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

[2024] SGHC 243

Originating Application No 596 of 2024

In the matter of DC/OC 457/2023

Between

Tan Heng Khoon t/a 360 VR Cars

… *Applicant*

And

Wang Shing He

… *Respondent*

GROUNDS OF DECISION

[Civil Procedure — Extension of time — Extension of time to file and serve notice of appeal — Order 18 rule 17(2) Rules of Court 2021]

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v
Wang Shing He

[2024] SGHC 243

General Division of the High Court — Originating Application No 596 of 2024
Goh Yihan J
28 August 2024

18 September 2024

Goh Yihan J:

1 This was the applicant's application for an extension of time to file and serve the Notice of Appeal against the decision of the District Court rendered in DC/RA 4/2024 ("RA 4"). The respondent objected to the application. The applicant was also the appellant in RA 4 below.

2 After hearing the parties, I allowed the application on 28 August 2024. I directed the applicant to file and serve the Notice of Appeal for RA 4 by 11 September 2024. These are the reasons for my decision.

Background facts

3 The background to this application was that the respondent obtained a regular default judgment against the applicant on 5 May 2023 in the District Court (see DC/JUD 737/2023 (the "Judgment")). This was due to the applicant

failing to file a Notice of Intention to Contest or Not Contest ("NOI"), by the applicable deadline, in the respondent's action in DC/OC 457/2023 ("OC 457") against him and another defendant. The Judgment ordered that the applicant pay to the respondent $175,000.00, plus interest on the same, with costs awarded to the respondent.

4 Subsequently, on 11 January 2024, the Deputy Registrar (the "DR") allowed the applicant's application in DC/SUM 2055/2023 to set aside the Judgment with liberty to file his NOI, subject to the applicant furnishing security to the respondent in the sum of $175,000.00 (*ie*, the principal sum awarded to the respondent under the Judgment) by 7 February 2024 by way of banker's guarantee or solicitor's undertaking.[1] The applicant was granted permission to file a NOI in respect of OC 457 within 14 days from the date of such security being provided.

5 On 25 January 2024, which was the 14th day after the DR's decision of 11 January 2024, the applicant filed an appeal against the DR's decision. This was the appeal in RA 4. On 8 May 2024, the District Judge (the "DJ") heard the appeal in RA 4 and dismissed it. However, the DJ gave the applicant until 20 May 2024 to furnish security in the manner ordered by the DR below.[2]

6 On 23 May 2024, which was the 15th day after the DJ's decision, the applicant attempted to file a Notice of Appeal against RA 4 (the

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1 Respondent's skeletal submissions dated 22 August 2024 ("Respondent's submissions") at para 2.

2 Respondent's submissions at para 3.

"Original NOA").[3] The Original NOA was rejected on 27 May 2024 by the Supreme Court Service Bureau for the following reasons:[4]

> (1) There was no decision made by [the DR] on 5 May 2023. (2) Even if there was a decision made by [the DR] on 5 May 2023, this notice of appeal has been filed out of time and in the wrong forum. (3) Insofar as the appellant is seeking to appeal against the decision of [the DJ] made on 8 May 2024, this notice of appeal has been filed out of time as well. (4) Appellant may refer to Order 18 rule 17 of the Rules of Court 2021.

7 The applicant then filed a correct Notice of Appeal for RA 4 on 30 May 2024 (the "New NOA"). However, the New NOA was rejected that same day for being filed out of time.[5]

The applicable law

8 In deciding whether to grant an extension of time to file a notice of appeal, it is well settled that the court has to consider the following four factors: (a) the length of the delay; (b) the reasons for the delay; (c) the chances of the would-be appellant succeeding on appeal; and (d) the degree of prejudice to the would-be respondent that cannot be compensated by costs, if the extension of time were granted (see the Court of Appeal decisions of *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 ("*Lee Hsien Loong*") at [18] (relying on *Lai Swee Lin Linda v Attorney-General* [2006] 2 SLR(R) 565 ("*Linda Lai*") at [45]) and *Sun Jin Engineering Pte Ltd v Hwang Jae Woo* [2011] 2 SLR 196 at [29] and [44]–[45]).

