfeit the whole or any part of the bond or not to forfeit any amount. As mentioned, a considerable amount of case law has been amassed concerning various aspects of the inquiry on whether a surety's bond should be forfeited, and, if so, the extent of the forfeiture. It may be useful to gather the strands of analysis together and place them into a framework for ease of application.

A two-stage analysis

24 The court will consider the question of forfeiture in two stages: see *Loh Kim Chiang v Public Prosecutor* [1992] 2 SLR(R) 48 ("*Loh Kim Chiang*") at [11]; *Re Ling Yew Huat & Anor* [1990] 2 MLJ 124 ("*Ling Yew Huat*"); and *Valliamai v Public Prosecutor* [1962] MLJ 280 ("*Valliamai*"). First, the court will consider whether the surety has shown sufficient cause for the non-forfeiture of the bond amount. Second, if the court finds that the surety has failed to show sufficient cause, the court will determine, in the exercise of its discretion, the extent to which the bond is to be forfeited.

25 The term "sufficient cause" in the first stage likely originates from the language of ss 361(1) and (2) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) (adapted in s 107 of the current edition of the CPC), which require the

surety to "show cause why [the bond] should not be paid" and empower the court to recover the amount by issuing a warrant for attachment and sale of property "[i]f sufficient cause is not shown and the penalty is not paid". Although the phrases "show cause" and "sufficient cause" are no longer used in s 107 of the CPC, the approach envisaged in the statute is the same – s 107(1)(*c*) allows the court to "call on [the surety] to pay the amount of the bond or to explain why he should not pay it", and s 107(2) permits the court to recover the amount by way of an order for attachment of property if it finds the surety's explanation inadequate and the amount is not paid.

First stage: has the surety shown sufficient cause against forfeiture?

26 In *Criminal Procedure in Singapore and Malaysia* (Tan Yock Lin & S Chandra Mohan gen eds) (LexisNexis, Looseleaf Ed, 2016, July 2015 release) ("*Tan & Mohan*"), the learned authors observe at para 2302 that the term "sufficient cause" has not been defined. They opine that the lack of definition is justifiable because the circumstances of each case must be looked at.

27 In my view, while it is certainly correct that the court should consider the circumstances of the case in determining whether the surety has shown sufficient cause against forfeiture (and indeed this is necessitated by the express language of s 104(2) of the CPC, which requires the court to "hav[e] regard to all the circumstances of the case"), it will nevertheless assist if the core concept behind the somewhat Delphic phrase "sufficient cause" is identified and brought into the open.

(1) Reasonable due diligence

28 I take the view that the key consideration in determining the existence of sufficient cause is whether the surety is able to show that he *exercised*

reasonable due diligence in the discharge of his duties as surety. In *Royaya bte Abdullah & Anor v Public Prosecutor* [2005] 2 MLJ 670 ("*Royaya*"), the court discussed the notion of sufficient cause at [33] in a passage which also appears in *Tan & Mohan* at paras 2305–2350:

> …there cannot be sufficient cause if the surety never took the trouble to ensure that the accused would appear on the date stipulated in court. The surety is not required to do what is superhuman; but at the least *he must have been diligent in undertaking his obligations. He must have made diligent attempts to remind the accused of the date of appearance and seek an assurance from him that he would be appearing.*
>
> [emphasis added]

29 It is immediately apparent from a review of the case law that the primary focus of the courts in determining whether sufficient cause has been established is precisely whether the surety has displayed the requisite level of diligence in carrying out his duties. It suffices for me to refer to a few illustrative cases.

30 In *Public Prosecutor v Mahadi bin Mohamed Daud* [1999] 3 SLR(R) 681 ("*Mahadi*"), Yong CJ found at [7] that the respondent had not shown sufficient cause because the respondent had not taken any steps to contact the accused beyond sending a single facsimile to the accused one day before the date the accused was due to return to Singapore for a hearing scheduled on the next day.

31 In *Ram Mahtani*, Yong CJ found at [6]–[7] that the bailors had failed completely to show that they had "exercised due diligence" to ensure that the accused would turn up for the hearing of his appeal. The first bailor had done nothing more than to call the accused while the accused was abroad to ask how things were going, believing that the accused's love for her and the family would ensure his attendance in court, while the second bailor had taken

no steps to obtain his contact number overseas or to call him to remind him to return in time for the hearing. On this basis (and also because of other conduct found by Yong CJ to be lacking), it was held that the bailors had not shown sufficient cause.

