IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 24

Court of Appeal / Originating Application No 6 of 2025

Between

Cao Pei

… *Applicant*

And

McCom Holding Limited

… *Respondent*

JUDGMENT

[Civil Procedure — Extension of time — Whether a solicitor's mistakes may weigh against a client]

Cao Pei
v
McCom Holding Ltd

[2025] SGCA 24

Court of Appeal — Originating Application No 6 of 2025
Sundaresh Menon CJ, Steven Chong JCA
23 May 2025

23 May 2025

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 In CA/OA 6/2025 ("OA 6"), Mr Cao Pei (the "Applicant") seeks an extension of time to file and serve a Notice of Appeal on McCom Holding Limited (the "Respondent") against the decision of a Judge of the General Division of the High Court (the "Judge") in HC/SUM 256/2025 ("SUM 256"). The Judge stayed the claims against the Respondent brought in the General Division of the High Court, in favour of arbitration under s 6(2) of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA").

2 The legal principles for an extension of time application are well-established. Nevertheless, given that the delay in OA 6 has arisen solely from the mistakes of the Applicant's counsel, we find it opportune to clarify the principles applicable in such a situation.

3 It is a "fundamental and uncompromising requirement" [emphasis in original omitted] that solicitors must act conscientiously and conscionably in their conduct of a case (*Zhou Tong and others v Public Prosecutor* [2010] 4 SLR 534 ("*Zhou Tong v PP*") at [1]). The courts have consistently admonished the dishonest conduct of solicitors (see, for example, *Law Society of Singapore v Chen Kok Siang Joseph and another matter* [2025] 3 SLR 933 at [158]; *Law Society of Singapore v Wan Hui Hong James* [2013] 3 SLR 221 at [81]), as well as disturbing instances of a solicitor's incompetence (see, for example, *Law Society of Singapore v Ooi Oon Tat* [2023] 3 SLR 966 at [2]; *Zhou Tong v PP* at [11]–[13]). While the present case does not concern indolence to the same degree, a solicitor's incompetence has real consequences on his or her client and should never be lightly passed over.

Facts

Background

4 The Applicant is the first claimant in the dispute in HC/OC 914/2024 (the "Main Suit"), while the second claimant in the Main Suit is General Resource Group Pte Ltd ("GRG"). The Applicant is a former director of GRG. The Respondent, the second defendant to the Main Suit, is the sole registered shareholder of GRG. The first defendant in the Main Suit ("D1") is the sole director and shareholder of the Respondent, while the Respondent is the sole shareholder of the third defendant ("D3").

5 In the Main Suit, the Applicant and GRG brought claims against the Respondent alleging, among other things, the Respondent's misappropriation of GRG's funds, and breaches of contract and/or fiduciary duties on the part of the Respondent. Central to these claims is a Trust Deed said to have been entered into by the Applicant and the Respondent in November 2018. Clause 15.2 of the

Trust Deed states that disputes arising from the Trust Deed shall be referred to arbitration.

6 The Applicant's primary contention is that based on the terms of the Trust Deed, the Respondent promised to hold all the shares in GRG on trust for the Applicant as the Applicant's trustee, and that the Applicant is the sole beneficial owner of GRG. As a trustee, the Respondent is said to owe the Applicant various duties and obligations alleged against him, and which the Respondent had breached when it misappropriated various sums from GRG and removed the Applicant as a director of GRG. The Applicant's claims of breach of contract and breach of fiduciary duties are therefore premised heavily on the Trust Deed (which contains the arbitration agreement).

7 As for the Applicant's claim that he is the sole beneficial owner of GRG, this is based on both the Trust Deed as well as a Shareholders' Equity Recognition Agreement dated 13 March 2023 between the Applicant and D1 (the "Shareholders' Agreement"). According to the Applicant, this agreement provides that although GRG's shares are in the name of the Respondent, the Applicant owns the entire beneficial interest in GRG. The Shareholders' Agreement does not contain an arbitration agreement.

8 As regards D1 and D3, the Applicant pleads that they too have acted in breach of various fiduciary and contractual obligations owed to the Applicant.

Procedural history

9 The Respondent filed SUM 256 to stay the Main Suit in favour of arbitration. On 17 February 2025, the Judge granted SUM 256. The reasons for his decision are set out in brief terms at [12]–[13] below.

10 The Applicant attempted to commence the present application on 3, 7 and 13 March 2025 (3 March 2025 being the final date for filing and serving the Notice of Appeal in time). All three applications were rejected for non-compliance with the Rules of Court ("ROC 2021") and/or the Supreme Court Judicature Act 1969 (2020 Rev Ed) ("SCJA"), for reasons which are elaborated at [26] below.

