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

[2021] SGHCR 1

Originating Summons No 1064 of 2020

Between

Autoexport & EPZ Pte Ltd
(formerly known as AJ
Towing (S) Pte Ltd)

… *Applicant*

And

TOW77 Pte Ltd

… *Respondent*

JUDGMENT

[Courts and Jurisdiction] — [District Court] — [Transfer of cases]
[Courts and Jurisdiction] — [District Court] — [Power]

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Autoexport & EPZ Pte Ltd (formerly known as AJ Towing (S) Pte Ltd)
v
TOW77 Pte Ltd

[2021] SGHCR 1

General Division of the High Court — Originating Summons No 1064 of 2020
AR Randeep Singh Koonar
27 November, 30 December 2020

26 January 2021 Judgment reserved

AR Randeep Singh Koonar:

Introduction

1 Autoexport & EPZ Pte Ltd ("AEPL") and TOW77 Pte Ltd ("TPL") are parties to ongoing proceedings in District Court Suit No 2021 of 2020 ("DC 2021"). TPL is the plaintiff in the claim and the defendant in the counterclaim. AEPL is the defendant in the claim and the plaintiff in the counterclaim.

2 In Originating Summons No 1064 of 2020 ("OS 1064"), AEPL applies to transfer the whole of the District Court proceedings to the General Division of the High Court (which I will refer to as "the High Court" for convenience). AEPL alternatively applies for its counterclaim alone to be transferred to the High Court.

3 AEPL's application is made pursuant to ss 54B and 54E of the State Courts Act (Cap 321, 2007 Rev Ed) ("the SCA"). AEPL's principal reason for its application is that its counterclaim exceeds the District Court limit of $250,000.

4 The case law clearly establishes that the likelihood of a party's claim exceeding the District Court limit ordinarily provides sufficient reason for transferring a *claim* to the High Court pursuant to s 54B(1) of the SCA, subject to considerations of prejudice to the opposing party.

5 What the cases have not considered, is whether, and if so how, this position is affected where the transfer of a *counterclaim* is being sought. In such circumstances, s 54E of the SCA, which specifically deals with the transfer of a counterclaim is engaged. There are two crucial issues:

(a) The first concerns whether s 54E(4) of the SCA permits the District Court to hear any counterclaim, even one exceeding the District Court limit; and additionally, to award damages exceeding the District Court limit.

(b) The second, and related point, concerns the interplay between s 54B(1) and s 54E of the SCA. If the answer to (a) above is in the affirmative, should the fact that the amount in the counterclaim exceeds the District Court limit still be regarded as presumptively providing sufficient reason for a transfer? If not, how should the Court exercise its discretion?

6 These issues lie at the heart of OS 1064.

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Facts

The parties and their disputes

7 It suffices to briefly state the facts giving rise to the disputes between parties.

8 AEPL and TPL are Singapore incorporated companies. Both claim to be in the business of providing towing services for motor-vehicles.

9 On 27 February 2020, AEPL and TPL entered into a written agreement for AEPL to sell its towing business to TPL ("the Agreement"). The salient written terms of the Agreement were as follows:

(a) The total contract sum payable by TPL to AEPL was $550,000. This was to be paid in the following manner:

(i) A $50,000 down-payment upon execution of the Agreement.

(ii) Thereafter, 10 monthly instalments of $50,000 each, commencing 31 April 2020 until full payment of the contract sum was made.

(b) AEPL was to use the down-payment and monthly instalments received from TPL for full or partial settlement of the hire-purchase contracts of its tow-trucks. For every $100,000 paid by TPL to AEPL, AEPL was to fully redeem at least one of the tow trucks and transfer its title to TPL.

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(c) In any event, AEPL was to deliver the tow trucks specified in the contract to TPL, and TPL was to take possession of the tow trucks, by 1 March 2021 or some other mutually agreed upon date.

(d) TPL would execute all towing contracts taken over from AEPL under the Agreement.