32 In *Yap Yin Kok v Public Prosecutor* [1987] SLR(R) 484, Chan Sek Keong JC (as he then was) found that the surety had not shown cause and ordered the bond to be forfeited in full. The following extract from Chan JC's judgment at [18] is illustrative of the court's focus on the diligence (or lack thereof) of the surety:

> *What degree of diligence has the surety shown in this case? On a scale of ten, probably one.* He had merely asked the appellant when the new date of hearing was and on being told that it had not been given yet, he went to New York. The notice of hearing was sent to his home address. In his evidence, he has not denied receiving it. During his long sojourn overseas, he appeared to have done nothing at all to keep in touch with the appellant or his son to ensure that any official communication as to the next hearing date was transmitted to him. In contrast, he was able to and did communicate with his son in respect of the notice dated 28 April 1987 to show cause. *There was therefore no excuse at all.*
>
> [emphasis added]

33 In *Public Prosecutor v Sim Yu Jen, Melvin* (Magistrate's Appeal No 104 of 2014/01), See Kee Oon JC allowed the Public Prosecutor's appeal against the decision of the district judge to remit the bond amount to the surety. See JC found that the surety had not kept in regular contact with the accused and had not filed a police report within 24 hours of losing contact with the accused. The surety's actions had fallen far short of what was expected of him, and See JC accordingly concluded that cause had not been shown.

(2) General principles concerning sufficient cause

34 It is uncontroversial that the surety bears the burden of satisfying the court that sufficient cause exists such that forfeiture should not take place. It is for the surety to lay before the court evidence of want of culpability: see *Ling Yew Huat*.

35 The determination of whether sufficient cause against forfeiture exists in each case is, of course, an intensely fact-specific inquiry. Accordingly, unless the factual matrices present striking similarities, a case-for-case comparison may therefore be of limited utility in providing guidance for ascertaining the appropriate outcome in a given case. It may, however, be possible to distil from the cases certain statements of principle or indicia of the attitude that may be taken towards certain types of conduct on the surety's part.

36 Without attempting to be prescriptive or exhaustive, the following general and non-categorical propositions can, in my view, be gleaned from the case law:

(a) Mere reliance on faith alone that the accused will show up for court hearings, without more, is not sufficient for a surety to discharge the onerous duty of ensuring the accused's attendance in court: see *Mahtani* at [6].

(b) A surety's duties are personal to the surety. When he chooses to delegate those duties to another person, he runs the risk of being in breach of his duties should the accused fail to attend court or should the person to whom he has delegated the responsibility fail to keep in daily communication with the

accused. It is not open to the surety to say that he has delegated the duty to another: see *Public Prosecutor v An Wei* [2014] SGDC 182 ("*An Wei*") at [19].

(c) When the accused goes missing, the making of a police report by the surety, without more, will not be sufficient to excuse the surety. Taken alone, this does not provide sufficient cause: see *Mahtani* at [7] and *Public Prosecutor v Ho Boon Lim* [2003] SGDC 90 ("*Ho Boon Lim*") at [17]. In this regard, I also note that under s 104(1)(*b*) of the CPC, it is a statutory duty of the surety to lodge a police report within 24 hours of losing contact with the accused.

(d) When the accused goes missing, passively waiting and hoping for the accused to return does not amount to compliance with a surety's obligations: see *Public Prosecutor v Pililis Georgios* [2013] SGDC 142 at [10] and [12]. It is relevant to consider whether the surety expended effort to look for the accused after the accused has gone missing: see *Mahtani* at [7]; *Ho Boon Lim* at [16]; and *Public Prosecutor v Rahilah Binte Kifley* [2005] SGDC 210 at [11].

(e) Where the accused is travelling, a surety's omission to obtain from the accused details that would allow the surety to contact or locate him is demonstrative of negligence on the part of the surety: see *Public Prosecutor v Chou Tai Chuan & Anor* [1988] 1 MLJ 511 and *Mahtani* at [6].

(f) If the surety turns a blind eye toward suspicious circumstances that indicate that the accused had the intention to abscond, the surety will have failed to exercise due diligence: see *Public*

Prosecutor v Wang Choong Tsuey [2009] SGDC 212 ("*Wang Choong Tsuey*") at [21]. In *Wang Choong Tsuey*, the surety was aware that the accused had left Singapore, despite the accused's claims that he was ill and unfit to attend court (at [16]). She also knew that the accused was prohibited by the conditions of bail from leaving Singapore without the permission of the court, and that he had not sought to obtain such permission (at [20]). The court found at [21] that, in light of the dubious circumstances, the surety should have known that something was amiss, and that by turning a blind eye to these circumstances and allowing the accused to leave the country, she had failed to exercise due diligence to secure the appearance of the accused in court. Thus, the court held at [24] that the surety failed to show the existence of sufficient cause against forfeiture.

(g) It may be relevant for the court's consideration that the surety had taken sufficient steps on previous occasions to ensure the accused's attendance in court and the accused had so attended: *Ramlee & Anor v Public Prosecutor* [1969] 1 MLJ 42 ("*Ramlee*"). However – and this is an important qualification – it would go too far to say that such circumstances, taken alone, provide sufficient cause: see *Loh Kim Chiang* at [26].

