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

**[2019] SGHC 80**

Originating Summons No 1066 of 2017

In the matter of an application under Order 53 of the Rules of Court (Chapter 322, Rule 5, 2014 Rev Ed)

Between

Agilah a/p Ramasamy

… *Applicant*

And

Commissioner for Labour

… *Respondent*

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# JUDGMENT

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[Administrative Law] — [Judicial review]
[Employment Law] — [Work Injury Compensation Act]

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# v
# Commissioner for Labour

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22 March 2019 Judgment reserved.

**Aedit Abdullah J:**

## Introduction

1 Ms Agilah a/p Ramasamy ("the Applicant") applies for leave to commence judicial review proceedings, seeking review of the decision of the Commissioner for Labour ("the Commissioner") to refuse to take into account an objection to a notice of assessment of compensation due to her for a workplace injury that she suffered.

2 The Applicant was previously employed by Pan Asia Logistics Singapore Pte Ltd ("Pan Asia"). She was injured in a workplace accident and made a claim for compensation under the Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("WICA").

3 Due to an administrative lapse, the Commissioner did not send the notice of assessment of compensation under the WICA to the Applicant's solicitors on

record. The notice was sent to Pan Asia instead and handed to the Applicant when she subsequently returned to work. As the Applicant only passed the notice to her solicitors a month later, her objection to the notice was ostensibly submitted out of time.

4 I dismiss the application for leave, albeit on the ground that alternative remedies had not been exhausted as the notice of assessment issued by the Commissioner was not effectively served on the Applicant on the date she returned to work.

## Facts

### *Background to the dispute*

5 On 25 August 2016, the Applicant was involved in an accident at Pan Asia's premises: a reach truck operated by her colleague collided into her, causing her to sustain injuries. The Applicant sought treatment at the National University Hospital ("NUH") and was given six months of medical leave.[1]

6 On 7 September 2016, the Applicant filed an incident report with the Ministry of Manpower ("MOM"). She engaged M/s Yeo Perumal Mohideen Law Corporation ("the Applicant's solicitors") on 19 December 2016. On the same day, the Applicant's solicitors sent a letter to the MOM by fax:[2]

(a) indicating that the Applicant was legally represented;

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1 Applicant's 1st Affidavit at paras 5–9.

2 Applicant's 1st Affidavit at paras 10–11 and pp 13–22.

(b) enclosing an application form for a work injury compensation claim under s 11(1)(*b*) of the WICA; and

(c) requesting that all future correspondence regarding the Applicant's WICA claim be forwarded to them.

*The notice of assessment of compensation*

7 The Commissioner issued a notice of assessment of compensation on 16 January 2017, assessing compensation to the Applicant in the sum of $2,620 ("the Notice"). The Commissioner's assessment was based on a medical report encapsulating the following findings:[3]

(a) The Applicant's permanent incapacity was assessed to be 1%.

(b) She could be assessed for permanent incapacity at that time and was of sound mind and capable of managing herself or her affairs.

(c) Her injuries were identified as "[h]ead injury with post-concussion syndrome" and included "[p]ersistent vertigo and tinnitus".

(d) The assessment of an award for 1% of permanent incapacity was based on *A Guide to the Assessment of Traumatic Injuries and Occupational Diseases for Workman's Compensation* (Work Injury Compensation Medical Board, Ministry of Manpower, 5th ed, 2011).

8 The Notice was sent to the Applicant c/o Pan Asia on 16 January 2017. Assistant Commissioner for Labour Melissa Tan ("ACOL Tan"), who was in charge of the Applicant's claim at the time, was not made aware of the

[3] Applicant's 1st Affidavit at pp 46–52.

Applicant's solicitors' letter when she prepared and issued the Notice. An administrative oversight caused MOM's case filing system to fail to reflect that the Applicant was legally represented.[4]

9 ACOL Tan also prepared a letter dated 9 January 2017, to which the Notice was attached. ACOL Tan's letter referred the Applicant to the attached Notice and stated:[5]

> If you agree with the assessment of compensation, no reply is required. If you wish to dispute this assessment, you must notify the Ministry, using the attached prescribed form and stating precisely all ground(s) of objection, by **30 JAN 2017**. [emphasis in original]

The letter did not include any further information. The date of service listed on the attached Notice was postdated to 16 January 2017 "to facilitate compliance".