10 The circumstances surrounding the making of the Agreement are disputed by parties. AEPL claims there is a mistake in the written terms of the Agreement, in that the first instalment was to be paid on 31 March 2020 and not 31 April 2020 (a date which does not exist), as the Agreement provides. This is disputed by TPL.

11 On or about 27 February 2020, TPL transferred $50,000 to AEPL for the down-payment under the Agreement. This is undisputed.

12 On or about 21 March 2020, TPL transferred a further $10,000 to AEPL. This is also undisputed.

13 What transpired thereafter is important because it forms the factual basis of AEPL's counterclaim.

(a) AEPL's case is that sometime in March 2020, it reminded TPL that the first instalment of $50,000 was due at the end of March. However, TPL had insufficient funds to pay the first instalment and offered to pay $10,000 first as a sign of good faith. As mentioned above (at [12]), TPL paid AEPL $10,000 on 21 March 2020. Thereafter, TPL further failed to pay the April instalment. When AEPL chased TPL for payment of the balance, TPL claimed that it was unable to pay the monthly instalments but promised to make full payment of the balance

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sum later. On or about 21 May 2020, TPL delivered a cheque drawn in AEPL's favour for the sum of $490,000 and post-dated to 31 June 2020. This cheque was later exchanged for another cheque ("the Cheque") for the same sum but post-dated to 30 June 2020 (because 31 June 2020 was a date that did not exist). AEPL claims that the Cheque was meant to be full payment of the outstanding contractual sum and that AEPL would perform its contractual obligations once the Cheque was honoured.

(b) TPL disputes AEPL's narrative of the circumstances in which the $10,000 was paid, and the Cheque issued:

(i) TPL's case regarding the $10,000 is that it was not part-payment of the March 2020 instalment (since TPL's case is that the first instalment was only due on 31 April 2020). Instead, the $10,000 was paid on "compassionate grounds" because AEPL indicated it was having financial difficulties.

(ii) TPL's case in OS 1064 regarding the Cheque is firstly that the Cheque was issued in the interim as a "gesture of sincerity" while parties tried to resolve certain disputes which had arisen in relation to the Agreement. Specifically, TPL denies that the Cheque was issued as full payment of the outstanding contractual sum. TPL further claims there was a meeting between AEPL and TPL on 8 June 2020, where it was agreed, among other things, that AEPL would return the Cheque to TPL. AEPL thus knew that the Cheque would be not be honoured.

(c) AEPL admits that parties had a meeting on 8 June 2020. AEPL claims that the meeting was called because TPL wanted to demand the

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return of the Cheque. However, AEPL maintains that it never agreed to return the Cheque at the meeting.

14 On 30 June 2020, the Cheque was dishonoured upon presentation by AEPL. TPL admits to cancelling the Cheque but claims to have done so pursuant to an agreement made with AEPL at the 8 June 2020 meeting.

The District Court proceedings

15 On 31 August 2020, TPL commenced proceedings in the District Court against AEPL, by way of DC 2021. TPL pleaded causes of action against AEPL arising from the Agreement, for fraudulent misrepresentation and breach of contract. TPL's principal claim for relief against AEPL was for a sum of $123,140.22 which it alleged AEPL had received on its account.

16 AEPL filed its Defence and Counterclaim on 28 September 2020. AEPL denied TPL's allegations of fraudulent misrepresentation and breach of contract. AEPL further counterclaimed for the sums of $490,000 and $14,781.83. The first sum of $490,000 is for damages for the Cheque being dishonoured. This claim is paramount in OS 1064 because it is the basis of AEPL's contention that the District Court proceedings should be transferred to the High Court since the value of its counterclaim exceeds the District Court limit. The second sum of $14,781.83 comprises expenses AEPL claims it incurred as a result of TPL's breach of the Agreement, less sums which AEPL admits are owing to TPL for towing jobs performed.

AEPL's transfer application

17 AEPL filed OS 1064 on 22 October 2020. AEPL's principal prayer for relief is for the whole of proceedings in DC 2021 to be transferred to the High

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Court. Alternatively, AEPL seeks to have its counterclaim alone transferred. To this end, AEPL relies on ss 54B and 54E of the SCA as the basis of its application.