37 I reiterate that the above is not meant to be an exhaustive list of principles, nor should these be treated as imperatives that are binding in every situation and that do not admit of deviation. They should only be seen as guidelines or indicia as to how certain types of conduct on the part of the surety may be assessed against the yardstick of reasonable due diligence.

(3) Consequence of a finding of sufficient cause

38 If a court finds, after a consideration of all the circumstances, that the surety has shown sufficient cause against the forfeiture of the bond, then forfeiture may be waived altogether: see *Valliamai* as cited in *Ramlee*. On the other hand, if a court concludes that the surety has failed to demonstrate sufficient cause, then the court should, under the two-stage analysis outlined above, proceed to consider the extent to which the bond should be forfeited.

Second stage: what is the appropriate extent to which the bond should be forfeited?

39 In *R v Knightsbridge Crown Court, ex parte Newton* [1980] Cr LR 715, Donaldson LJ held as follows:

> … It has been said by this court, and by other courts time and again, that entering into suretyship – going bail for someone, to use the common phrase – is an extremely serious matter not to be lightly undertaken, and those who go bail must understand that, *if the accused fails to surrender to his bail, it is only in the most exceptional cases that the court will be prepared to modify the prima facie position, which is that the amount for which the person concerned has stood surety will be forfeit in full.*
>
> [emphasis added]

40 Donaldson LJ's statement of principle has been cited as good law in a number of subsequent judgments by both local and English courts: see *Ram Mahtani* at [4]; *Mahadi* at [5]; *Loh Kim Chiang* at [20]; and *R v Uxbridge Justices, ex parte Heward-Mills* [1983] 1 All ER 530 ("*Heward-Mills*") at 534.

41 Accordingly, the starting point where the surety has failed to show sufficient cause is therefore forfeiture of the *entire amount* of the bond. The court will depart from this *prima facie* position if, and only if, the surety

satisfies the court that there are exceptional circumstances warranting such a departure. This is, in my opinion, in line with the language in s 104(2) of the CPC which requires the court to have regard to "all the circumstances of the case" in determining the amount of the bond to be forfeited. It is useful also to have regard to the following summary of principles set out by McCullough J in *Heward-Mills* at 535 (cited with approval by May LJ in *Coleman* at 156 and adopted by M Karthigesu J (as he then was) in *Loh Kim Chiang* at [23]), which he reached after a careful and thorough review of the English precedents:

> Having summarised all the passages in the cases where this topic falls to be considered as a matter of principle, so far as I know and as far as the research done by counsel has shown, I would draw together the more important principles to be derived from the authorities, as follows. (1) *When a defendant for whose attendance a person has stood surety fails to appear, the full recognisance should be forfeited, unless it appears fair and just that a lesser sum should be forfeited or none at all.* (2) *The burden of satisfying the court that the full sum should not be forfeited rests on the surety and is a heavy one. It is for him to lay before the court the evidence of want of culpability and of means on which he relies.* (3) Where a surety is unrepresented the court should assist by explaining these principles in ordinary language, and giving him the opportunity to call evidence and advance argument in relation to them.
>
> [emphasis added]

In the above passage, McCullough J raises the additional point that the court should ultimately have regard to what is "fair and just" in determining the sum to be forfeited, if any. The burden, however, lies on the surety to convince the court that fairness and justice militate in favour of a reduction of the sum to be forfeited. This is not an easy burden to discharge.

42 It is evident that the court's assessment of whether there are circumstances that warrant a departure from the *prima facie* position of full forfeiture is a heavily fact-dependent exercise. I propose to discuss five points

that arise from the case law which may provide some guidance to the analysis. These points are, of course, not exhaustive of the factors to be considered by the court, which are a matter for the court's discretion and good sense.

(1) The degree of culpability of the surety

43 The degree of culpability of the surety is a crucial consideration for the court in its assessment of the amount of the bond to be forfeited. In *Heward-Mills*, McCullough J quoted with approval at 532 the following extract from the transcript of Lord Widgery CJ's judgment in *Corker* (which was also cited with approval by Karthigesu J in *Loh Kim Chiang* at [16]):

> The other two points, I think, are points on which justices must have further guidance than that which the decision in *ex p Green* presently affords to them. It is said, and no doubt absolutely correctly, that *the degree of culpability of the surety is a factor which must be taken into account when deciding whether to forfeit the whole or part of his recognisance*. One first of all has to ask oneself on whom is the onus in these matters, and it seems to me that the onus is clearly on the surety. The surety has undertaken a recognisance for a certain sum of money, and prima facie he can and intends to pay it. If he wants to say he cannot afford it, or that it is not fair he should pay it, he ought to make the running. It is he who should set the scene. When it comes to culpability one has to remember, I think, that the great majority of sureties have very little opportunity to control the movements of the accused person. If surety and accused live in the same family that is one thing, but if they live apart it may be that the surety will have very little opportunity of seeing whether or not the accused attends court. *It cannot be right in my judgment that a surety who has entered into an obligation for several hundreds of pounds is able to excuse himself when the time comes by simply saying, 'Well, of course I have very little chance to observe him and therefore it really was not my fault.' These are all things that ought to be taken into account when the decision to give the recognisance is taken…*
>
> [emphasis added]