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3 Affidavit of Tan Heng Khoon dated 31 May 2024 ("Applicant's Affidavit") at para 2.

4 Applicant's Affidavit at p 5.

5 Applicant's Affidavit at p 6.

9 Among the four factors, the emphasis, in the first instance at least, is invariably on the first two, *ie*, the length of the delay and the reasons for the delay (see *Lee Hsien Loong* at [19]). This is to be expected. The third factor (*ie*, chances of success in the would-be appeal) is set at a low threshold to sieve out clearly hopeless appeals, as the court allowing the extension of time does not scrutinise too closely the merits of the would-be appeal (see *Lee Hsien Loong* at [19]–[20]; see also the Appellate Division of the High Court decision in *Newspaper Seng Logistics Pte Ltd v Chiap Seng Productions Pte Ltd* [2023] SGHC(A) 5 at [14]–[16] and [22]).

10 Further, the fourth factor (*ie*, prejudice to the would-be respondent) concerns prejudice occasioned to the respondent *over and above* the mere fact that the notice of appeal may be lodged out of time where otherwise the appeal would not proceed at all. This is since there is a prejudice inherent in *every* grant of an application for an extension of time to file a notice of appeal (see the Court of Appeal decisions of *Aberdeen Asset Management Asia Ltd and another v Fraser & Neave Ltd and others* [2001] 3 SLR(R) 355 ("*Aberdeen Asset Management*") at [44] and *AD v AE* [2004] 2 SLR(R) 505 ("*AD v AE*") at [13]–[14]). Thus, a relevant prejudice can include *inter alia* prejudice resulting from an irreversible or permanent change of position on the would-be respondent's part (see *AD v AE* at [14] and *Linda Lai* at [70]). If it were otherwise, no extension of time could ever be granted, because the would-be respondent would invariably be prejudiced *vis-à-vis* his or her position if the notice of appeal could not be lodged at all (see *Aberdeen Asset Management* at [44], citing the High Court decision of *S3 Building Services Pte Ltd v Sky Technology Pte Ltd* [2001] SGHC 87 at [67]–[69]).

11 For these reasons, the focus of the inquiry tends to be on the first two factors of the length of the delay and the reasons for the delay (see the Court of Appeal decision of *Falmac Ltd v Cheng Ji Lai Charlie and another matter* [2014] 4 SLR 202 at [14] and the High Court decision of *Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] 3 SLR 725 at [49]). As such, I proceeded to consider the four factors in *Lee Hsien Loong* at [18]–[19] and *Linda Lai* at [45], and with a particular emphasis on the first two factors.

My decision: the application for an extension of time to file and serve a notice of appeal was allowed

12 Having carefully considered these factors, I allowed the applicant's application on 28 August 2024 for an extension of time to 11 September 2024 for the following reasons.

The length of the delay in respect of the filing of the New NOA was not long

13 First, on the length of the delay, it was clear that the applicant had filed the Original NOA out of time, despite his arguments to the contrary.

14 In this regard, the applicant argued that he had filed the Original NOA within time, which was within 14 days after the DJ's decision, pursuant to O 18 r 17(1)(*a*) of the Rules of Court 2021 ("ROC 2021"). According to the applicant, although he had filed the Original NOA on the 15th day after the DJ's decision in RA 4 (rendered on 8 May 2024), the 14th day was 22 May 2024, which was Vesak Day, a public holiday. Thus, pursuant to O 3 r 3(7) of the ROC 2021, which provides that "[w]here the time prescribed by these Rules, or by any judgment, order or direction, for doing any act expires on a non-court day, the act is in time if done on the next day, not being a non-court day", the

applicant was still within time when he filed the Original NOA on 23 May 2024. In my view, the applicant would be right *had* the Original NOA been correctly filed. However, the applicant's Original NOA was not successfully filed. The Service Bureau had rightly rejected the filing owing to errors such as *inter alia* his incorrectly stating the appealed-against decision as that of the DR and not that of the DJ (see at [6] above).

