IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 205

Suit 1414/1995

Between

Tan Chiang Brother`s Marble (S) Pte Ltd

… *Plaintiff*

And

Anderson Land Pte Ltd

… *Defendant*

And

Lum Chang Building Contractors Pte Ltd

… *Third Party*

GROUNDS OF DECISION

Arbitration — Award — Recourse against award; Arbitration — Award — Recourse against award

Version No 1: 29 Oct 2026 (23:45 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Tan Chiang Brother`s Marble (S) Pte Ltd v Anderson Land Pte Ltd (Lum Chang Building Contractors Pte Ltd, Third Party)

[1999] SGHC 205

Suit 1414/1995
Choo Han Teck JC
06 August 1999

1 :This matter began as an action by the plaintiffs Tan Chiang Brother`s Marble (S) Pte Ltd (`Tan Chiang`), who were at the material times a nominated sub-contractor of the third party. The defendants Anderson Land Pte Ltd (`Anderson Land`) were at all material times the developers of a condominium at 18 Anderson Road. The main contractors were Lum Chang Building Contractors Pte Ltd (`Lum Chang`). They were joined as the third party in the suit. At the start of the trial before me on 4 August 1997 counsel for Lum Chang made an oral application for the matter to be arbitrated and the court proceedings be stayed pending the arbitration. In the meantime Lum Chang also commenced arbitration proceedings against Anderson Land (among other things, for damages for delay) but that arbitration would not have involved Tan Chiang, and thus one of the advantages of having this action arbitrated was that the claims and counter-claims of all parties can be disposed of in the same forum. The court`s minutes recorded counsel`s application as follows:

> *Apply for matter be referred to arbitration under s 22 Arbitration Act. Grounds are that it would involve 2,000 documents to be examined. Consists in part of accounts, especially final project account between third party and defendants.*

2 The record also shows that Mr Alvin Yeo, counsel for the defendants, supported the application while Mr Ng Yuen for the plaintiffs took a `neutral position`. Consequently, various orders were made by me and the order of court was extracted on the same day. The order of court reads as follows:

> *This action coming on for hearing this day and upon the application of the third party and upon hearing counsel for the plaintiffs, counsel for the defendants and counsel for the third party, it is hereby ordered that:*
>
> 1 The action in Suit 1414 of 1995 be stayed and the matter be referred to arbitration by a single arbitrator;
>
> 2 Parties to agree on an arbitrator within 21 days and failing such agreement, an arbitrator shall be appointed by the court;
>
> 3 The third party in this action to be the plaintiffs in the arbitration and the plaintiffs to be the third party;
>
> 4 The remuneration of the arbitrator to be fixed by consent with the arbitrator with liberty to apply;
>
> 5 The third party to apply to discontinue the action upon the final decision of the arbitrator; and
>
> 6 Parties to apply to the registry for a refund of hearing fees;
>
> 7 here be liberty to apply.

3 The proceedings were thus stayed and parties went for arbitration before Mr Giam Chin Toon. He delivered an interim award on 9 February 1999. It appears that Lum Chang is not satisfied with the award and applied under s 28 of the Arbitration Act by way of OM 7/99 on 2 March 1999 for leave to appeal against the award. Anderson Land has no difficulty with that application, and Tan Chiang does not seem to be particularly interested. However, on 3 June 1999 Lum Chang filed this summons-in-chambers for a declaration that leave of court is not required to appeal against the award of the arbitrator because s 28 of the Arbitration Act does not apply. I will say in passing that the application ought to have been made by way of an originating summons since the

Version No 1: 29 Oct 2026 (23:45 hrs)

proceedings in the suit had been stayed and no application was made to restore it. This application by Lum Chang is an about-turn from the position it takes in the originating motion (which was adjourned pending this application). Mr Woo Bih Li SC appearing for Lum Chang submitted that as the arbitration was directed by the court under s 22 of the Act a party who is dissatisfied with the award may apply to the High Court to set aside the award under s 23(2) of the Act. He submitted that s 28 provides the avenue for appeals against arbitration awards but is confined only to arbitration effected under an arbitration agreement, as opposed to an arbitration directed by the courts under s 22. Section 23(2) of the Act reads as follows:

> *The report or award of any special referee or arbitrator on any such reference shall,* ***unless set aside by the court or a judge*** *thereof, be equivalent to the judgment of a judge. [Emphasis mine.]*

4 On the other hand s 28(1) provides that `Without prejudice to the right of appeal conferred by subsection (2), the court shall not have jurisdiction to set aside or remit an award ***on an arbitration agreement*** on the ground of errors of fact or law on the face of the award (emphasis mine)`. The term `arbitration agreement` is defined in s 2 of the Act to mean `a written agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not`. It does appear that given the definition of the term arbitration agreement in the Act itself, s 28 does not apply to an arbitration directed by the court under s 22. Mr Woo diligently retraced the history of the legislative changes in the United Kingdom from which our provisions derive. The UK equivalent of our s 22 was deleted from their Arbitration Act 1889 and re-enacted in the Supreme Court of Judicature (Consolidation) Act 1925. The series of legislative changes culminated in the Arbitration Act 1979 in the UK in which provisions restricting appeals against arbitration awards were set out. Thus, when s 28 of our Act was

Version No 1: 29 Oct 2026 (23:45 hrs)

inserted in 1980 it followed the UK Act of 1979 (which no longer has a provision equivalent to our s 22).