44 In other words, as a general proposition it does not assist the surety for him to say that he could not possibly have placed the accused under close

surveillance all the time in order to ensure his attendance in court. The surety should have considered, at the time when he was approached to be surety, whether he was in a position to carry out sureties' duties before agreeing to take on those onerous responsibilities. Therefore, in the general run of things such an argument by the surety will find little favour with the court. In my view, this is consistent with the principle that the compliance of sureties with their duties is crucial to the general administration of criminal law and criminal procedure. Given the significance of the undertaking, sureties are obliged to consider with great care and circumspection whether they are able and willing to take on those duties before they execute the bond.

45 Another useful authority is *R v Southampton Justices, ex parte Green* [1975] 3 WLR 277, where Lord Denning MR remarked as follows at 282:

> By what principles are the justices to be guided? *They ought, I think, to consider to what extent the surety was at fault.* If he or she connived at the disappearance of the accused man, or aided it or abetted it, it would be proper to forfeit the whole of the sum. If he or she was wanting in due diligence to secure his appearance, it might be proper to forfeit the whole or a substantial part of it, *depending on the degree of fault.* If he or she was guilty of no want of diligence and used every effort to secure the appearance of the accused man, it might be proper to remit it entirely.
>
> [emphasis added]

The passage was cited with approval by Yong CJ in *Mahtani* (at [5]) and Karthigesu J in *Loh Kim Chiang* (at [15]). Again, the emphasis is ostensibly on the degree of fault or culpability of the surety. Where the surety connived at, aided or abetted the disappearance of the accused, his culpability is so high as to warrant the forfeiture of the whole of the bond. Where the surety was negligent in performing his duties, this may warrant the forfeiture of the whole or a substantial part of the bond, to be determined in accordance with his degree of fault. Lord Denning also suggested that if the surety is "guilty of no

want of diligence and used every effort to secure the appearance of the accused man", then the appropriate decision might be to remit the entire amount of the bond. I accept this latter proposition, but in my view the real reason why it would not be proper to forfeit any part of the bond amount in such a case is that the surety has been able to show *sufficient cause* for non-forfeiture of the bond amount in the first place – *ie*, the surety did not display a lack of reasonable due diligence. Thus the issue of quantum of forfeiture does not arise at all.

(2) The surety's financial circumstances

46 It is appropriate at the outset to make the position clear that a surety's plea that he lacks the financial wherewithal to suffer the consequences of forfeiture is *not* generally a sound reason to reduce the amount forfeited. This point has been repeatedly emphasised in a number of judgments of Singapore and English courts.

47 For instance, in *Corker* (cited with approval in *Heward-Mills* at 532; *Loh Kim Chiang* at [16]; and *Mahtani* at [9]), Lord Widgery CJ held:

> It would defeat the whole system of bail, I think, if it became generally known that the amount payable was strictly limited according to the surety's means and that anybody who had no means would not have to pay. Imagine the relish and speed with which persons would accept the obligation of surety if they were penniless and knew that that was a total answer to any kind of obligation on the recognizance. *The real pull of bail, the real effective force that it exerts, is that it may cause the offender to attend his trial rather than subject his nearest and dearest who has gone surety for him to undue pain and discomfort.* But be that as it may, it cannot be the law, I venture to think, that a surety can escape entirely by saying that he was not culpable and was penniless. *These are matters which he should have some regard to before he enters into his recognisance, and it must in turn be the subject of regard when any question of forfeiture arises.*

[emphasis added]

Two points arise from Lord Widgery CJ's reasoning. First, if the court were to accept as a total answer to forfeiture that the surety is not in a financial position to endure forfeiture, this would mean that the mechanism of bail would likely fail to achieve its purpose of compelling the accused to surrender himself to due process and attend court as required. The point is encapsulated in Lord Widgery CJ's explanation (cited also by Sundaresh Menon CJ in *Public Prosecutor v Yang Yin* [2015] 2 SLR 78 at [35]) about the "real pull of bail". The threat of forfeiture acts as a veritable Sword of Damocles that hangs not over the accused but over his nearest and dearest, thereby disincentivising the accused from absconding. Second, the argument that the surety would be unable to endure the financial consequences of forfeiture is unpersuasive because those consequences ought to have been considered by the surety before he agreed to undertake the obligation. Put another way, it no longer lies in the mouth of the surety to say, after the accused's disappearance, that he cannot now bear the consequences of forfeiture. Donaldson LJ in *Parfrey* at 211 puts this in more express terms: "There is an obligation on a surety to be fully satisfied that he or she can meet the liability which will arise if the accused person does not surrender to his bail."