11 On 14 March 2025, OA 6 was successfully filed. On the same day, the Applicant commenced arbitration against the Respondent.

Decision in SUM 256

12 The Judge ordered a mandatory stay of the Main Suit in favour of arbitration in relation to the claims against the Respondent pursuant to s 6(2) of the IAA. The Judge was satisfied that the various claims advanced and reliefs sought by the Applicant against the Respondent fell within the ambit of the Trust Deed and were therefore governed by the arbitration agreement. This included the claims that the Respondent had breached its fiduciary duties owed to the Applicant by virtue of the Trust Deed. The arbitration was also international in nature and hence subject to a mandatory stay. The proceedings were therefore stayed in so far as they engaged the provisions in the Trust Deed.

13 A case management stay was ordered in relation to the claims against D1 and D3, as the Judge found that the claims against the Respondent were inextricably meshed with the claims against D1 and D3. Further, a stay was appropriate as the reliefs sought by the Applicant against D1 and D3 were dependent on him succeeding in his claims against the Respondent. The Main Suit was ordered to be struck out if the Applicant failed to commence the arbitration within 30 days.

Our decision

14 To determine whether to grant an extension of time for a Notice of Appeal to be filed, the court considers four factors: (a) the length of delay; (b) the reasons for the delay; (c) the applicant's chances of success in the intended appeal; and (d) any prejudice that the respondent would suffer if the extension of time is granted. These four factors go towards the broader inquiry of whether there are sufficient grounds to persuade the court to indulge the applicant (*Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 ("*Lee Hsien Loong*") at [18]). All four factors are of equal importance and must be balanced against one another, having regard to the facts and circumstances of the case (*Lee Hsien Loong* at [28]).

15 The Judge's decision was delivered on 17 February 2025, and the last day for filing and serving the Notice of Appeal was 14 days later on 3 March 2025 (O 18 r 27(1) of the ROC 2021). OA 6 was filed on 14 March 2025 (see [11] above). This 11-day delay was neither *de minimis* nor unduly long. We also find that no prejudice would be suffered by the Respondent if the extension of time were granted, and deal with this briefly below. The focus of our analysis is therefore on the reasons for the delay, as well as the prospects of success of the intended appeal.

16 Having considered the application, we dismiss OA 6 for the following reasons.

Reasons for the delay

The applicable law

17 In relation to the reasons for a delay, the mere fact that the delay stems from a solicitor's procedural mistakes are insufficient in and of themselves to

justify an extension of time. Instead, there must be "some extenuating circumstances or explanation offered to mitigate or excuse the oversight" (*Pradeepto Kumar Biswas v Sabyasachi Mukherjee and another* [2024] 1 SLR 143 ("*Pradeepto*") at [23], citing *Newspaper Seng Logistics Pte Ltd v Chiap Seng Productions Pte Ltd* [2023] SGHC(A) 5 ("*Newspaper Seng Logistics*") at [8]). The overarching consideration is whether the solicitor's mistake is "sufficient to persuade the court to show sympathy" to the applicant, and there are no "hard and fast rules" on this. Instead, it is the overall picture which emerges that is determinative (*Nomura Regionalisation Venture Fund Ltd v Ethical Investments Ltd* [2000] 2 SLR(R) 926 ("*Nomura*") at [28]). The mere fact that the mistake was *bona fide* is but one consideration (*Pearson Judith Rosemary v Chen Chien Wen Edwin* [1991] 2 SLR(R) 260 ("*Pearson*") at [20]; *Nomura* at [28]).

18 In this regard, much would depend on the *nature* of the mistake, which is inevitably a fact-sensitive inquiry. Where, for example, a solicitor's mistake was relatively minor and had been rectified promptly, such as a purely procedural failure to include a cover page that is quickly rectified, this may operate as a neutral factor which neither acts against nor assists the applicant (see, for instance, *Pradeepto* at [21] and [23], though we recognise there were other errors in that case). In contrast, where the mistake arose solely from the misreading of a simple legal rule, such a mistake, even if *bona fide*, would generally be insufficient to persuade the court to show sympathy (*Pearson* at [17] and [20]).