10 On 13 January 2017, Pan Asia's insurer, MSIG Insurance (Singapore) Pte Ltd ("MSIG"), received a copy of the Notice. The date of service was similarly postdated to 16 January 2017. The Notice directed MSIG to make payment of the $2,620 compensation amount within 21 days after the Notice was served on MSIG, if no objections to the Notice were received within 14 days.[6] As MSIG did not receive any notice of objection to the compensation amount within 14 days from 16 January 2017 and had no objections of its own, it proceeded to prepare a cheque for $2,620 payable to the Applicant ("the MSIG cheque"). The cheque was enclosed with a cover letter dated 23 January 2017

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4 Melissa Tan Yu Ting's Affidavit at para 12.

5 Jason Loh Chee Boon's Affidavit at pp 13-26.

6 Tan Ching Hai, Ryan's Affidavit at p 7.

and sent to MSIG's intermediary, Honan Insurance Group (Asia) Pte Ltd ("Honan").[7]

*The Applicant's receipt of the Notice*

11 Pan Asia received the Notice in a sealed envelope on 16 January 2017. It received the MSIG cheque on 14 February 2017 through Honan. Honan sent a cover letter with the MSIG cheque to explain that it covered the Applicant's WICA claim.[8]

12 On 1 March 2017, the Applicant returned to work. The Applicant and Commissioner dispute the manner in which the Applicant received the Notice:

(a) **The Applicant's version:** On 1 March 2017, Ms Teo Hoot Wah ("Teo"), the Applicant's manager, handed her a cheque for $2,620 for her "medical claims expenses". She received the sealed MOM envelope on 8 March 2017 from Ms Juliana Binti Johar ("Juliana"), her colleague. The Applicant was not informed that the contents of the letter were time-sensitive and did not open the letter. She received a second cheque from Ms Teo on 4 April 2017 for a sum of $1,674.10 for medical bills that had been incurred. She did not receive any cover letter from Honan.[9]

(b) **The Commissioner's version:** On 1 March 2017, Ms Teo instructed Ms Juliana to pass the Applicant the sealed MOM letter and the MSIG cheque. Ms Juliana's only instructions were to hand over the documents, and she had no knowledge of what the MOM letter

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7 Tan Ching Hai, Ryan's Affidavit at paras 5–7.

8 Vivienne Ng Ka Yah's Affidavit at para 5.

9 Applicant's 2nd Affidavit at paras 8–11.

contained. Ms Juliana passed the Applicant the sealed letter from the MOM and Honan's cover letter, which enclosed the MSIG cheque. Ms Juliana did not explain the contents of the MOM letter. The Applicant acknowledged receipt of Honan's cover letter and the enclosed cheque by signing on a copy of the letter, and opened and read the MOM letter in Ms Juliana's presence.[10] On 4 April 2017, Ms Teo handed the Applicant a cheque for $1,674 issued by Pan Asia, and explained that this cheque was to reimburse her for medical expenses that had been incurred. The Applicant then signed a letter acknowledging her receipt of the cheque.[11]

13 Whichever version is correct, the Applicant only received the Notice in March, some one and a half months after its putative expiry on 30 January 2017.

*The Applicant's objection to the Notice dated 18 April 2017*

14 The Applicant subsequently deposited the MSIG cheque with her bank. The work injury compensation amount was paid to her on 6 March 2017.[12] She saw her solicitors on 18 April 2017, and they informed her of the nature of the Notice and that the period for objecting to the Notice had passed.

15 The Applicant's solicitors wrote to the Commissioner on 18 April 2017 and raised the following issues:[13]

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10 Juliana's 1st Affidavit at paras 4–5 and pp 4–5; Juliana's 2nd Affidavit at paras 4–7.

11 Teo's 1st Affidavit at para 8 and p 7; Teo's 2nd Affidavit at paras 6–7.

12 Tan Ching Hai, Ryan's Affidavit at para 7.

13 Applicant's 1st Affidavit at paras 14–15 and 21–23, and pp 13–22.

(a) The Notice had not been duly sent to them, notwithstanding their earlier letter dated 19 December 2016.