48 On the second point that I have raised, Mr Chan suggests that the approach outlined by Lord Widgery CJ leaves some room for argument that a surety's financial difficulties remain relevant where such difficulties arose from matters either (i) reasonably unknown to the surety at the time that bail was posted or (ii) occurring after bail was posted.[5]

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[5] Young Amicus Curiae's Written Submissions at [21].

49 With respect, I am not fully persuaded that the position taken by Mr Chan is fully correct. If the surety's financial circumstances have changed so much after the execution of his bond that he is no longer able and willing to continue to stand bail for the accused, it is open to the surety to arrest the accused under s 105(4) of the CPC and immediately bring him before a court and apply to have the surety's bond discharged, whereupon the court *must* discharge the bond. Alternatively, the surety may make an application under s 105(1) of the CPC for the discharge of the bond. Under s 105(2), the court may, on receiving such an application, issue an arrest warrant directing that the accused be produced before it, and s 105(3) states that when the accused makes such an appearance (either under the warrant or voluntarily), the court *must* direct that the bond be discharged wholly. After the surety's bond is discharged, the court must call on the accused to provide other sufficient sureties. If the accused fails to do so, the court is required under s 105(5) to commit the accused to custody.

50 Where the surety does not take such action as set out in the paragraph above, it is reasonable to assume that the surety maintains his willingness and ability to suffer the possible forfeiture of the entire bond amount. Perhaps the only remaining circumstance that might be contemplated is where unexpected financial difficulties arise after the surety has been asked to show cause, whereupon it might be too late for the surety to apply to have the bond discharged.

51 Nevertheless, I note that McCullough J in *Heward-Mills* also referred at 534 to two other cases in which the English courts have held that the means of the surety remain relevant for consideration. The first is a decision of Forbes J in *R v Crown Court at Ipswich, ex p Reddington* [1981] Crim LR 618 ("*Reddington*"), where the court held as follows:

> Of course, anyone who stands surety for someone's attendance must have solemnly undertaken that they are good for the amount of the surety, that they have sufficient resources available. So that when considering the question of means it is a little difficult for a surety to say that he has not got the money which, when entering the recognisance, he must have indicated that he had at that time. *But it clearly would be right, and that case [Ex p Green]* is *authoritative, that courts considering the estreatment of recognisance must consider not only the extent of the surety's resources and the ability to meet what is in effect a financial penalty in those circumstances*.
>
> [emphasis added]

52 The second is McCullough J's own decision in *R v Crown Court at Oxford, ex parte Jones and Jacobs* (29 June 1982, unreported) ("*Jones*"), where McCullough J held as follows:

> *One has to arrive at a decision which is fair and just in all the circumstances. In doing so one must assess the surety's culpability. One must also consider his means*. One must remember that one is not fixing a penalty for misconduct. One is deciding whether to mitigate the ordinary principle which is that if somebody says: "I promise to pay £20,000 if X does not turn up at court", and X does not turn up at court, then £20,000 is forfeited.
>
> [emphasis added]

53 *Reddington* and *Jones* were also cited by Karthigesu J in *Loh Kim Chiang* (at [21] and [22]) and the learned judge opined that the passage from *Reddington* was "important", although ultimately the court's decision to reduce the amount forfeited in that case did not turn on the surety's lack of means. I note also Karthigesu J's reference at [28] to Eveleigh J's statement in *Riccardi* at 155 that "recognizance is not a fine and it is not a punishment either". Karthigesu J further reasoned at [28] that "it must be appreciated that the administration of criminal justice cannot function effectively without the bail system, and persons must not be discouraged from coming forward to

stand bail". A balance must be struck between the competing policy objectives.

54 I observe that McCullough J, in the passage from *Heward-Mills* that I have extracted at [41] above, concluded that the surety is entitled to lay before the court evidence of his means. In *Coleman*, May LJ similarly held at 157 that the means of the surety is relevant:

> In the light of the argument in the present application, I should add, as appears from two at least of the authorities to which I have referred, that apart from the steps taken by the surety to ensure that the accused appears at the trial, *the means of the surety, when it is sought to estreat his recognizance, are also relevant.* Again, however, it should not lightly be held that as the surety has limited means, his recognizance should not be estreated in whole or at least in substantial part. After all, the surety did agree to be bound in the sum of the recognizance. In those circumstances it will not lie easily in his mind, if there has been no change of circumstances since he stood bail, to suggest that his lack of means requires some mitigation of the amount to be estreated. Nevertheless, as I have said, *it is a relevant consideration which may be taken into account.*
>
> [emphasis added]

55 In *Loh Kim Chiang*, Karthigesu J found at [29] that the district judge, in deciding to forfeit the entire amount of the bond, had not applied his mind to the means of the appellant, although Karthigesu J qualified this by adding that "a bailor entering his bond, *ex facie*, is declaring his ability to pay the full amount of the bail". Upon a re-exercise of the discretion, Karthigesu J found it appropriate in all the circumstances to remit half the amount of the bail and enforce payment of the other half.