19 Indeed, a solicitor's mistake that is gross or reprehensible may even weigh *against* an applicant. In *Tan Chai Heng v Yeo Seng Choon* [1979–1980] SLR(R) 658 ("*Tan Chai Heng*"), the delay arose after the applicant's solicitors misplaced the relevant papers required for filing a Notice of Appeal. The court

observed that the solicitors could simply have gone to the registry of the High Court to prepare the Notice of Appeal. This was "quite a simple thing to do", yet "no effort at all was made to do it" (at [4]). In these circumstances, the delay of over a month disclosed "gross negligence" on the solicitor's part, which "did not merit the exercise of judicial discretion in favour of the applicant" (at [6]).

20 Whether to grant an extension of time is ultimately a question of discretion, and we reiterate that no hard and fast rules may be laid down – otherwise, it "ceases to be a discretion and becomes a rule of law" [emphasis in original omitted] (*Lim Hong Kheng v Public Prosecutor* [2006] 3 SLR(R) 358 ("*Lim Hong Kheng v PP*") at [15], citing *Public Prosecutor v Sundaravelu* [1967] 1 MLJ 79 at 79–80). Thus, while the cases provide valuable guidance on how the court may exercise this discretion, counsel should avoid the "tendency to treat cases dealing with *particular fact situations* as establishing *binding rules*" [emphasis added] (*Lim Hong Kheng v PP* at [16]). Such a mechanical approach is at odds with the court's task of considering *all* the circumstances of a case.

21 The solicitors in this case attribute their mistake to the purported legal complexity that faced them in OA 6. In such circumstances, the court will necessarily assess the alleged difficulty in question. Where the applicable law is well-established and "there is nothing in it which is complex or could give rise to a misunderstanding", the court will likely not be sympathetic to the applicant (*Denko-HLB Sdn Bhd v Fagerdala Singapore Pte Ltd* [2002] 2 SLR(R) 336 ("*Denko*") at [14] and [19]; see also *Pearson* at [17] and [20]).

22 In a similar vein, a solicitor's failure to even consider what the applicable procedural regime is, will generally be insufficient to constitute a difficulty or complexity which draws sympathy from the court. Such was the

case in *Newspaper Seng Logistics*, where the delay arose because of the solicitor's failure to consider whether the Rules of Court 2014 ("ROC 2014") or the ROC 2021 was applicable. In wrongly assuming that the ROC 2014 applied (at [9] and [11]), the solicitor's conduct "fell short" of what was required of her, and there was no legal difficulty which had arisen. The extension of time was granted only upon weighing the solicitor's oversight against the other three factors (at [26]).

23 Of course, the principle that a solicitor's mistake may weigh against his client applies primarily to civil proceedings. Because criminal cases engage concerns of one's liberty and life (*The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal* [2015] 5 SLR 1104 at [127]), there is invariably a "dire anxiety" on the part of the court not to convict an innocent person or to uphold a manifestly excessive sentence, and the court "works doubly hard" to prevent any such erroneous deprivations of liberty (*Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2018] 1 SLR 544 at [57]).

24 The position is otherwise in civil proceedings because a client may seek a remedy from a negligent solicitor. Otherwise, it would mean that no matter how inexcusable and negligent the lawyer's error is, the client will invariably be able to obtain an extension of time. That would make a mockery of the Rules of Court and "run the risk of turning the rules prescribing time into dead letters" (*Denko* at [18]). It would provide the party in breach with an unqualified right to an extension of time, which would "defeat the purpose of the rules which is to provide a time table for the conduct of litigation" (*Tan Chai Heng* at [5], citing *Ratnam v Cumarasamy* [1965] 1 MLJ 228; [1964] 3 All ER 933). In this regard, we reiterate that in an extension of time application, the overriding

consideration is that the Rules of Court are there to be obeyed, with reasonable diligence being exercised (*Anwar Siraj and another v Ting Kang Chung John* [2010] 1 SLR 1026 at [30]). Thus, where a delay stems from a solicitor's mistake in civil proceedings, depending on the nature of the mistake (as discussed at [18]–[22] above), this could very well weigh against the client.

Analysis

25 The Applicant argues that the present delay did not arise due to any "inaction or neglect" by him or his counsel, but due to "a series of reasonable and diligent steps taken" to comply with the "unique procedural circumstances of the case". Even if the delay arose due to his mistakes, he submits that he had good reasons for the delay – namely, the "complex procedural considerations" in OA 6. He had also promptly rectified these errors.