(b) The Applicant had been handed a copy of the Notice on 1 March 2017, but had not been informed of what to do with it.

(c) The Applicant had instructed them to object to the award in the Notice. A notice of objection signed by the Applicant was enclosed and dated 18 April 2017. It stated that the compensation amount on "permanent incapacity [was] too low" and that there was "no assessment done by the ENT doctor".

(d) New timelines for objection and withdrawal of the Notice should be issued to preserve the Applicant's claim under "Common Law".

*The Commissioner's decision dated 25 July 2017*

16 Assistant Commissioner for Labour Jason Loh Chee Boon ("ACOL Loh") replied to the Applicant c/o her solicitors via a letter dated 25 July 2017. He stated that:[14]

(a) The Notice issued on 16 January 2017 had been effectively served on the Applicant on 1 March 2017, when she received the hard-copy Notice from Pan Asia. As she had not raised objections within 14 days of service, the Notice crystallised into an order under s 24(3) of the WICA on 15 March 2017. The objection dated 18 April 2017 would therefore be disregarded, in accordance with s 25(2) of the WICA.

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[14] Jason Loh Chee Boon's Affidavit at p 51.

(b) If the Applicant wished to make a complaint of dizziness and occasional tinnitus, she should be advised to file a claim for compensation by 24 August 2017, before the limitation period under s 11 of the WICA in respect of her 2016 accident expired.

***Summary timeline***

17 In summary, the timeline of events is as follows:

(a) **25 August 2016:** The Applicant was injured in an accident at Pan Asia's premises.

(b) **7 September 2016:** The Applicant filed an MOM incident report.

(c) **19 December 2016**: The Applicant engaged her solicitors, who faxed a letter to the MOM to indicate that she was legally represented.

(d) **16 January 2017**: The postdated date of service of the Notice, as specified in the Notice sent to the Applicant c/o Pan Asia and MSIG. Pan Asia received the Notice in a sealed envelope on this date.

(e) **23 January 2017**: MSIG issued the cheque and sent it to Honan.

(f) **30 January 2017**: The deadline for objections to the Notice, as stated in ACOL Tan's letter to the Applicant.

(g) **14 February 2017**: Pan Asia received the MSIG cheque.

(h) **1 March 2017**: The Applicant returned to work and Ms Juliana handed her the MSIG cheque. The MOM envelope enclosing the Notice was handed to her on either 1 or 8 March 2017.

(i) **6 March 2017**: The MSIG cheque was cleared.

(j) **15 March 2017**: The date the Notice crystallised into an order, according to ACOL Loh's letter dated 25 July 2017.

(k) **18 April 2017**: The Applicant saw her solicitors. They wrote to the Commissioner enclosing the Applicant's objection to the Notice.

(l) **25 July 2017:** ACOL Loh replied the Applicant c/o her solicitors to state that her objection was disregarded in accordance with s 25(2) of the WICA.

**The framework under the WICA**

18 Under the WICA, following the making of a claim, the Commissioner has the power to assess and make an order on the amount of compensation due: s 24(1). The Commissioner shall then cause to be served on the employer and the claimant the notice of assessment of compensation: s 24(2).

19 Any employer or claimant objecting to any notice of assessment of compensation must give notice of his objection in the prescribed form within 14 days after the service of the notice of assessment (or any longer period specifically allowed), stating the grounds of his objection: s 25(1).

20 The Commissioner shall disregard any ground of objection contained in any notice of objection given outside the 14-day period allowed for objections under s 25(1): s 25(2).

21 Under s 24(3), a notice of assessment "shall be deemed to have been agreed upon by the employer and the person claiming compensation, and shall have the effect of an order" under s 25D for payment of compensation if:

(a) no objection is received within 14 days after the service of the notice of assessment of compensation; or

(b) all objections so received by the Commissioner are withdrawn within 28 days after the service of the notice.

No appeal shall lie against any order under ss 24(3) or 24(3A): s 24(3B).

22 Any person aggrieved by any order of the Commissioner under the WICA may appeal to the High Court, subject to s 24(3B): s 29(1). No appeal shall lie against any order by the Commissioner unless a substantial question of law is involved in the appeal and the amount in dispute is not less than $1,000: s 29(2A).