5 Whatever the reason may be for the omission in s 28 of our Act to include an arbitration under s 22, it seems clear that there is no express provision for an appeal against an arbitration award under s 22. Mr Alvin Yeo does not quarrel with the contention that s 28 applies only to arbitration agreements and does not include an arbitration under s 22. His point was that given the special facts of this case, the arbitration was one under s 28 even though the application was made under s 22. Mr Yeo`s arguments were that at the start of the trial the parties had, by agreement, decided to arbitrate. The resulting orders from the court was to put that agreement into effect, and the order of court represents the written agreement of the parties (within the definition in s 2 of the Act) because it was an order drawn up by the solicitors for Lum Chang with the consensus of the other parties.

6 I am of the view that the orders for the matter to proceed to arbitration were made under s 22 as the court`s minutes so record. I do not think that the orders as extracted may be read as representing a written agreement by the parties in this case. The orders of court follow the application. Thus, I think that Mr Woo is right in saying that under such circumstances, an aggrieved party may apply to the High Court to set aside the arbitration award under s 23(2). It may appear anomalous that in such a case an appeal will lie thereafter to the Court of Appeal from the decision of the High Court (setting aside the award or otherwise) through the normal appeal process prescribed by the Supreme Court of Judicature Act, and not under s 28(7) of the Arbitration Act which is a more restrictive avenue. It may not have been the intention of Parliament to have this dual approach but that is a matter for the legislature to change if it deems

Version No 1: 29 Oct 2026 (23:45 hrs)

necessary. However, I think that the two routes to upset an arbitration award (that is, under s 23(2) and s 28) can co-exist although there may be sound arguments that there should only be a single avenue. There are also sound reasons why the approaches in a s 22 and s 28 situation differ. In the latter, arbitration is by agreement and the parties generally intend that the arbitration be final and conclusive. In the former, the arbitration is thrust upon them by an order of court and, therefore, the award stands as a judgment of that court to which the normal process of appeal should apply. Mr Yeo refers to a number of established cases that applied s 28 in a very restrictive way and he argues that perhaps the same threshold be applied to an application under s 23(2) on the ground that this would have the merits of consistency, but this is really an argument that should be made at the hearing of an application to set aside the award and Mr Woo rightly did not respond presently. Likewise, I shall make no observation about it as that is not an issue upon which I have to determine in this instance.

7 The next issue is whether Lum Chang was out of time in making an application under s 23(2). This issue arose from the second prayer in the summons before me. Under O 69 r 4(2) of the Rules of Court, an appeal under s 28 of the Act must be made within 21 days from the date of the award. Lum Chang`s application under OM 7/99 was made on 2 March 1999, within the prescribed 21 days from the award of 9 February 1999. Thus, if this matter is governed by s 28 Lum Chang would be within time. However, Mr Yeo argues that Lum Chang by this application is equating the award of the arbitrator as a judgment of the court. Therefore, the time for appeal is one month from the date of judgment and it is out of time as no application has even been made to set aside the award. Mr Woo`s response was that there is no time limit restricting an application under s 23(2) but accepts that any such application must be made

Version No 1: 29 Oct 2026 (23:45 hrs)

within a reasonable time. Mr Yeo submits that by any calculation, a reasonable time cannot exceed one month as no time limit prescribed by law for appeals or the setting aside of judgments or orders have been more generous than that. As I have held, the arbitration in question was governed by s 22. Thus a dissatisfied party has to apply to set aside the award under s 23(2) within a reasonable time which, for the reasons below, I hold to be 21 days from the date of the award.

8 Mr Woo also submits that if Lum Chang is out of time to set aside the award I should allow OM 7/99 to stand as an application to set aside the award under s 23(2). With respect, I think that the applicant is trying to cover far too many bases. OM 7/99 was filed specifically as an application for leave to appeal under s 28. It is the applicant`s case that a s 28 appeal is an entirely different matter from an application to set aside under s 23(2) and I agree. The least that must be done is to apply formally to amend the originating motion to convert it from an application for leave to appeal to an application to set aside if that is at all possible. The supporting affidavit will require the incorporation of the grounds upon which the application is made. I have not heard arguments as to whether the originating motion can be amended in this way and will therefore not dwell on the point except to note that the motion is a different originating process from an application to set aside. As a matter of principle, the moment this declaration is sought before me, the application in OM 7/99 should have been withdrawn. It is not an application in the alternative. The applicant cannot ask a court to declare that leave to appeal is not necessary and at the same time keeps an application for leave to appeal pending before the court. Furthermore, an amendment may not now be permitted if, as I find, the time for setting aside the award under s 23(2) has passed. It is certainly not a straightforward matter of merely allowing the originating motion to stand as an application to set aside.