18 For completeness, I note that OS 1064 originally included an ancillary prayer for an extension of time to apply for summary judgment on the counterclaim should the main prayers be allowed. However, AEPL sought leave to withdraw this ancillary prayer at the hearing before me on 30 December 2020, which I granted.

My decision

Overview of the District Court's jurisdiction and the transfer provisions

19 Before examining ss 54B and 54E of the SCA, it is helpful to sketch out the provisions of the SCA conferring jurisdiction on the District Court. These provisions form the statutory context in which ss 54B and 54E are to be interpreted.

20 The District Court's general civil jurisdiction is conferred by s 19 of the SCA. As a starting point, s 19(1) and (2) confer the District Court with broad jurisdiction, identical to the jurisdiction conferred on the General Division of the High Court:

> **General civil jurisdiction**
>
> **19.**—(1) A District Court exercising civil jurisdiction shall be a court of record.
>
> (2) Subject to subsections (3) and (4), a District Court shall have all the jurisdiction of the General Division of the High Court to hear and try any action in personam where —
>
> (a) the defendant is served with a writ of summons or any other originating process —

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> (i) in Singapore in the manner prescribed by Rules of Court; or
>
> (ii) outside Singapore in the circumstances authorised by and in the manner prescribed by Rules of Court; or
>
> (b) the defendant submits to the jurisdiction of a District Court.

21 However, the broad jurisdiction conferred on the District Court is then expressly made subject to several exceptions set out in s 19. One exception which is of significance in OS 1064 is s 19(4), which subjects the District Court's jurisdiction to a monetary limit known as "the District Court limit". The provision reads:

> (4) Subject to sections 22 and 23, a District Court's jurisdiction under subsection (2) shall not include jurisdiction to hear and try any action where —
>
> (a) the *amount claimed in the action* exceeds the District Court limit; or
>
> (b) any *remedy or relief sought in the action is in respect of a subject-matter the value of which exceeds* the District Court limit.
>
> [emphasis added]

22 The current District Court limit is $250,000.

23 Where proceedings are ongoing in the District Court, a party may apply to have the proceedings transferred to the High Court. Section 54B is the general provision governing such transfers and it reads:

> **General power to transfer from State Courts to General Division of High Court**
>
> **54B.**—(1) Where it appears to the General Division of the High Court, on the application of a party to any civil proceedings pending in a State Court, that the proceedings, *by reason of its involving some important question of law, or being a test case, or for any other sufficient reason*, should be tried in the General

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> Division of the High Court, it *may order* the proceedings to be transferred to the General Division of the High Court.
>
> (2) An order under subsection (1) may be made on such terms as the court sees fit.
>
> [emphasis added]

24 I pause here to make two observations. First s 54B(1) provides for three grounds on which proceedings may be transferred, namely: (1) the proceedings raise an important point of law; (2) the proceedings are a test case; and (3) a residual ground of "any other sufficient reason". AEPL relied solely on the final ground in OS 1064. As will be seen below, the interpretation to be accorded to this phrase "any other sufficient reason" is a central issue in OS 1064. Second, even if the prescribed grounds under s 54B(1) are met, the court still has *discretion* as to whether to transfer a case. And as the case authorities (discussed at [28]–[29] below) show, a key consideration in the exercise of the court's discretion is prejudice to the opposing party.

25 Section 54E is a specific provision that only applies where a defendant has filed in counterclaim in the State Courts involving a matter beyond the District Court limit. In such cases, a party to the proceedings may apply for the whole of the proceedings or the proceedings on the counterclaim to be transferred to the High Court. Section 54E is an important provision in OS 1064 and merits reproduction in full:

> **Transfer of counterclaim from State Courts to General Division of High Court**
>
> **54E.**—(1) Where, in any civil proceedings pending in a State Court, *any counterclaim or set-off and counterclaim of any defendant involves a matter beyond the District Court limit*, any party to the proceedings may apply to the General Division of the High Court, within such time as may be prescribed by Rules of Court, for an order that the whole proceedings, or the proceedings on the counterclaim or set-off and counterclaim, be transferred to the General Division of the High Court.