**Parties' submissions**

***The Applicant's case***

23 The Applicant requested for leave to apply for:

(a) a quashing order in respect of the Commissioner's decision dated 25 July 2017 to refuse to take into account the Applicant's objection dated 18 April 2017; and

(b) a mandatory order to mandate the Commissioner to reassess the Applicant's claim, pending a full diagnosis of her injuries.

24 The Applicant submitted that the preliminary requirements for an application for leave have been met:

(a) The application for leave was made within three months of the date of the Commissioner's decision, *ie*, on 20 September 2017, in

accordance with O 53 r 1(6) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the ROC").[15]

(b) The Applicant had exhausted all alternative remedies before seeking judicial review as the statutory avenue of appeal under s 29(1) of the WICA was not available to her. The Notice had crystallised into an order, and she was therefore barred from bringing an appeal: s 29(1) read with s 24(3B) of the WICA.[16]

25 The Applicant next submitted that the substantive requirements for an application for leave have been fulfilled:[17]

(a) the matter complained of is susceptible to judicial review – the Commissioner was exercising statutory powers under the WICA;

(b) the Applicant has sufficient interest and standing in the matter – she made the application in respect of injuries that she suffered; and

(c) the material before the court discloses an arguable or *prima facie* case of reasonable suspicion in favour of granting the remedies sought by the Applicant – Dr Yeo's medical assessment on 10 December 2016 had been conducted prematurely; MOM's mistake had caused the state of events; and the Applicant had no recourse to alternative sources of compensation.

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15 Applicant's Submissions dated 30 November 2018 at paras 23–24.

16 Applicant's Submissions dated 29 January 2019 at paras 2–4.

17 Applicant's Submissions dated 30 November 2018 at paras 25–45.

***The Commissioner's case***

26 The Commissioner submitted that the Applicant failed to exhaust all alternative remedies. She could have brought an appeal to the High Court under s 29(1) of the WICA as to whether her objections had been wrongly refused.[18] In any case, the Applicant has not met the substantive bar for a grant of leave to commence judicial review:

(a) The Commissioner had not acted improperly, irrationally or unreasonably in issuing the Notice. The Notice had not been based on a premature assessment of the Applicant's injuries. Even if it had been premature, the Notice would not have been invalidated on that basis, and the Applicant should have submitted her objection to the Notice in accordance with the specified timelines under the WICA.[19]

(b) The Notice had been properly served on the Applicant on 1 March 2017 when it was personally handed to her. The WICA provisions regarding service were facultative and not prescriptive.[20]

(c) The Commissioner had not acted improperly, irrationally or unreasonably in refusing the Applicant's objections. The Applicant had failed to bring her objections within the specified 14-day period under s 25(1) of the WICA, and the Commissioner was bound by s 25(2) to disregard them. In any case, the Notice had crystallised into an order, in

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18 Respondent's Submissions at paras 32–69.

19 Respondent's Submissions at paras 70–107.

20 Respondent's Submissions at paras 108–133.

accordance with s 24(3), and the Commissioner's jurisdiction over the Applicant's claim thus ended.[21]

***Parties' correspondence dated 22 and 28 February 2019***

27 At the hearing on 4 February 2019, I directed the Commissioner to indicate if it would object to any application by the Applicant for an extension of time to commence a statutory appeal in connection with the present application.

28 In a letter dated 22 February 2019, the Commissioner indicated that:

> … In the event that, within 3 months of the date of this letter, the Applicant commences a Court application to seek an extension of time to bring an appeal under section 29(1) of the Work Injury Compensation Act (Cap 354) in respect of the order of the Commissioner set out in the letter dated 25 July 2017 on substantially the same facts and circumstances that the Applicant has presented in OS 1066, the Government will not object to such extension of time being granted. [emphasis in original]

The Commissioner reserved its right to intervene in the said application and/or appeal, as well as the rights of any other interested parties to participate in and/or object to such application and/or appeal.

29 The Applicant's solicitors replied on 28 February 2019 to state that the Commissioner's consent was irrelevant, given that "the employers and the insurers" would strike out any application for extension of time on the basis that the Notice had crystallised into a non-appealable order.

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21 Respondent's Submissions at paras 134–152.