15 In this regard, it cannot be that a party who has filed an erroneous Notice of Appeal within the prescribed timeline is taken to have filed a Notice of Appeal on that date, with respect to the appeal concerned, such that they are taken to have filed it within time. This is because the erroneous Notice of Appeal is a nullity with respect to the appeal concerned and, for all intents and purposes, such a party should be taken as not having filed a Notice of Appeal with respect to the appeal concerned at all. To take an extreme example, it cannot be that a party who files a completely blank Notice of Appeal (apart from the relevant headings which identify it to be such a document) within the prescribed timeline is taken to have filed it on that date. If this is right, then it must logically follow that the same analysis applies to any erroneous Notice of Appeal, regardless of the extent of the error concerned.

16 Thus, the correct point of reference for measuring the length of the delay was the date of filing of the New NOA, as opposed to that of the Original NOA. The Original NOA, being erroneous, was not relevant since it was a nullity in respect of the contemplated appeal against RA 4. Given that the applicant filed the New NOA on 30 May 2024, which was seven days after 23 May 2024, being the deadline to file a notice of appeal against RA 4 within time, it followed that he had filed the New NOA out of time.

17 However, the length of the delay was not a long one. The delay was that of a week. This is comparable to the period of delay of nine days considered in *Management Corporation Strata Title Plan No 2911 v Tham Keng Mun and others* [2011] 1 SLR 1263 ("*MCST 2911*") at [23] and *Tan Chiang Brother's Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd* [2002] 1 SLR(R) 633 ("*Tan Chiang*") at [29]. The extensions of time were granted in both *MCST 2911* at [36] and *Tan Chiang* at [30]. The decisions to allow the applications were based on a holistic consideration of *all* four factors in *Linda Lai* at [45]. Nevertheless, in *MCST 2911* at [24], Woo Bih Li J (as he then was) had observed that the nine-day delay was "relatively shorter than the delay in some other cases", but "was of the view that the delay was not *de minimis*". Likewise, in *Tan Chiang* at [29], the Court of Appeal reasoned there that "[t]he delay in the service was only some nine days", and "[i]n view of the fact that the delay was only some nine days and PPH was notified that an appeal was being filed, there could be no question of any prejudice."

18 Hence, I was of the view that the delay of seven days here was not a long one, although not determinative of whether the application was to be granted. That would depend upon my consideration of the other factors, including and especially the factor of the applicant's reasons for that delay, to which I now turn.

The applicant provided good reasons for the delay

19 Second, the applicant provided good reasons for the delay in filing the New NOA. In this regard, the respondent argued that since the applicant had filed the Original NOA "at the eleventh hour", he had accepted the risk that he

would not be able to correct errors in the filing.[6] Indeed, the respondent pointed out that the applicant had a propensity to file his applications on the last possible day provided therefor (see, *eg*, at [5] above). Put differently, the respondent submitted that the applicant had "consciously forfeited the opportunity to correct errors" within the prescribed time period to file a Notice of Appeal.[7]

20 I did not place much weight on the respondent's argument that the applicant had not explained why he chose to file the Original NOA only on the last possible day. In my view, a party has the unfettered right to decide when to file a Notice of Appeal, so long as it is within the prescribed period in the ROC 2021, or that in any other written law or the directions of court. Indeed, there are many reasons why a party may choose to file a Notice of Appeal late in the day, be it strategic or simply needing more time to make up his or her mind. It would be untenable if a party must explain why he or she has filed a Notice of Appeal during the later part of the prescribed time period. This would lead to impossible questions, such as, just how many days prior to the expiry of the prescribed time period would be considered a comparatively "later" filing requiring justification.

21 I also did not place much weight on the respondent's related argument that the applicant, by choosing to file the Original NOA on the last possible day, accepted the risk that he would not be able to correct errors in the filing. This is because the applicant would not have known of any error until he was notified by the court. It would be unfair to take the time taken by the court to consider whether to accept or reject the filing of the Original NOA against the applicant because there is no certainty as to how long the court would take to so consider.

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6 Respondent's submissions at para 10.

