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

[2021] SGHC 113

Originating Summons No 175 of 2021

Between

Walker Helen Debra

… *Applicant*

And

Soh Poh Geok

… *Respondent*

JUDGMENT

[Civil Procedure] — [Appeals] — [Leave]
[Civil Procedure] — [Extension of time]
[Civil Procedure] — [Rules of Court]

Version No 1: 10 May 2021 (18:51 hrs)

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Walker, Helen Debra
v
Soh Poh Geok

[2021] SGHC 113

General Division of the High Court — Originating Summons No 175 of 2021
Choo Han Teck J
26 April 2021

10 May 2021 Judgment reserved.

Choo Han Teck J:

1 On 14 March 2018, a car driven by the respondent hit two women and the dogs that they were walking for their employers, the applicant and her husband. One of the women's claims has been settled and the other's is ongoing. The two dogs were the applicant's 4-year-old Tibetan Mastiff, Maximus, and the applicant's husband's Labrador Retriever, Ruby. Maximus was killed and Ruby was injured in the accident. The applicant and her husband had both sued the respondent for damages for the death and injury of Maximus and Ruby respectively, but the present application only concerns the applicant's claim because the applicant's husband died shortly before judgment below was given. Any appeal from the decision concerning Ruby can only proceed when probate has been granted in respect of the husband's estate.

2 According to the applicant, Maximus was a large dog weighing 50kg, with a golden-brown coat and a fluffy mane. He was adopted by the applicant's

family when they were working in Hong Kong, and the applicant became Maximus's registered owner.

3 In the proceedings in the Magistrate's Court below, the applicant claimed for the costs of acquiring a replacement dog and for cremation expenses of Maximus. The DJ gave judgment on 8 February 2021, and held that as a dog is a chattel, and the personal property of their owners, only the market value of the dog was to be awarded, as opposed to the dog's actual value according to the owner. The applicant's oral evidence indicated that she was seeking compensation for pain and suffering caused to her family by Maximus's death, but the DJ held that there would not be any award for the emotional suffering of the owner due to the death or injury of the dog, or for the loss of companionship from the dog. The DJ said that since the applicant would not replace both dogs as they were family pets, the court was not able to award replacement costs for both dogs, which, in the DJ's view, referred to the cost of purchasing a replacement dog plus other related costs such as the cost of immunisation, neutering the dog and dog training. Instead, the court would award damages based on the market value of the dog prior to the accident.

4 The DJ accepted that the cost of importing a 4-year-old Tibetan Mastiff from Hong Kong (as there was no known local breeder) was $8,000, and accepted the respondent's submission that the market value of Maximus was $2,700, taking into account "depreciation discount" as Maximus was 4 years old at the time of the accident. The DJ thus awarded the sum of $2,700 for the death of Maximus. Since the respondent bore 90% liability for Maximus's death (and Ruby's injuries) by way of an interlocutory judgment entered on 7 December 2020, this amounted to the final sum of $2,430 for Maximus's death. However, the DJ made no award as to the cost of cremation expenses of Maximus amounting to $680 as, in her view, there was no legal basis for such

Version No 1: 10 May 2021 (18:51 hrs)

an order, unlike funeral expenses for humans under Section 10(3)(*c*) of the Civil Law Act (Cap 43, 1999 Rev Ed).

5 The applicant thus decided to appeal against the DJ's decision, but under O 55D r 4(3)(*a*) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"), the applicant had to first file an application for leave to appeal in the Magistrate's Court within 7 days from the date of the order. In the event that leave to appeal is refused by the Magistrate's Court, a further application may be filed to the General Division within 7 days from the date of the refusal (O 55D r 4(3)(*b*) of the ROC). As the order was made on 8 February 2021, the deadline to file for leave to appeal to the Magistrate's Court was therefore 17 February 2021. The applicant missed this deadline because she was in grief over her husband's death a few days before the judgment, and the applicant had been preoccupied with his funeral arrangements.