**My decision**

30 I heard the application for leave to commence judicial review and the substantive application together in a "rolled-up hearing". In *Yong Vui Kong v Attorney-General* [2011] 1 SLR 1 ("*Yong Vui Kong*") at [16], Steven Chong J (as he then was) noted that where "all the evidence is already in and there is no dispute of fact", and where the hearing involves pure questions of law that have been fully argued, leave and the substantive merits of the application can and should be decided at one hearing: see, also, *Yong Vui Kong* at [17]–[19]; *Pang Chen Suan v Commissioner for Labour* [2008] 3 SLR(R) 648 at [56]. Such hearings are more common now, having the advantages of cost and time savings.

31 Having considered the submissions of the parties, I am concerned that the Applicant was not consistent as to when the Notice was served on her. Seeing as how the date of service carries important legal implications under the WICA, I weighed the facts in the round and ultimately conclude that effective service of the Notice occurred only on 18 April 2017, at the earliest, when the Applicant brought the Notice to her solicitors' attention. Accordingly, the Applicant still has recourse under s 29(1) of the WICA to appeal against the Commissioner's decision, and I dismiss her application for leave on the basis that alternative remedies have not been exhausted.

**Whether alternative remedies had been exhausted**

32 A person seeking judicial review of a public body's decision must exhaust all alternative remedies before invoking the jurisdiction of the court for judicial review: *Borissik Svetlana v Urban Redevelopment Authority* [2009] 4 SLR(R) 92 at [25]. The question here turns on whether the Applicant was

entitled to the statutory avenue of appeal under s 29(1) of the WICA or whether an appeal was precluded by operation of s 24(3B).

33 The Commissioner argued that the Applicant could have brought an appeal under s 29(1) of the WICA. The Applicant's case was that her notice of objection dated 18 April 2017 was valid. She could have brought an appeal as to whether the Commissioner had the power to receive her belatedly submitted notice of objection, or if his power to do so ceased because the Notice had crystallised into an order pursuant to s 24(3) of the WICA. The Commissioner referred to two High Court authorities that have found that s 29(1) allows an aggrieved claimant to appeal against decisions as to whether a notice of appeal of compensation has crystallised into an order under s 24(3): *Goh Yee Lan Coreena and others v P & P Security Services Pte Ltd* [2016] 4 SLR 1065 ("*Coreena Goh*") at [24] and [25]; *Temasek Polytechnic and another v Poh Peng Ghee and others (Attorney-General, intervener)* [2019] 3 SLR 305 (*"Temasek Polytechnic*") at [19] to [32].[22]

34 The Applicant contended that the Commissioner was wrong to rely on *Coreena Goh* and *Temasek Polytechnic* to argue that s 29(1) of the WICA is available to her. This is not a case that involves a substantial question of law as to whether the Notice had crystallised into an order. Rather, the Applicant accepted that as no notice of objection had been submitted within the requisite 14-day period, the Notice had crystallised into an order pursuant to s 24(3) of the WICA. Recourse to s 29(1) was accordingly precluded by s 24(3B).[23]

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22 Respondent's Submissions at paras 38–48.

23 Applicant's Submissions dated 29 January 2019 at paras 6–13.

35 I first consider the cases raised by the Commissioner.

36 The High Court in *Temasek Polytechnic* discussed the interaction between ss 24(3B) and 29(2A) of the WICA at [29]–[31]. Woo Bih Li J first observed that s 24(3)(*a*) deems the notice of assessment as having the effect of an order under s 25D on the premise that no notice of objection was received by the Commissioner within the requisite 14-day period after the notice of assessment was served. Section 24(3B) assumes that the premise under s 24(3)(*a*) is undisputed, *ie*, that no notice of objection was received by the Commissioner. It is on that basis that s 24(3B) provides for the serious consequence that no appeal is allowed. However, where it is disputed that a notice of objection was received by the Commissioner and this gives rise to a question of law, s 29(2A) applies instead of s 24(3B).

37 On the facts in *Temasek Polytechnic*, s 24(3B) of the WICA did not preclude an appeal from being brought under s 29(1): at [32]. The substantial question of law was whether a notice of objection served by an employer's insurer, and not the employer, constituted a valid objection by the employer for the purposes of s 24(3) of the WICA: at [4].