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> (2) On any such application or on its own motion, the General Division of the High Court *may*, as it thinks fit, and on such terms as it sees fit, order —
>
> > (a) that the whole proceedings be transferred to the General Division of the High Court;
> >
> > (b) that the whole proceedings be tried in the State Courts; or
> >
> > (c) that the proceedings on the counterclaim or set-off and counterclaim be transferred to the General Division of the High Court and that the proceedings on the plaintiff's claim and the defence thereto other than the set-off (if any) be tried in the State Courts.
>
> (3) Where an order is made under subsection (2)(c), and judgment on the claim is given for the plaintiff, execution thereon shall, unless the General Division of the High Court at any time otherwise orders, be stayed until the proceedings transferred to the General Division of the High Court have been concluded.
>
> (4) *Where no application is made under subsection (1) or where it is ordered that the whole proceedings be tried in the State Courts, such State Court shall have jurisdiction to try the proceedings, notwithstanding any other provision of this Act.*
>
> [emphasis added]

26 It will be evident that like s 54B, s 54E confers a discretion on the court. However, the provision is silent as to how that discretion is to be exercised. As with other judicial discretions, such discretion cannot be unfettered or at large. Instead, it must be exercised in accordance with judicial standards, bearing in mind the object and purposes of the SCA. This, in turn, is a matter of statutory interpretation.

The Court of Appeal's interpretation of the phrase "sufficient reason" under s 54B SCA in Keppel Singmarine

27 To recapitulate, s 54B of the SCA gives the High Court discretion to transfer civil proceedings pending in a State Court to the High Court where there is, among other things, "sufficient reason" for doing so.

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28 In *Keppel Singmarine Dockyard Pte Ltd v Ng Chan Teng* [2010] 2 SLR 1015 ("*Keppel Singmarine*") the Court of Appeal held (at [16]–[17]) that the likelihood of a plaintiff's damages exceeding the jurisdictional limit of the District Court would, *ordinarily*, be regarded as "sufficient reason" for a transfer. However, this alone would not justify a transfer. A court must still undertake a holistic exercise to consider whether to exercise its discretion to transfer. A key consideration here is prejudice to the opposing party, which is, however, not to be found simply because a damages award in the High Court may exceed $250,000.

29 These principles established in *Keppel Singmarine* have been applied by the High Court in subsequent cases: see *Tan Kee Huat v Lim Kui Lin* [2013] 1 SLR 765 ("*Tan Kee Huat*") at [28]; *Ng Djoni v Miranda Joseph Jude* [2018] 5 SLR 670 ("*Ng Djoni*") at [20]; *Wong Siew Mee v Jee Lee and another (Tan Poh Weng Andy (formerly known as Tan Poh Kim), third party)* [2020] 5 SLR 1391 at [52].

AEPL's reliance on Keppel Singmarine is misplaced

30 Relying on the principles established in *Keppel Singmarine*, counsel for AEPL, Ms Glenda Lim ("Ms Lim"), submits there is "sufficient reason" to transfer the proceedings in the present case because the amount claimed in AEPL's counterclaim exceeds the District Court limit.

31 I do not agree with Ms Lim's submission. In my judgment, the *Keppel Singmarine* and the cases following it do not assist AEPL in establishing there is sufficient reason to transfer DC 2021 or the counterclaim to the High Court. I make four observations in this regard.

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32 First, it is pertinent to appreciate the underlying policy rationale for *Keppel Singmarine's* holding that the likelihood of a plaintiff's damages exceeding the District Court limit is, ordinarily, sufficient reason for transferring the proceedings to the High Court. If this was not the case, a plaintiff would be placed in an invidious position *because the District Court would lack jurisdiction to hear his claim*.