6 At the hearing before me on 26 April 2021, the applicant's counsel sought an extension of time to file an application for leave to appeal against the DJ's decision awarding $2,430 for Maximus's death. By Section 21(1)(*a*) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"), leave to appeal is required from the Magistrate's Court or from the General Division of the High Court because the amount in dispute at the hearing before the Magistrate's Court does not exceed $60,000.

7 The applicant's counsel, Miss Lee, had attempted to file the application for extension of time to file the application for leave to appeal in the Magistrate's Court on 19 February 2021, which was only two days out of time. However, according to counsel, the application was rejected by the State Courts on 23 February 2021. Counsel received a notice from the State Courts stating that an application for extension of time has to be made to the General Division

Version No 1: 10 May 2021 (18:51 hrs)

of the High Court, and the notice referred counsel to the High Court's decision in *Lioncity Construction Co Pte Ltd v JFC Builders Pte Ltd* [2015] 3 SLR 141 ("*Lioncity*"). Pursuant to the notice from the State Courts Registry, the applicant's counsel thus filed the present Originating Summons ("OS 175") on 24 February 2021, requesting for an extension of time to file the application for leave to appeal, and also requesting that the applicant be granted leave to appeal against the DJ's decision on damages.

8 At the hearing before me, the main issue raised before me was whether the application for extension of time to file an application for leave to appeal had been correctly made to the Magistrate's Court in the first place, or whether it should have been made to the General Division of the High Court.

9 Counsel for the respondent, Mr Wee, submitted that the application for extension of time had been correctly made to the Magistrate's Court by the applicant's counsel in the first instance. He cited the authority of *Tan Soo Giem v Yeo Ching Chua* [2004] 1 SLR(R) 408 ("*Tan Soo Giem*"). In that case, the defendant was late in filing an application for leave to appeal against an order by the Magistrate's Court. The defendant then filed an application to the Magistrate's Court for extension of time to file the application for leave to appeal. This was rejected by the Deputy Registrar, but allowed by the District Judge on the defendant's appeal.

10 On appeal to the High Court by the plaintiff, Lai Kew Chai J upheld the decision of the District Judge that the Magistrate's Court had jurisdiction to extend the time to file for leave to appeal under O 55D r 4(2) and 4(3) of the then Rules of Court (which are *in pari materia* with the present ROC). Lai J agreed with the District Judge that it would lead to an "odd result" if all applications for extension of time for leave to appeal from a decision of the

Version No 1: 10 May 2021 (18:51 hrs)

Magistrate's Court under O 55D had to be made to the High Court (*Tan Soo Giem* at [16]):

> …[T]he principles for extension of time to appeal would be applied in considering an application for extension of time to file the application for leave to appeal. The factors generally are the length of the delay, the reason for the delay, the merits of the application for leave to appeal and degree of prejudice to the other party. Against these principles, if the High Court grants an extension of time for leave to appeal, the application for leave to appeal will then be heard by the Subordinate Court. Since the factors would have been considered by the High Court in extending time, it would follow, at least in most cases, that the Subordinate Court would grant leave to appeal as a matter of course. I agree that the rules should not be construed to require this unnecessary two-staged process…

However, the State Courts Registry's notice to the applicant's solicitors in this case, stated that the application to the Magistrate's Court was rejected on the authority of the decision in *Lioncity*.

11 In *Lioncity*, the plaintiff obtained summary judgment against the defendant in respect of part of its claim. Months later, the defendant applied for an extension of time to appeal against the order for summary judgment. This extension of time was granted by a District Judge in chambers. The plaintiff was dissatisfied with the District Judge's decision, but failed to file the notice of appeal against the decision within the prescribed 14 days and sought an extension of time from the District Judge to do so. The District Judge held that she did not have the power under O 55C r 1(4) of the then Rules of Court (which is *in pari materia* with the present ROC) to grant an extension of time to file a notice of appeal where the application was made after the expiry of the 14-day time limit.