56 To conclude, the financial circumstances and means of the surety are relevant considerations for the court in determining the proper extent of forfeiture. The reason is that s 104(2) of the CPC requires the court to have

regard to all the circumstances of the case in reaching its decision on forfeiture, and the court is ultimately concerned with reaching a decision that is fair and just in all the circumstances. Nevertheless, a surety's lack of means, taken alone, will generally be an inadequate reason for any reduction in forfeiture. Such lack of means must amount to an exceptional circumstance warranting departure from the *prima facie* position of full forfeiture. This is justified on the basis that (i) by executing his bond, the surety is taken to have represented that he is willing and able to suffer the potential consequences of forfeiture; and (ii) the system of bail will not perform its function effectively if the threat of forfeiture is illusory and easily eluded.

(3) Potential impact of forfeiture on the surety's dependents

57 In *Coleman*, Roch J delivered a concurring judgment where he agreed with the approach outlined by McCullough J in *Heward-Mills* that I have reproduced at [41] above. Roch J proceeded as follows (at 158):

> In order to determine what is fair and just in a particular case, it is necessary for the court to consider all the matters placed before it by or on behalf of the surety and by the prosecution, if the prosecution is invited by the court to intervene, which are relevant. *One matter which in my judgment is relevant is the effect that the estreatment of the full amount of the recognizance will have on the surety and others who will be affected, for example members of the surety's family.* If the estreatment of a recognizance involves not merely the payment of a sum of money by the surety but the sale of property in which the surety has a joint interest with another person or a home in which the surety lives with his family, then these are matters which a surety is entitled to place before the court and which the court is entitled to consider in deciding whether to estreat the whole of the recognizance or whether it is an appropriate case for giving relief and, if it is such a case, the extent to which relief from forfeiture should be given.
>
> [emphasis added]

58 I agree that the potential impact of forfeiture on the surety and his family is a relevant consideration for the court in ascertaining a fair and just result having regard to all the circumstances of the case, pursuant to s 104(2) of the CPC. But in my view, this is a plea that should, in the general run of cases, have limited mitigating effect. The detriment to be suffered by the surety's dependents must amount to an exceptional circumstance that, in the court's mind, justifies forfeiture of less than the whole amount of the bond.

59 I say this for the reason that the surety should have borne in mind the potential consequences of forfeiture on his dependents before agreeing to take on the responsibility. In almost every case, the loss of the bond amount will have an impact on the family finances, sometimes even causing hardship and a trickle-down effect on the lives of the surety's children and other dependents. These are matters which the surety should have foreseen and considered, either at the point where he agreed to stand as surety or subsequently when he had the opportunity to apply for the bond to be discharged. I do not say that such consequences will never be relevant considerations for the court in the exercise of its discretion. But it would erode the pull of bail if sureties are consistently allowed to point to the hardship that might be suffered by their family as an entire answer to the question of forfeiture. That would be a thoroughly unsatisfactory result for the general administration of criminal justice. Accordingly, save in exceptional circumstances and where fairness and justice so demand, the balance tips in favour of a restrictive approach to pleas of familial hardship. As Donaldson LJ in *Parfrey* observed at 211, "the burden of satisfying a court that the full sum should not be forfeit is a very heavy one, so let no one think that they can simply appear before magistrates and tell some hard luck story, whereupon the magistrates will say 'Well, be

more careful in future.' We are not dealing with that character of obligation at all".

(4) Whether the surety made efforts, after the accused's non-attendance in court, to locate the accused and secure his subsequent arrest or attendance in court

60 In *Public Prosecutor v Suhaili Binti Rahmat* [2010] SGDC 199 ("*Suhaili*"), the accused repeatedly failed to turn up in court and a total of ten Warrants of Arrest were issued against him (at [3]). At the show cause hearing, the accused turned up together with his surety and the accused was then taken into custody (at [4]). The district judge found at [5] that the surety was unable to offer any explanations for the accused's prior absences or any mitigating circumstances. Indeed, in the district judge's view the surety appeared "nonchalant and disinterested" in the show cause proceedings. The district judge found that there was no evidence of due diligence on the surety's part to ensure the accused's attendance in court until the conclusion of his case or of any other mitigating circumstances for the judge's consideration. Nevertheless, the district judge decided to forfeit only half the bail sum, *ie* $5,000 out of $10,000.