26 We disagree and hold that the reasons for the delay in this case weigh against the Applicant. To begin, the assertion that the delay did not arise due to the "inaction or neglect" by the Applicant's counsel is patently untrue. The delay arose due to *multiple missteps* by the Applicant's counsel. The Applicant's counsel made no less than *four* separate applications before OA 6 was successfully filed. We set them out as follows:

(a) On 3 March 2025, the deadline for filing and serving the Notice of Appeal, the Applicant sought permission to appeal from the Appellate Division of the High Court ("Appellate Division") in relation to the intended appeal in OA 6. Further, the certificate for security for costs stated the wrong amount of security. This first filing was rejected on 4 March 2025. Upon review of the ROC 2021, the Applicant's counsel realised that permission to appeal was not required.

(b) On 7 March 2025, the Applicant sought an extension of time to file a Notice of Appeal before the Appellate Division. During a case management conference on 12 March 2025, the Assistant Registrar ("AR") brought the Sixth Schedule of the SCJA to the attention of the Applicant's counsel, and asked counsel to consider whether the application might be more appropriately filed before the Court of Appeal. (The Sixth Schedule states that appeals arising from a case relating to the law of arbitration must be made to the Court of Appeal.) The Applicant counsel's response, which is telling, was: "This is the first time I am seeing the 6th Schedule." On the same day, the Applicant consented to the administrative rejection of his second filing in order to refile it to the Court of Appeal.

(c) On 13 March 2025, the Applicant re-filed the extension of time application before the Court of Appeal. This application was also rejected on the Applicant counsel's request.

(d) Finally, on 14 March 2025, OA 6 was successfully filed.

27 The Applicant counsel's errors were elementary. A needless application was made for permission to appeal, and the Applicant's counsel displayed a *gross unawareness* of the Sixth Schedule of the SCJA by filing the application before the Appellate Division instead of the Court of Appeal on not one, but two occasions. This lack of awareness was especially inexcusable given that, on his own account, the Applicant's counsel had run through the requirements of the Fifth Schedule of the SCJA before making the necessary applications. The Applicant counsel's errors – most significantly, his *lack of awareness of the Sixth Schedule* – were not procedural oversights or lapses, but basic errors of law.

28 This application also does not raise any "complex procedural considerations". After the AR brought the Sixth Schedule of the SCJA to the Applicant counsel's attention, the latter was able to confirm on that same day that he would refile the application before the Court of Appeal. Evidently, the interpretation of the Sixth Schedule was not legally too complex for the Applicant's counsel, and the late filing was due solely to his failure to consider the Sixth Schedule altogether, much as the case was in *Newspaper Seng Logistics* (see [22] above). We emphasise that this was not a minor error, let alone an extenuating circumstance which would warrant an extension of time. We do not think lightly of it, and will consider the appropriate cost orders that follow from this (see [39]–[40] below). In these circumstances, the reasons for the delay, being the gross failures of the Applicant's counsel, weigh *against* the Applicant.

Prospects of success of the intended appeal

29 As we have alluded to above at [24], where a client suffers a loss due to a solicitor's negligence, he should look to his solicitors. But this leads us to the second reason which makes even this futile in this case, because there are no grounds at all to appeal the mandatory stay under the IAA. The present application is even more puzzling given that the Applicant has commenced an arbitration against the Respondent (see [11] above).

30 The prospects of the appeal succeeding, whilst of equal importance relative to the other three factors, is set at a low threshold. Unless an applicant's intended appeal is "truly hopeless", this factor is considered to be neutral (*Lee Hsien Loong* at [19]–[20]).

31 The Applicant's argument on why the intended appeal is not hopeless is difficult to comprehend. The Applicant submits that the stay should not be

granted as "multiple causes of action in [the Main Suit] go beyond the scope of the arbitration agreement set out in the Trust Deed, and are made against parties not privy to the Trust Deed, such as [D1 and D3]." In particular, the Applicant points to his intended claim against D1 which stems from "a separate contractual agreement" unrelated to the Trust Deed (presumably, the Shareholders' Agreement (see [7] above)). In the light of this, he argues that a stay of the entire proceedings gives rise to a risk of inconsistent findings.

32 The insurmountable difficulty that the Applicant faces is this: even though he commenced OA 6 with the purpose of lifting the mandatory stay ordered for the claims against the Respondent, the Applicant's arguments appear to be directed at the case management stay ordered for the claims against D1 and D3, *which he does not seek to appeal against*. Indeed, the Applicant does not seem to be arguing that the mandatory stay granted under s 6(2) of the IAA should be lifted because the claims against the Respondent fall outside the scope of the arbitration agreement. Rather, his case is that the stay granted under s 6(2) of the IAA should be lifted and the court proceedings against the Respondent should continue because there are separate claims *against D1 and D3* in the Main Suit which fall outside the scope of the arbitration agreement.