38 In *Coreena Goh*, the plaintiff brought an appeal under s 29(1) of the WICA in relation to the substantial question of law as to whether the Assistant Commissioner's decision to schedule a hearing under s 25D was valid, or if its power to do so had ceased because the notice of assessment that had been issued had become an order for payment pursuant to s 24(3): at [25]. Similarly, the case turned on whether an employer's insurer's objection constituted a valid objection by the employer under s 25(1): at [34] to [39]. On the facts, the insurer's objection was not a valid objection under s 25(1), the notice of assessment thereby crystallised into a binding non-appealable order pursuant to

s 24(3) read with s 24(3B), and the Commissioner ceased to have jurisdiction to hear the matter thereafter: at [38] to [39].

39 It is clear that the plaintiffs in *Temasek Polytechnic* and *Coreena Goh* did not rely upon s 29(1) to bring appeals in circumstances similar to the Applicant. I thus disagree with the Commissioner that these cases stand for the broader proposition that the Applicant may bring an appeal under s 29(1) of the WICA against the decision as to whether the Notice has crystallised into an order under s 24(3).

40 Crucially, the Applicant did not serve any notice of objection during the 14-day time period for objections. In comparison, objections were submitted during the requisite 14-day period in *Temasek Polytechinc* and *Coreena Goh*, albeit by the employers' insurers. The two s 29(1) appeals thus concerned the question of whether those were valid objections under s 25(1) that prevented notices of assessment from crystallising into orders under s 25D pursuant to s 24(3). Here, s 24(3)(*a*) of the WICA operated in a mandatory manner such that the Notice automatically crystallised after no objections were served in the 14 days from 1 March 2017. The Commissioner had no discretion in this regard, and made no "decision" against which an appeal may lie. Rather, it was by operation of s 24(3)(*a*) that the Notice became a *non-appealable* order for compensation thereafter.

41 At this point, it would appear that the Applicant's position that alternative remedies have been exhausted is correct in law. If, as parties accept, the Notice was served on the Applicant on 1 March 2017, the Applicant does not have recourse to the statutory avenue of appeal under s 29(1) of the WICA as the Notice crystallised into an order on 15 March 2017 pursuant to s 24(3)(*a*). The Applicant's belief that this was the case was corroborated by the position

ACOL Loh took in his letter, *ie*, that s 25(2) required that he disregard the Applicant's objection out of time because the Notice had already crystallised into an order by then (see [16] above).

42 I note, however, that the Applicant's position regarding whether the Notice was properly served was inconsistent. In order to first establish that she exhausted all alternative remedies, the Applicant implicitly accepted that she was properly served the Notice, such that the timelines under s 24(3) of the WICA ran accordingly and the Notice crystallised into a non-appealable order against which an appeal under s 29(1) could not lie.

43 Yet in the later part of her submissions arguing for ACOL Loh's decision on 25 July 2017 to be quashed, the Applicant stated that the Notice had been improperly served.[24] Counsel for the Applicant stated in oral arguments that the personal service of the Notice on the Applicant had prejudiced her and that the Notice should have been served on her solicitors instead. The Applicant had sought legal representation because she did not understand what had to be done under the WICA. Given this improper service, ACOL Loh should have taken into account her objection out of time. His decision not to do so should be quashed.

### *Whether the Notice was effectively served on 1 March 2017*

44 The Applicant is not entitled to take an inconsistent position as regards service, given that the preliminary and substantive bases for judicial review are to be established cumulatively. The Applicant's contradictory submissions therefore require that I make a finding as to whether the personal service of the

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24 Applicant's Submissions dated 29 January 2019 at paras 22–23.

Notice on the Applicant on 1 March 2017 was effective to trigger the timelines under s 24(3) of the WICA.

45 The Commissioner addressed this issue in written and oral submissions. He first argued that s 24(2) of the WICA only requires the Commissioner to "cause to be served" on the Applicant and her employer a relevant notice of assessment. Section 24(2) is facultative and not prescriptive. It does not require that documents be served only on the lawyers of legally represented person. Similarly, s 43, which specifies the methods by which documents may be served under the WICA, is also non-prescriptive. In any case, the effective informal service rule considered in *Progressive Builders Pte Ltd v Long Rise Pte Ltd* [2015] 5 SLR 689 at [22] to [38] applied.