33 It is true that instead of having the proceedings transferred, the plaintiff may seek to avoid the District Court limit in other ways. However, none of these are entirely satisfactory or apt to produce fair or just outcomes.

34 For example, a plaintiff may abandon part of his claim under s 22 of the SCA to give the District Court jurisdiction. However, this can result in the plaintiff recovering damages which are lower than what he would otherwise be entitled to at law. A plaintiff can alternatively seek the defendant's agreement to the District Court having jurisdiction under s 23 of the SCA. It suffices to say that such consent is not always forthcoming. Finally, a plaintiff may discontinue the District Court proceedings and re-commence them in the High Court if the relevant limitation period has not expired. But recommencing can be costly to parties, result in unnecessary duplication in work, and waste precious judicial resources.

35 Hence, there are strong policy considerations underpinning *Keppel Singmarine's* holding that the likelihood of a plaintiff's damages exceeding the District Court limit would ordinarily provide sufficient reason for a transfer.

36 Second, *Keppel Singmarine* and the cases following it did not concern a situation like the present, where it is the *defendant's counterclaim*, and not the plaintiff's claim, which exceeds the District Court's jurisdictional limit. This is

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a material distinction. Where a counterclaim is involved, s 54E of the State Courts Act applies. Crucially, s 54E(4) provides that if no application is made to transfer the proceedings or the counterclaim, or if the High Court decides not to transfer the proceedings or the counterclaim, "[the] State Court *shall have jurisdiction to try the proceedings, notwithstanding any other provision* of [the SCA] [emphasis added]".

37 The position where a counterclaim is involved is therefore materially different to the situation in *Keppel Singmarine*, where the Court of Appeal's interpretation of the phrase "sufficient reason" under s 54B of the SCA would have been influenced by the District Court's lack of jurisdiction to try the plaintiff's claim.

38 Third, and related to the second, the existence of the specific provision in s 54E of the SCA must be borne in mind when interpreting the general provision in s 54B. In other words, s 54B must be read in the context of s 54E and the phrase "sufficient reason" in s 54B should not be read in a way which renders s 54E otiose. Instead, a harmonious interpretation of the provisions should be preferred.

39 As I intimated to parties at the hearings on 27 November and 30 December 2020, the interplay between s 54B and s 54E was an important issue for the Court to consider. There also appears to be a dearth of precedent on how s 54E of the SCA should be interpreted.

40 TPL's counsel, Mr Rajwin Singh Sandhu ("Mr Singh"), elected to disregard the issue entirely in his written submissions. In oral submissions, Mr Singh went no further than barely assert that s 54E(4) meant that the District Court had jurisdiction to hear the counterclaim.

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41 But more importantly, it is AEPL that bears the burden of persuasion in OS 1064. I find AEPL's submissions to be unpersuasive and internally inconsistent.

42 Ms Lim's first submission is that s 54E(4) of the SCA does not apply or is irrelevant. Ms Lim submits that the District Court cannot have jurisdiction to hear a counterclaim exceeding its jurisdictional limit given s 19 of the SCA, which establishes the District Court limit.

43 I disagree with this submission. To begin, this submission is repugnant to the plain words of s 54E(4) which state the contrary. On a purposive interpretation, there are also compelling reasons as to why Parliament may have intended to confer the District Court with jurisdiction to hear counterclaims exceeding the District Court limit. One such reason would be to allow for the consolidation of related proceedings, to avoid multiplicity of proceedings.

44 Ms Lim's second submission is that the District Court will only have jurisdiction to hear the counterclaim in DC 2021 and award damages exceeding the District Court limit if the High Court makes an order to that effect. Ms Lim further seeks to rely on this to explain the purported necessity of the application in OS 1064, even if the counterclaim is to eventually be heard by the District Court.

45 I disagree with this submission. Section 54E(1) makes clear that the District Court has jurisdiction to hear a counterclaim exceeding the District Court limit where *no application for a transfer is made*. An order of the High Court dismissing an application for a transfer is not a pre-condition to the District Court hearing the counterclaim.