61 Mr Chan submits, quite reasonably, that the court in *Suhaili* must have taken into account, as a factor militating in favour of reduced forfeiture, the fact that the surety came with the accused for the show cause hearing which enabled the court to direct the police officers to take the accused immediately into custody. Although this was not expressly stated in the decision as a mitigating factor, the district judge did not identify any other ground that would warrant forfeiture of less than the whole amount. For completeness, I note that on appeal in Magistrate's Appeal No 176 of 2010/01, the High Court

judge reduced the forfeited amount to $1,000 solely on the basis of the surety's young age.

62 In my view, while the court is certainly not barred from taking into account the fact that the accused turned up in court together with the surety at the show cause hearing, the focus of the inquiry should be on the degree of diligence demonstrated by the surety in securing the accused's attendance. If the accused's eventual appearance in court, leading subsequently to his custody, was due to the efforts of the surety who located the accused and secured his attendance, then there is good reason for the court to regard such effort as a factor weighing in favour of reduced forfeiture. On the other hand, if the accused's eventual arrest was not attributable to the diligence of the surety – for instance where the arrest was effected only after efforts by the police – it is highly doubtful whether the surety should receive any credit for the result.

63 An example can be found in *Sabri Bin Suboh v Public Prosecutor* [2001] SGDC 57, where the accused absconded after pleading guilty but was eventually arrested. The district judge found at [10] that the surety failed to show due diligence to ensure that his brother attended court. However, the court took into consideration the fact that, after the surety learnt of the accused's disappearance, he went to Johor Bahru and brought the accused back to Singapore. The district judge held that "[d]ue weight must be given to *this effort of his*[;] otherwise [the accused] would still have been at large." [emphasis added]. On this basis, $1,000 of the bond amount of $5,000 was remitted. It is clear that the district judge's focus was on *the effort made by the surety* to bring the accused back into the jurisdiction so that the court might subject him to due process, rather than the brute fact that the accused had returned to the jurisdiction. If the surety had stood by and done nothing but

fortuitously the accused had decided to return on his own accord, it is difficult to see why this should count in the surety's favour at the show cause proceedings.

64 In my view, where the surety can demonstrate that he made substantial efforts between the date of the accused's non-attendance in court and the date of the show cause hearing to ascertain the reason for the accused's absence or to locate and trace the accused's whereabouts, so as to provide useful information to the court and the police to assist in the search for the accused, then the court may take these efforts into account at the second stage of the analysis in mitigating the surety's earlier lack of due diligence in ensuring the accused's attendance in court. If the accused is successfully brought into custody either wholly or partly as a consequence of the surety's substantial efforts to locate and/or apprehend the accused, that result should be regarded as an additional mitigating factor given that the surety had, through the efforts on his part, managed to substantially remedy his earlier lack of due diligence.

(5) Whether there is a satisfactory explanation for the accused's absence

65 There is some room for debate as to whether the court may take into account, in the second stage of the inquiry, the existence of any satisfactory explanation for the accused's non-attendance. By way of example, an accused person may have fainted or have been hospitalised and therefore is unable to attend court on the required date. His surety, having failed to exercise reasonable diligence, is unable to answer the court's questions on the whereabouts of the accused or to provide a satisfactory account of what the surety did to ensure the accused's attendance. The argument could be made at the show cause proceedings that even if the surety had in fact been diligent in his duties, he could not in any event have ensured the accused's attendance

because the latter was incapacitated. Given that the key purpose of sureties' duties is to ensure that the accused turns up in court, it follows that the surety should not be penalised because he could not in any event have secured the accused's attendance, whether or not he exercised due diligence. No harm was caused by the surety's negligence. This is also the reason why a surety does not have his bond forfeited where the accused turns up in court notwithstanding (in a hypothetical case) the surety's utter failure to satisfy his duties.

66 I have doubts over the correctness of such an argument. This is for two reasons. First, if the argument were accepted, the moral luck of the surety would be the only thing that separates him from *complete* forfeiture of bail. In a case where, but for the accused's incapacitation and subsequent inability to attend court (or to abscond), the accused would have absconded as a consequence of the surety's negligence, it is only by chance that the surety does not suffer forfeiture. It is indisputable that he is as culpable as a surety whose negligence caused or contributed to the accused's non-appearance. Secondly, in practice it is more likely than not that a surety who was diligent in fulfilling his duties (*eg*, by keeping in constant communication with the accused, reminding him to attend court or accompanying him to court) would have some knowledge of the accused's whereabouts if the latter does not show up, or at least some basis to make an educated guess as to where he might be. This could save the investigation officer a considerable amount of time and resources in locating the accused, and would in any event be more satisfactory to the court than the answer "I have no idea where the accused is or why he is not present because I have not been in contact with him." Accordingly, I would be hesitant to accept such an argument, but I leave the determination of the point open for a case where it arises on the facts.