46 The Commissioner then submitted that the Notice was effectively served on the Applicant on 1 March 2017. The Applicant had opened and read MOM's sealed letter and the Honan cover letter which expressly stated that the cheque for $2,620 was for the Applicant's claim for work injury compensation. She also deposited the MSIG cheque by 6 March 2017. Considering these facts together led to the "sole, logical conclusion" that the Applicant must have known that the cheque was in satisfaction of her WICA claim, and the amount stated on the cheque was as determined pursuant to the Notice. Even if she had not appreciated the legal significance of the Notice, she would have known that it concerned work injury compensation assessed by the MOM. It would not be unreasonable to expect that she would have forwarded the Notice to her solicitors, whom she had appointed for the purpose of assisting her with her WICA claim.[25]

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25 Respondent's Submissions at paras 108–133.

47 Notwithstanding the above, I am concerned that it is not clear from the facts that the date of service of the Notice for the purposes of s 24(3) of the WICA was 1 March 2017. The following are salient:

(a) By ACOL Tan's admission, the Commissioner made an administrative error in sending the Notice to the Applicant c/o Pan Asia on 16 January 2017. MOM's administrative lapse led ACOL Tan to be unaware that the Applicant's solicitors had requested on 19 December 2016 for her WICA-related correspondence to be forwarded to them.

(b) It appears that the Commissioner initially intended for the date of service of the Notice to be 16 January 2017. This was the (postdated) date of service listed on the notices of assessment sent to the Applicant c/o Pan Asia and to MSIG. It was clearly also the point at which the 14-day timeline under ss 24(3) and 25(1) of the WICA was supposed to begin running: ACOL Tan's letter dated 9 January 2017 specified that the Applicant had until 30 January 2017 to object to the Notice.

(c) MSIG interpreted the date of service to be 16 January 2017. MSIG was supposed to issue the cheque for the compensable amount within 21 days after service of the notice if no objections were submitted within 14 days of service: see [10] above and s 24(4)(*a*) of the WICA. As no objections were received by 30 January 2017, MSIG issued the cheque for the compensation amount of $2,620 and sent it to Honan. Honan then sent the cheque to Pan Asia, which received it on 14 February 2017.

(d) The fact that the employer's payment of the compensation amount (here, via the MSIG cheque payable to the Applicant) is supposed to *follow* the 14-day period for objection under s 24(3) of the

WICA means that the Applicant should not have been handed the MSIG cheque on the same date the Notice was served on her.

(e) The Applicant is, by her own account, not proficient in English.[26] The MOM letter and the accompanying Notice were written in English.

(f) Ms Juliana did not inform the Applicant what the contents of the sealed MOM letter were and that they were time-sensitive when she handed her the letter on 1 March 2017. It did not appear from the affidavit evidence that Ms Juliana explained to the Applicant that the MOM letter and Notice had been received on her behalf on 16 January 2017.

(g) ACOL Tan's letter and the accompanying Notice only specified the date of service and the deadline for objections to be the original January dates. Nothing in the body of the letter (excerpted above at [15]) clarified to the Applicant that the Notice's date of service should be taken to have shifted if she received the Notice and letter late.

48 Having considered the facts, I disagree with the Commissioner that the Applicant was in a position that enabled her to be aware that the sealed MOM letter contained a Notice that should have immediately been brought to the attention of her solicitors.

49 First, there are serious timeline consequences that follow from the date of service of the notice of assessment: if no objections are served within 14 days of the service of the notice, it crystallises into a non-appealable order. There is

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[26] Applicant's 2nd Affidavit at para 14.

force in the Applicant's argument that parties who convey that they are legally represented are generally entitled to assume that time-sensitive legal documents will be sent to their solicitors, who are trained and equipped to handle these matters and whom parties have put expense and time towards engaging.