12 The plaintiff's subsequent appeal to the High Court was dismissed. See Kee Oon JC (as then he was) said that it would be "beneficial and neater to

Version No 1: 10 May 2021 (18:51 hrs)

adopt a consistent approach" towards all applications for extension of time to appeal (*Lioncity* at [41]). In his view, the uniform position for appeals governed by O 55B, O 55D and O 57 was that an application for extension of time to appeal made after the expiry of the time limit to appeal should be heard by the court with jurisdiction to hear the appeal (*Lioncity* at [29]–[32]). For consistency with that position, the plaintiff's application under O 55C (for an extension of time to appeal after the expiry of the time limit) should therefore be heard by the High Court and not by the District Court; adopting a contrary view would only be correct if O 55C r 1(4) had specifically and expressly empowered the lower court to grant an extension after the expiry of the stipulated time for appeal (*Lioncity* at [35], [39]).

13 Mr Wee submitted that the State Courts Registry had misinterpreted *Lioncity*, and wrongly applied it to the present situation. While both *Lioncity* and *Tan Soo Giem* concerned an application for an extension of time, *Lioncity* concerned an application for extension of time to appeal against a decision of a District Judge. However, *Tan Soo Giem* concerned an application for extension of time for leave to appeal against a decision of a District Judge.

14 I agree with See Kee Oon JC's reasoning in *Lioncity* that the wording of O 55D r 14 means applications for extension of time to file a notice of appeal after the expiry of the time limit should be made to the court with jurisdiction to hear the appeal. However, O 55D r 14 (and the other provisions of O 55D) does not concern an extension of time to file an application for leave to appeal. Filing a notice of appeal is different from filing an application for leave to appeal. In the former situation, one party is exercising his existing right to appeal; in the latter situation, that party has no right to appeal, but is seeking the court's leave to do so. *Lioncity* thus does not deal with the question of whether an application for extension of time for leave to appeal should be filed to the

Version No 1: 10 May 2021 (18:51 hrs)

lower court or to the appellate court, and I therefore agree with Mr Wee's submission that *Lioncity* is inapplicable to the present situation.

15 In my view, the applicant in this case is in the same position as the defendant in *Tan Soo Giem*, and was correct in initially filing an application to the Magistrate's Court for an extension of time to file the application for leave to appeal. I agree with Lai J's holding in *Tan Soo Giem* that O 55D r 14 "has nothing to do with an extension of time for an application for leave to appeal to a Subordinate Court" (*Tan Soo Giem* at [13]). Further, if the Magistrate's Court does not have the power to grant the extension of time, then this would result in the "two-staged process" that Lai J described in *Tan Soo Giem* (*Tan Soo Giem* at [16]). Such a process would be wholly unnecessary and a waste of time and money.

16 As for prayer 2 of OS 175, which is the applicant's prayer to be granted leave to appeal by the General Division of the High Court, I agree with Mr Wee that the applicant must first seek and fail to obtain leave from the Magistrate's Court before she can apply for leave from the General Division of the High Court, according to O 55D r 4(3) of the ROC. The applicant thus cannot pass over the jurisdiction of the Magistrate's Court in this manner. This is also consistent with the observations of Lai J in *Tan Soo Giem* at [5]. Furthermore, it is not clear whose order it was that the notice from the Registry was sent to the applicant's solicitors. If it was from the court then it was made without hearing counsel. If it was from an algorithmic response from the computer system, regrettably then, the computer responded *ultra vires*, that is to say, without the authority of the court, for this is a matter that requires a judicial decision.

Version No 1: 10 May 2021 (18:51 hrs)

17 I therefore order that these proceedings, concerning the extension of time to file the application for leave to appeal and the applicant's request to be granted leave to appeal, be transferred to the Magistrate's Court for decision (as I am empowered to do under Section 54C(2) of the State Courts Act (Cap 321, 2007 Rev Ed)).

18 I therefore leave the questions of extension of time and leave to appeal for decision by the Magistrate's Court, and will not express any views on the merits of the case.

19 At the hearing before me, Mr Wee said that he would not ask for costs for this application as the applicant's counsel had not created the problem in the first place, since they had filed the application to the correct court. I agree that the applicant's counsel was not to blame for this state of affairs, and I make no order as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Lee Yuk Lan (Benedict Chan & Company) for the applicant;
Anthony Wee and Pang Weng Fong (United Legal Alliance LLC) for the respondent.

Version No 1: 10 May 2021 (18:51 hrs)