33 The Applicant asserts that his position is supported by the observations of Moore-Bick J (as he then was) in *Reichhold Norway ASA v Goldman Sachs International* [1999] CLC 486 at 491, which were cited in *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*") at [166]. However, the specific issue which Moore-Bick J – and this court in *Tomolugen* – was discussing was: when is it appropriate for a court to grant a *case management stay* for matters which do *not* fall within an arbitration agreement, where there are related arbitration proceedings for matters which do fall within the arbitration agreement? The present case is

entirely distinguishable because the Applicant is seeking to lift the *mandatory* stay granted by the Judge under s 6(2) of the IAA in relation to the claims against *the Respondent*, and not the case management stay for the claims against *D1 and D3*. Accordingly, those observations of Moore-Bick J have nothing to do with the Applicant's case.

34 As a stay under s 6(2) of the IAA is generally mandatory, the Applicant may only resist the stay on the grounds stipulated in s 6(2). Yet, the Applicant mounts no argument that the arbitration agreement is null and void, inoperative or incapable of being performed; indeed, he is not arguing that the claims *against the Respondent* do not fall within the ambit of the arbitration agreement. Instead, his contention is that the claims against *D1 and D3* fall outside the arbitration agreement and on that ill-conceived ground, he seeks the continuance of the Main Suit. This is patently hopeless because, as was held in *Tomolugen*, the mandatory stay will nonetheless apply in such circumstances, and any consequential risks, such as of inconsistent findings, will have to be managed in other ways, including by way of a case management stay (at [186] and [188]). But to compound the error, it may be noted that the Applicant had himself commenced arbitration against the Respondent on 14 March 2025 (see [11] above), and in the Notice of Arbitration, seeks a declaration that that the arbitral tribunal has jurisdiction to consider the dispute between the parties.

35 The Applicant has therefore failed to provide any legal basis for disputing the Judge's grant of the mandatory stay. OA 6 is utterly hopeless.

Prejudice suffered by the would-be respondents

36 Finally, the Respondent raises three factors to show that it would suffer prejudice if OA 6 is granted. We deal with them in brief just for completeness:

(a) First, we agree that the Applicant's act of commencing arbitration and requesting a declaration that the arbitral tribunal has jurisdiction, while concurrently seeking to lift the stay against the Respondent, is fundamentally inconsistent, for which the Applicant has provided no reasonable explanation. However, this reinforces the hopeless nature of the intended appeal (see [34] above). It does not disclose any prejudice arising from the grant of the extension of time (*Lee Hsien Loong* at [24]–[25]).

(b) Second, the Respondent claims that there are concurrent proceedings before the Appellate Division and the Court of Appeal which would prejudice the Respondent. However, both sets of proceedings deal with different legal issues. In any case, the Applicant's permission to appeal application before the Appellate Division in AD/OA 4/2025 has since been dismissed on 8 May 2025.

(c) Third, the Respondent argues that the Applicant has "a history of disregarding procedures and orders". In particular, the Applicant refused to provide a valid undertaking as to damages in relation to a Mareva Injunction which was previously in force. Even accepting this to be true, the Mareva Injunction has been set aside by the Judge, and the Appellate Division in AD/OA 4/2025 declined to grant permission to appeal against the Judge's setting aside of the Mareva Injunction. Hence, it is unclear what prejudice would be inflicted by the grant of OA 6.

37 Accordingly, no prejudice would be suffered by the Respondent even if an extension of time is granted. However, it is clear on a consideration of all the factors that the extension of time should not be granted because it was

necessitated by elementary errors on the part of the solicitor, and its object is to pursue a hopeless appeal.

Conclusion

38 For the foregoing reasons, we decline to grant an extension of time. We award costs to the Respondent at S$12,000 including disbursements.

39 In these circumstances, we considered whether the Applicant's counsel should personally bear the costs of OA 6. In this regard, we apply the three-step test in *Prometheus Marine Pte Ltd v King, Ann Rita and another appeal* [2018] 1 SLR 1 at [75] (endorsing *Ridehalgh v Horsefield* [1994] Ch 205 at 231): (a) Has the legal representative in question acted improperly, unreasonably or negligently? (b) If so, did such conduct cause the applicant to incur unnecessary costs? (c) If so, is it in all the circumstances just to order the legal representative to compensate the other party for the whole or any part of the relevant costs?

40 Before making such an order, the Applicant's counsel should be given a reasonable opportunity to be heard (O 21 r 6(2) of the ROC 2021). The Applicant's solicitors are to provide written submissions within seven days of this order, which are not to exceed five pages.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

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