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46 Ms Lim's third and final submission is that even if the District Court had jurisdiction to *hear* the counterclaim, it will not be able to *award damages* exceeding the District Court limit.

47 I disagree with this submission. This submission is not borne out on a plain reading of s 19 of the SCA, which is plainly directed to a District Court's *hearing jurisdiction*, and not its power to award damages. Notably, the monetary limit imposed by s 19(4) refers to the District Court's power to "hear and try" an action.

48 A contextual reading of the SCA further supports this interpretation.

49 First, s 19(4) is expressly made subject to s 22 and 23 of the SCA. Under the latter provision, if parties agree for the District Court to have jurisdiction notwithstanding the claim exceeding the District Court limit, it is inconceivable that the District Court's power to award damages is capped at the District Court limit. If that were so, a plaintiff would effectively be abandoning the portion of his claim exceeding the District Court limit (as he might do under s 22 of the SCA). This leaves no meaningful distinction between ss 22 and 23 of the SCA. Parliament could not have intended this when legislating for the District Court limit.

50 Second, s 31 of the SCA provides that when a District Court is acting within its jurisdiction, it has the power to grant such remedies as ought to be granted by the High Court. This suggests that once properly seized of hearing jurisdiction, there is no monetary cap on the quantum of damages the District Court can award.

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51 In any case, Ms Lim resiled from her third submission during oral argument. Ms Lim accepted that the District Court can award damages exceeding the District Court limit if the counterclaim is not transferred but insisted that this was contingent upon the High Court making an order to that effect. For the reasons given above (at [45]), I reject this argument.

52 In my judgment, therefore, the likelihood of a defendant's *counterclaim* exceeding the District Court limit does not *ordinarily provide* sufficient reason for transferring the entirety of the proceedings or the counterclaim alone to the High Court. I find that *Keppel Singmarine* and the cases following it are distinguishable in view of the specific provisions of the SCA applying to counterclaims, and the unique policy considerations which apply to a counterclaim.

A two-stage approach should be adopted to determine whether a transfer should be ordered where a counterclaim exceeds the District Court limit

53 While the likelihood of a defendant's counterclaim exceeding the District Court limit does not ordinarily provide "sufficient reason" for a transfer of proceedings under s 54B and s 54E of the SCA, it remains a relevant, if not pertinent, consideration under both sections. Under s 54B, the High Court's powers of transfer may only be exercised upon a showing of "sufficient reason" by the applicant. Likewise, under s 54E, an application for a transfer may only be made where any counterclaim or set-off and counterclaim involves a matter beyond the District Court limit.

54 In my judgment, a two-stage approach may be helpfully adopted in cases where a defendant applies to transfer proceedings from the District Court to the High Court on the ground that its counterclaim exceeds the District Court limit.

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55 At the first stage, the court should consider the likelihood of the counterclaim exceeding the District Court limit. If a defendant fails to prove this, by adducing *prima facie*, credible evidence, he cannot rely on s 54E of the SCA to justify the transfer. Likewise, the defendant should be taken as having failed to show "sufficient reason" under s 54B of the SCA if that is the sole ground on which the application is based. If the defendant fails to make the requisite showing at the first stage, there is no need to go to the second stage.

56 At the second stage, the court should conduct a holistic evaluation of all material circumstances to determine whether it should exercise its discretion to transfer. This would be in keeping with the Court of Appeal's observations in *Keppel Singmarine* at [17]. In my respectful view, adopting a multi-factorial test would be helpful in this regard. A non-exhaustive list of relevant factors would include:

(a) The complexity of the claim and the counterclaim, in terms of the legal and factual issues raised.

(b) The risk of conflicting judgments and wastage of resources arising from duplicity of proceedings if the claim and the counterclaim are heard by different courts.

(c) The prejudice to the plaintiff if the proceedings or the counterclaim are transferred.

(d) The prejudice to the defendant if the proceedings or the counterclaim are not transferred.

(e) Delay by the defendant in applying for the transfer.