Version No 1: 29 Oct 2026 (23:45 hrs)

9 Mr Woo says that the issues involved in this application are difficult and novel and therefore asks that I should exercise my discretion in extending the time for Lum Chang to set aside the award. This argument glosses over the fact that the instructing solicitor deposed in his affidavit supporting this application that it `has recently occurred to me that s 28 of the Act is intended to govern arbitration agreements, and not to arbitration referred by the court under s 22 ...`. In my view, this is not a satisfactory situation. Lum Chang was advised to seek leave to appeal under s 28. If its advisors should subsequently take the view that this was wrong because the proper step was to apply to set aside the award, then that is what it ought to have done straightaway. Instead it took the unusual step of applying to the court to declare that leave to appeal was unnecessary. The question as to whether there is any merit in granting an extension of time for Lum Chang to apply to set aside the award is really an inconsequential one. As I observed, Lum Chang was advised to, and did seek leave to appeal against the award. That is the position it took and must stand or fall by it. The solicitor`s affidavit merely says that this application is being made because it `has recently occurred to [him]` that the appeal was not the right procedure. He does not say when exactly it was that this occurrence took place. I can only assume that it must have been very close to the date of filing this application which is 3 June 1999, well after a month from the date of the award. If the application by way of OM 7/99 had proceeded and was found to be the wrong procedure (although Mr Yeo thought that it was the correct one) can Lum Chang return with an application to set aside the award? I think not if it was out of time. Thus, the problem for Lum Chang is not whether I should exercise my discretion to extend time for it to file an application to set aside the award. If the time has passed I am ***functus officio*** .

Version No 1: 29 Oct 2026 (23:45 hrs)

10 I shall now revert to the question of what is a reasonable time within which a party should apply to set aside an award under s 23(2). In the absence of any express statutory provision, I will hold that a reasonable time would be 21 days, which is the same period under s 28. I think that a case can be made for a shorter period, but certainly not a longer one. It must be remembered that unless the award is set aside, it stands as a judgment of the court against which the dissatisfied party has one month to appeal to the Court of Appeal. If however, an application is made to set aside the award the time to appeal to the Court of Appeal will run from the date of the decision of the judge. In the absence of any other consideration I think that it would be fair to set the limit 21 days for a dissatisfied party to apply to set aside an award under s 22. A party who is dissatisfied with an arbitration award under s 22 must apply to set it aside within this period otherwise the award stands as a judgment of the court and will thus be outside the powers of a puisne judge to rule upon its correctness. It is no longer a matter of setting aside an arbitration award since that award now stands as a judgment of the court. In coming to this conclusion I note that the award in question is an interim award (exhibited in Mr John Chung`s affidavit) but I think that it is final in so far as the issue upon which the award was made. Mr Woo`s submission that this application raises complicated and novel issues of law and procedure does not really assist him since his instructing solicitors had formed the view very clearly, albeit erroneously, at the material time that the correct procedure was by way of an appeal under s 28. Thus, the only factor in favour of Lum Chang is that it has given notice to Anderson Land (by way of OM 7/99) that it was dissatisfied with the award of the arbitrator. That notice was given within 21 days from the date of the award. This alone, however, is insufficient as the matter is now outside the province of the High Court. It seems to me that Lum Chang`s only recourse is to apply to the Court of Appeal for leave to appeal out of time against the award which, by reason of it not having

Version No 1: 29 Oct 2026 (23:45 hrs)

been set aside in time, stands as a judgment of this court. For the reasons above, I would not exercise my discretion to extend time even if am so empowered to do.

11 I should point out that prayers 2 and 3 of the application before me appears to have erroneously referred to an appeal when they should be referring to an application to set aside. Counsel indicated that an amended summons would be filed to rectify the error but this has not been done. In any event, for the reasons in my judgment herein the correction would be academic.

12 I therefore grant an order in terms of prayer 1 and dismiss prayers 2, 3 and 4 of the application.

13 **Outcome:**

14 Order accordingly.

Choo Han Teck JC

Alvin Yeo and Paul Sandosham (Wong Partnership) for the defendants
Woo Bih Li SC (Bih Li & Lee) and John Chung (Donaldson & Burkinshaw) for the third party

Version No 1: 29 Oct 2026 (23:45 hrs)