50 Second, I find that the case involved such facts that adopting the Commissioner's position would place an unduly unfair and onerous burden on the Applicant. Any layperson, let alone one not proficient in English, would have been confused in the circumstances. The Applicant had been handed a notice of assessment and an accompanying letter that specified a timeframe for objections that had expired by the time of her receipt of the documents. No explanation was provided as to what the letter and notice entailed, that legal consequences followed if she failed to submit objections within 14 days, or even that these documents had been received by Pan Asia while she was away. No express or implied indication was given to the Applicant and MSIG that the initial timelines for objections would be shifted backwards to accommodate the Applicant's absence from work from January to 1 March 2017. It is reasonable for the Applicant to have assumed that any WICA-related documents would have been sent to her solicitors, and that she therefore did not act hastily. Although it would have been prudent of her to have shown her solicitors the MOM letter and Notice upon receipt, the Commissioner's own administrative lapses contributed to the existing state of affairs.

51 Although the Commissioner placed weight on the fact that the Applicant deposited the MSIG cheque by 6 March 2017, I do not find this fact significant. The Applicant should not have been given the cheque with the Notice in the first place if her WICA claim was ostensibly still pending as at 1 March 2017.

52 Finally, I note the interpretative approach taken by Tay Yong Kwang J (as he then was) in *Pang Chew Kim (next of kin of Poon Wai Tong, deceased) v Wartsila Singapore Pte Ltd* [2012] 1 SLR 15 ("*Pang Chew Kim*") at [27]:

> … It is clear that s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) enjoins courts to prefer an interpretation that would promote the purpose underlying any particular legislation. The WICA describes itself as being "[a]n Act relating to the payment of compensation to employees for injury suffered in the course of their employment". Being a piece of social legislation, the WICA should be interpreted purposively in favour of employees who have suffered injury during their employment. …

At the same time, I recognise that the WICA framework was also intended to provide "one final stop" for the expeditious payment of compensation, thereby avoiding protracted legal proceedings: *Selvam Raju v Camelron General Contractors and another* [2010] 2 SLR 1113 at [9]. Nevertheless, balancing the goals of simplicity and expedition against the need to ensure fairness to the Applicant, I find that the balance in this case tips in favour of the latter goal.

53 This is not to say a similar outcome will be reached in every case. I recognise that the Commissioner would usually have great discretion to determine how service under the WICA should be effected. However, the administrative errors on the Commissioner's part and the unique facts in this case mean that service of the Notice was not effected on 1 March 2017. Effective service only occurred, at the earliest, on 18 April 2017, when the Applicant handed the Notice to her solicitors. As the Applicant's objection was submitted on the same day, the Notice had not crystallised into an order by virtue of s 24(3) of the WICA. An appeal under s 29(1) may thus be brought against ACOL Loh's decision on 25 July 2017 not to consider the Applicant's objection dated 18 April 2017.

54 I therefore find that the Applicant's alternative remedies have not been exhausted, and dismiss her application for leave to commence judicial review proceedings.

**The effect of the Commissioner's letter dated 22 February 2019**

55 As required under O 55 rr 2(1) and 3(2) of the ROC, an appeal under s 29(1) of the WICA must be brought by originating summons within 28 days after the date of the "judgment, order, determination, or other decision" being appealed against. Although any appeal against ACOL Loh's decision would now be out of time, leave for an extension of time may be granted by the court hearing the s 29(1) appeal: see *Coreena Goh* at [26] to [29].

56 The Commissioner stated in his 22 February 2019 letter (excerpted above at [28]) that the Government will not object to such an application for leave, but I leave it to him to decide if he wishes to maintain that position in the present circumstances. I would note only that the Applicant's case is that she elected to apply for leave to commence judicial review on the understanding that the Notice had crystallised into an order, thus barring an appeal under s 29(1) of the WICA: see [24(b)] above.

**Conclusion**

57 The Applicant failed in her application for leave to commence judicial review, but on the basis that her right to appeal under s 29(1) of the WICA had not been exhausted as her objection to the Notice was properly raised. The matter is now in the hands of the Applicant, who must decide if she wishes to proceed with that route.

58 In the circumstances, I am not minded to order costs, but will hear parties on this through separate directions. Time for appeal is extended in the meantime.

Aedit Abdullah
Judge

Perumal Athitham and Roy Paul Mukkam (M/s Yeo Perumal Mohideen Law Corporation) for the applicant;
Jeyendran Jeyapal, Gordon Lim and Sheryl Yeo (Attorney-General's Chambers) for the respondent.