57 I make three observations here.

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58 First, as with any multi-factorial test, no single factor has a talismanic quality. The weight to be assigned to each factor instead depends on the circumstances.

59 Second, the same test should be applied whether a transfer is being sought under s 54B or s 54E of the SCA. There is no reason in principle or policy which merits adopting a different test. If anything, the need for consistency in deciding such applications points towards a similar approach being adopted.

60 Third, transfer applications are *generally* an inappropriate forum for the court to resolve disputes of fact based on affidavit evidence without the benefit of cross-examination: see *Tan Kee Huat* at [33]. I make this point because Mr Singh's submissions were singularly aimed at persuading the Court that TPL's narrative regarding the issuance and cancellation of the Cheque should be believed over AEPL's. In my view, Mr Singh's undue focus on the merits of the dispute was misconceived, and unhelpful to the resolution of the issues before the Court.

61 On the one hand, I accept that under *Singmarine* and its progeny, a plaintiff must show a possibility or a likelihood that his claim would exceed the District Court limit and is minimally required to adduce "*prima facie*, credible evidence" to that effect: see *Ng Djoni* at [29]. Hence, a claim that is inherently incredible will not meet the requirements for transfer. I adopt the same standard under the first stage of the framework I have proposed at [55] above.

62 On the other hand, it bears emphasis that a "*prima facie,* credible case" means exactly what those words suggest – a credible case *on the face of* the plaintiff's evidence. Save for where claims are plainly unsustainable, the

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Court's role is not, and cannot be, to conduct a minute examination of the evidence to decide whose version is to be believed based on conflicting affidavit evidence.

Application of the two-stage approach to the facts

63 I turn to apply the two-stage approach set out above to the facts.

First stage

64 I am satisfied that the first stage of the framework is met. AEPL has adduced *prima facie*, credible evidence of a likelihood that its counterclaim exceeds the District Court limit.

65 The counterclaim in DC 2021 is largely based on the Cheque being dishonoured when it was presented. At the hearing, Ms Lim clarified that damages were sought in respect of the dishonoured cheque under s 57 of the Bills of Exchange Act (Cap 23, 2004), and not for breach of the Agreement.

66 In this regard, it is undisputed that TPL issued AEPL the Cheque for $490,000 and post-dated it to 30 June 2020. It is also undisputed that the Cheque was cancelled by TPL and dishonoured upon presentation on 30 June 2020. The dispute lies solely in why the Cheque was issued and whether parties had agreed to the cheque being cancelled.

67 AEPL's evidence was that the Cheque was issued as full payment for outstanding amounts under the Agreement, after TPL had fallen behind in paying the monthly instalments. I am satisfied that AEPL's evidence is *prima facie* credible in the totality of the circumstances.

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68 I am also not satisfied that the evidence adduced by TPL negates the *prima facie* case established by AEPL, to render it plainly unsustainable. In fact, TPL's own case is far from persuasive on its face. While TPL claims in OS 1064 that the Cheque was issued as a "gesture of sincerity", it is noteworthy that TPL has not pleaded this in DC 2021. Moreover, it seems oxymoronic for a party to issue a cheque as a "gesture of sincerity" where that party has no intention of honouring the cheque at all.

69 In any event, this is not the proper forum to determine whether AEPL or TPL's evidence regarding the Cheque should be preferred. The issue at the first stage is simply whether there is *prima facie,* credible evidence that AEPL's counterclaim exceeds the District Court limit. For the reasons given, I am satisfied that this requirement is met.

Second stage

70 A holistic evaluation of all material circumstances leads me to conclude that the proceedings, or the counterclaim, in DC 2021 should not be transferred to the High Court.

71 On the one hand, I accept that there is no delay on AEPL's part in bringing this application. I also accept that transferring proceedings to the High Court would not irreparably prejudice TPL. This primarily flows from the fact that the District Court proceedings are still at an early stage. Counsel confirmed that pleadings have been filed but discovery has not commenced.

