IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 136

Suit No 920 of 2019
(Registrar's Appeal No 98 of 2020)

Between

Yuen Minglan Helga Mrs Minglan Helga Alle
(executrix of the estate of Mrs Yuen Ingeborg Nee Santjer, deceased)
… *Plaintiff*

And

(1) Ng Yung Chuan Sean

(2) Parkway Hospitals Singapore Pte Ltd trading as Mount Elizabeth Hospital

(3) VS Investment Holdings Pte Ltd formerly known as Ardmore Orthopaedics Pte Ltd
… *Defendants*

JUDGMENT

[Civil procedure] – [Experts]

Yuen Minglan Helga Mrs Minglan Helga Alle (executrix of the estate of Mrs Yuen Ingeborg Nee Santjer, deceased)
v
Ng Yung Chuan Sean and others

[2020] SGHC 136

High Court — Suit No 920 of 2019 (Registrar's Appeal No 98 of 2020)
Choo Han Teck J
29 June 2020

6 July 2020 Judgment reserved.

Choo Han Teck J:

1 The first defendant performed a knee replacement surgery on one Yuen Ingeborg Nee Santjer ("Madam Yuen") on 1 November 2016. Complications developed the next day, but the first defendant had already left the hospital for an overseas trip earlier that day.

2 According to the statement of claim, three doctors took over the management of Madam Yuen and performed a second surgery on her, but her condition did not improve. She allegedly began suffering multiple organ failure, and her leg was amputated above the knee in an attempt to save her. This too allegedly failed, and Madam Yuen's condition continued to worsen. She eventually passed away on 7 November 2016.

3 Madam Yuen's purported executrix is suing as the plaintiff on the estate's behalf against the first defendant. She is also suing the second defendant as the party having management of Mount Elizabeth Hospital where Madam Yuen's surgery took place. The third defendant is the company having the management of Ardmore Orthopaedic Clinic in which the first defendant practised. Ardmore Orthopaedic Clinic itself is not named as a party, but that is not the issue before me in this appeal.

4 Mr Edmund Kronenburg, counsel for the plaintiff, requested by a letter dated 5 May 2020 to the assistant registrar a direction that the defendants file and serve independent medical expert reports in support of the defences they had filed, and that the plaintiff be given two weeks thereafter to file and serve her replies. Mr Kronenburg took the view that paragraph 4 of Appendix J of the Supreme Court Practice Directions, which contains the High Court Protocol for Medical Negligence Cases ("the Protocol"), requires the defendants to do so just as it requires a plaintiff to attach her medical expert report in support of her claim when her statement of claim is filed.

5 The assistant registrar replied by letter of the same date informing Mr Kronenburg that his request was denied. The plaintiff filed this appeal against the assistant registrar's rejection of Mr Kronenburg's request through his letter of 5 May 2020.

6 Before me, Mr Kronenburg maintains his argument that the Protocol had changed the "paradigm" of practice and that since a plaintiff is now obliged to attach her expert report when she files her statement of claim, a defendant should likewise file her defence with her expert report attached "in the spirit of

the Protocol", and to facilitate the fair exchange of information and the early resolution of the dispute.

7 With respect, that is a complete misunderstanding of the Protocol. In a medical negligence case, a plaintiff has up to three years to file his statement of claim before her action is time-barred. Against that, a defendant has only two weeks to file her defence when she has been served with the claim.

8 The plaintiff has much more time to prepare her case and get her expert report than a defendant does. Further, when a plaintiff files her claim, she is expected to be fully ready to proceed. She should not file a claim without knowing whether she has the medical evidence to back it up. On the other hand, the defendant is not obliged to call any medical expert evidence if her counsel is confident of neutralising, if not destroying, the plaintiff's medical evidence without the need to call her own. The Protocol is thus intended to expedite the action by having the plaintiff's medical evidence filed early instead of having a plaintiff asking for time to look for medical expert evidence only after filing her claim.

9 The Protocol in spirit and in substance does not impose the condition on the defendant that Mr Kronenburg sought. But this is not the only misunderstanding of procedure on the part of counsel. This appeal was filed against the letter of the assistant registrar in reply to Mr Kronenburg's request in his letter of 5 May 2020.

10 Letters are mere epistles, some are of love, and some are of hate. They are not the official orders of a court that bring into play the appeal procedure set out in the Rules of Court (Cap 322, R 5, 2014 Rev Ed). When a party wishes to

be heard by the court, the procedure is to file an application to the court. It should not be writing letters.

11 The modern practice of law leans towards the trim, speedy resolution of disputes in the interests of clarity, access to justice, and indeed of justice itself, but let that not mislead counsel into thinking that procedure is no longer important, and that the letter has replaced the need for proper applications to the court.

12 For the above reasons, the appeal is struck out for being irregular, which is the proper order as opposed to the appeal being dismissed, for the latter assumes that there were merits in both substance and procedure. Costs will be costs thrown away to the three defendants to be fixed at a later date if parties are unable to agree costs.

Choo Han Teck
Judge

Edmund Jerome Kronenburg and Esther Lim Yanqing (Braddell Brothers LLP) for the plaintiff;
Melvin See Hsien Huei, Geraldine Yeong Kai Jun and Michelle Lee Ying-Ying (Dentons Rodyk & Davidson LLP) for the first and third defendants;
Kuah Boon Theng SC, Samantha Oei Jia Hsia and Yong Kailun Karen (Legal Clinic LLC) for the second defendant.