7 Respondent's submissions at para 10.

It is also unfair because this indirectly deducts the court's time for consideration from the period within which a party must file a Notice of Appeal. For example, by the respondent's argument, if a party were to file what turns out to be an erroneous Notice of Appeal on the tenth day after the original decision, that party would have consciously accepted the risk that he or she would only have four days to correct any error. That is plainly unsustainable because if the court were to take more than four days to point out any error, then, by the respondent's argument, that party must be taken to have had no good reason for the delay in filing, since by filing the erroneous Notice of Appeal on the tenth day, he or she must also have consciously accepted the risk of having only four days to correct any erroneous filing. That cannot be correct. Instead, it must be largely irrelevant that a party filed what turned out to be an erroneous Notice of Appeal on the last possible day within the range of time allotted for him or her to do so under the ROC 2021. If the party had done so unknowingly, and the court later points this out to the party, I do not think that it is fair to say that the party had consciously forfeited the opportunity to file a corrected Notice of Appeal on time, and therefore did not have a good reason for the delay in filing the Notice of Appeal.

22 In my view, the conceptually correct way to analyse the present situation was to consider the Original NOA to be a nullity. Thus, since the applicant had filed the New NOA only on 30 May 2024, he had filed a Notice of Appeal seven days out of time. The question is whether he had a good reason for that seven-day delay. Instead of saying that the applicant had forfeited the opportunity to correct errors, it is more accurate to say that the applicant must explain why he only filed the New NOA on 30 May 2024. In the context of the present case, this required the court to consider the circumstances under which the applicant filed the Original NOA. This included considerations of whether the applicant

had filed the Original NOA knowing (subjectively or otherwise) that it was erroneous, but should not involve the consideration of the fact that the applicant had done so on the last possible day available to him.

23 On the facts, I was satisfied that the applicant had made an honest mistake when filing the Original NOA. Indeed, by filing the Original NOA on the last possible day to do so, he clearly had RA 4 in mind, since he had calculated the 14-day time period with reference to when the decision in RA 4 was rendered. Also, given that the Original NOA was rejected on 27 May 2024, the applicant had acted with sufficient haste by filing (or attempting to file) the New NOA three days later on 30 May 2024. Moreover, I recognised that the applicant was a self-represented party in relation to the filing of the Notice of Appeal. Thus, some leeway should be accorded to him in relation to the error that has been made. As was held by the General Division of the High Court in *Lu Shun v Public Prosecutor* [2021] SGHC 74 at [26] (in relation to a self-represented party's conduct of the cross-examination of a witness in a criminal trial, which must apply *mutatis mutandis* to genuine errors in the filing of court documents by the same), "[a]s a litigant-in-person ('LIP'), the appellant may be afforded some leeway by the court as he is assumed to be unfamiliar with the law and legal process."

24 In the circumstances, I was satisfied that the applicant had provided good reasons for filing the New NOA only on 30 May 2024. He had simply misidentified the correct case number in the erroneous Original NOA, but he clearly had RA 4 in mind and promptly took steps to correct the error once he was aware of it. This *bona fide* mistake should not preclude the applicant from pursuing an appeal against RA 4. This amounted to a good reason explaining the applicant's late filing of the New NOA. In this regard, I drew guidance from

the High Court's consideration of a similar reason for delay in the case of *Nomura Regionalisation Venture Fund Ltd v Ethical Investments Ltd* [2000] 1 SLR(R) 482 ("*Nomura*") at [21], where the solicitors of the would-be appellant served the notice of appeal late owing to a genuine error of the firm's secretary. When the mistake was discovered, it was rectified, and the papers were properly served to the correct firm. As the High Court put it there (at [21]), "this was a case of wrong service, not non-service". Likewise, I was of the view that, while the applicant was late in his filing of the New NOA, he had a good reason for his lateness, namely, his erroneous filing of the Original NOA, which would have been within time if not for his genuine mistake, which he then corrected forthwith.

The chances of the applicant succeeding on appeal

25 Third, on the chances of the applicant succeeding on appeal, while the applicant did not make any submissions on this factor, I did not consider this to be material in the present application. In my view, if the applicant has given good reasons for the delay, which was not lengthy, then he should be granted an extension of time almost regardless of the merits of his appeal.