72 I note that Mr Singh submits that TPL would be irreparably prejudiced if the District Court proceedings are transferred to the High Court. Mr Singh identifies the alleged prejudice as flowing from the higher filing and hearing fees that apply in the High Court. While it is true that litigants in the High Court

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incur higher court fees, this does not amount to the type of prejudice envisaged in *Keppel Singmarine* as a compelling ground for refusing a transfer.

73 First, the fact that a party opposing the transfer faces the prospect of incurring higher court fees if the proceedings are transferred is a feature in every case of this nature. It cannot carry excessive, let alone determinative, weight in the court's analysis. Otherwise, most transfer applications would be refused.

74 Second, I do not agree that the prejudice alleged by Mr Singh constitutes "irreparable" prejudice to TPL. If TPL prevails in the proceedings, it will be entitled to its costs of the proceedings, which would include disbursements. Hence, the court's broad powers in awarding costs may minimise potential prejudice to TPL if the proceedings were to be transferred.

75 Third, the nature of the prejudice alleged by Mr Singh falls far short of the type which led the courts in *Keppel Singmarine* and *Ng Djoni* to refuse to transfer the proceedings:

> (a) In *Keppel Singmarine* (at [18]–[20]) parties had previously entered a consent interlocutory judgment in the District Court on the understanding that the defendant's liability would be capped at the District Court limit. Moreover, the transfer application was made more than four years after the consent interlocutory judgment was entered and parties had relied on that judgment throughout that time. Finally, even if the consent interlocutory judgment were set aside, parties would have to re-litigate their liabilities. This would have been highly prejudicial to the defendant given almost seven years had passed since the accident and evidence may have been lost during that time.

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(b) In *Ng Djoni* at ([50]–[56]), the Court found that a transfer would be prejudicial given the plaintiff's delay in commencing proceedings and crystallising the quantum of damages being claimed. In this regard, the Court noted that the claim was filed only a few days before the limitation period expired, and the writ and statement of claim were served more than four years after the accident (and more than a year after they were filed). Crucially, the plaintiff was involved in two further car accidents *after* the accident giving rise to his claim against the defendant. The Court noted that the plaintiff's delay deprived the defendant of the opportunity to have the plaintiff's medically re-examined, and that any further re-examination would not be fruitful given the intervening accidents.

76 The facts of the present case, in terms of the nature of prejudice alleged, are plainly distinguishable.

77 But it does not follow that AEPL's application for a transfer should thus be allowed. In my judgment, the factors pointing against allowing the transfer outweigh those pointing in favour of it. In this regard, I place significant weight on the following three factors.

78 The first is that the proceedings do not concern any complex issues of law or fact which merit them being heard by the High Court at first instance. Both the claim and the counterclaim turn on factual issues which are straightforward.

79 The second is that the AEPL will not be prejudiced if the proceedings remain in the District Court. Pursuant to s 54E(4) of the SCA, the District Court will have jurisdiction to hear the counterclaim; and s 31 of the SCA empowers

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the District Court to award the full measure of damages claimed by AEPL should it succeed on its counterclaim. Indeed, AEPL's main concern in seeking a transfer of proceedings is that the District Court would otherwise not have jurisdiction to hear its counterclaim. This concern is wholly misconceived for the reasons discussed above.

80 The third is that it would be undesirable for the claim and the counterclaim to be heard by different courts. Given the claim and the counterclaim largely arise from the same set of facts, there is an evident danger of inconsistent findings of facts being made and judicial and parties' resources being wasted. Consolidation of the proceedings is plainly desirable. And for the reasons give above, it would be more expedient for these proceedings to continue in the District Court.

Conclusion

81 For the above reasons, I find that the circumstances do not merit the whole of the proceedings in DC 2021, or the counterclaim alone, being transferred from the District Court to the High Court. I therefore dismiss prayers 1, 2 and 3 of OS 1064. I will hear parties on costs.

Randeep Singh Koonar
Assistant Registrar

Glenda Lim (Moey & Yuen LLC) for the Applicant;
Rajwin Singh Sandhu (Rajwin & Yong LLP) for the Respondent.

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