Summary of principles

67 Without derogation from or qualification of the principles that I have described in the preceding paragraphs, the following is a summary of the approach that may be taken in determining whether forfeiture is appropriate:

(a) The court should first consider whether the surety has shown sufficient cause against forfeiture. The key consideration is whether the surety exercised reasonable due diligence in the discharge of his duties as surety. It is for the surety to lay before the court evidence of want of culpability. This is an intensely fact-specific inquiry and the court should have regard to all the circumstances in making its finding.

(b) If the surety satisfies the court that sufficient cause exists, then forfeiture may be waived altogether. But if the surety fails to do so, then the court must consider the extent to which forfeiture is appropriate. The starting point where the surety fails to show sufficient cause is forfeiture of the entire amount of the bond. The surety must demonstrate the existence of exceptional circumstances to justify any lesser degree of forfeiture; this is a heavy burden to discharge. The degree of culpability of the surety is a crucial consideration in the court's assessment of the appropriate extent of forfeiture. The court should similarly have regard to all the circumstances (including any subsequent efforts made by the surety, between the date of the accused's non-attendance in court and the date of the show cause hearing, to locate or produce the accused in court) in determining, in the exercise of its discretion, the extent of forfeiture that would be fair and just.

My decision

68 I find that the Surety has not shown sufficient cause against the forfeiture of the bond. The Surety admitted before me and the District Judge that she did not communicate with the Accused. She left this to Mdm Tan. She did not even make the effort to contact Mdm Tan after the latter's calls with the Accused to find out what the Accused had said about his whereabouts and his circumstances.

69 I agree with the District Judge's observation that a surety's duties are personal to the surety and that her reliance on Mdm Tan's communication with the Accused is accordingly misplaced. Indeed, the decision in *An Wei* (that I have referred to at [36(b)] above) makes this amply clear. If the Surety chose to delegate her duties to another person (such as Mdm Tan), it does not lie in the Surety's mouth to say as sufficient cause that the Surety is not responsible for the Accused's non-compliance with the conditions of bail. The Surety herself bears her duties and she therefore ran the risk of being in breach of those duties if the Accused did not attend court despite Mdm Tan's reminders. On this basis, I also reject the Surety's argument that Mdm Tan was like her "alter ego" and that "Mdm Tan [was] exercising the bailor's responsibilities with [the Surety]".[6] Blame cannot be laid at anyone's door but the Surety's.

70 The fact that the Surety did not know (i) where the Accused was staying and (ii) the friend with whom the Accused was allegedly staying further points to the Surety's failure to comply with her obligations. In the circumstances, I agree with the Prosecution that the Surety was utterly derelict

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6 Petition of Appeal found in ROP at 8–9.

in her duties. She has failed to show any semblance of the required level of reasonable due diligence in the performance of her duties as surety.

71 I therefore consider the extent to which the amount of the bond should be forfeited. The starting point, as I have described, is forfeiture of the entire amount. The only argument that the Surety advances in this regard is that a forfeiture of the entire amount would cause hardship to her and her family, as the $60,000 represents her life savings and the money is needed for her daughter's education and Mdm Tan's medical expenses.

72 As I have explained at [56] and [58]–[59] above, the financial circumstances of the Surety and the impact that forfeiture will have on the Surety's dependants are relevant considerations. In many cases, as a result of a surety's failure to exercise diligence in the performance of his duties, forfeiture takes a heavy toll on the surety's financial situation and the ones who suffer the brunt of the hardship may ultimately be the surety's innocent dependents. This is never an easy result to contemplate. But the policy of the law, derived after careful consideration of principle and precedent, must be put into effect (albeit with care and conscientiousness in every case). And the law requires that any financial, personal or familial hardship pleaded before the court amount to exceptional circumstances before a departure from the *prima facie* position of total forfeiture is permitted.

73 I have considered the circumstances of the case with due prudence and attention. I do not find this to be an exceptional case warranting a departure from the general rule. The Surety has not discharged the heavy burden that the law places upon her to show that the entire sum should not be forfeited.

74 Accordingly, I find that the District Judge was correct to order forfeiture of the entire bond amount of $60,000.

Conclusion

75 For these reasons, I dismiss the appeal. As a final matter, I would like to record my gratitude to Mr Chan, the learned *amicus curiae*, whose legal research and submissions I have found to be thoughtful and thorough.

Chan Seng Onn
Judge

The appellant in person;
Asoka Markandu and Stephanie Chew (Attorney-General's Chambers) for the respondent;
Justin Chan (Shook Lin & Bok LLP) as young *amicus curiae*.