26 In any event, as I have held (see at [9] above), the threshold for the third factor is a low one, aimed at sieving out clearly meritless or hopeless appeals. In this regard, since the grant of an extension of time is a question of discretion, "the chances of the appeal succeeding should be considered, as it would be a waste of time for all concerned if time is extended when the appeal is utterly hopeless" (see the Court of Appeal decision of *Pearson Judith Rosemary v Chen Chien Wen Edwin* [1991] 2 SLR(R) 260 at [17]; see also *Nomura* at [22]). However, it was not shown to me that the applicant's intended appeal against the District Court's decision on RA 4 would be "utterly hopeless", such that it

would be a "waste of time" for me to grant his application. Thus, I did not consider that this factor militated against the grant of the extension of time sought here. It was, at worst, a neutral factor in the circumstances.

There was no prejudice to the respondent beyond the mere fact that the appellant would be able to pursue his appeal against RA 4

27 Finally, the respondent argued that any extension of time would prejudice her because she had been denied the benefits of the Judgment for more than 15 months by the applicant's various actions to delay the proceedings.[8] I note, however, that the respondent must show that she would suffer undue prejudice beyond the usual prejudice flowing from the grant of an extension of time for a notice of appeal to be filed. Otherwise, no extension of time could ever be granted (see at [10] above), since the would-be respondent would always invariably suffer *some* prejudice from an appeal being allowed to proceed where it otherwise would not (see *Aberdeen Asset Management* at [44]).

28 On this point, it is important to distinguish between the prejudice caused by the appellate process itself versus the kind of undue prejudice that would justify the court's exercise of discretion to refuse an extension of time. While a party may wish for a quick resolution of the dispute in his or her favour, this must be balanced against the opposing party's right to litigate the same dispute to its rightful end. Hence, it is not enough for the respondent to argue that her ability to enforce the Judgment may be further delayed if the applicant is permitted to pursue his appeal against her. That is prejudice inherent in the appellate process itself. As the Court of Appeal reasoned in *Wee Soon Kim Anthony v UBS AG and Others* [2005] SGCA 3 ("*Anthony Wee*") at [54]–[55], with regard to this fourth factor:

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[8] Respondent's submissions at para 11.

> 54 Furthermore, the prejudice cannot possibly refer to the fact that the would-be appellant would be deprived of his right of appeal if the extension were not granted. Otherwise, it would mean that in every case where an extension of time is sought by a would-be appellant, there would inevitably be prejudice to him.
>
> 55 Likewise, the prejudice to the would-be respondent cannot possibly refer to the mere fact that the appeal would be constituted, if an extension were to be granted. Otherwise that would mean that inevitably there would be prejudice to the would-be respondent. As stated in *Aberdeen* [*Asset Management*], the prejudice must refer to some other factor, *eg* change of position on the part of the respondent pursuant to the order below. As the respondents before us did not contend that there was such a prejudice, the question of prejudice, for the purpose of granting an extension of time to appeal, *was a non-issue*.
>
> [emphasis added]

29 In the present case, it is true that the applicant has taken "various actions" since the Judgment was rendered more than 16 months ago, which is said to have prevented the respondent from enforcing the Judgment against the applicant.[9] However, I could not see how this amounted to undue prejudice from the application being granted, so as to justify a refusal of the application. It appeared to me that the only prejudice relied on by the respondent would be the usual prejudice occasioned by permitting an appeal to be lodged where it would otherwise not be. Indeed, the respondent's only argument as to prejudice is that "justice delayed is justice denied",[10] which I understand to be that the respondent is unable to reap the fruits of the Judgment timeously if the applicant appeals in respect of RA 4. However, the applicant is entitled to appeal against the DR's and the DJ's respective decisions. He may or may not prevail in the end, but it is certainly his right to appeal. This should not be taken against him.

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9 Respondent's submissions at para 11.

10 Respondent's submissions at para 11.

30 As the respondent can point to no prejudice above and beyond the usual prejudice arising from permitting a notice of appeal to be filed out of time, such as "[s]ome form of irreversible or permanent change of position" (see *AD v AE* at [14]), it follows, based on the Court of Appeal's approach in *Anthony Wee* at [55], that this fourth factor was, at worst, a neutral factor in respect of my granting the present application.

Conclusion

31 Taking the four factors holistically, I allowed the application for an extension of time for the applicant to file the Notice of Appeal for RA 4.

Goh Yihan
Judge of the High Court

The applicant in person;
Fan Kin Ning (Tan Kim Seng & Partners) for the respondent.