Lioncity Construction Company Pte Ltd *v* JFC Builders Pte Ltd [2015] SGHC 62

Case Number	: District Court Suit No 3371 of 2012 (Registrar's Appeal (State Courts) No 203 of 2014)
Decision Date	: 12 March 2015
Tribunal/Court	: High Court
Coram	: See Kee Oon JC
Counsel Name(s)	: Thea Sonya Raman (Rajah & Tann Singapore LLP) for the appellant; Li Jiaxin (Michael Por Law Corporation) for the respondent.
Parties	: Lioncity Construction Company Pte Ltd — JFC Builders Pte Ltd

Civil Procedure – Extension of time – Extension of time to file notice of appeal

12 March 2015

See Kee Oon JC:

1 This Registrar's Appeal turned on a procedural point: whether an application for extension of time for filing a notice of appeal to the High Court after the expiry of the 14 days for appeal as stipulated in O 55C r 1(4) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the ROC") must be made before the High Court or whether the application can be made before a District Judge ("DJ") in chambers. O 55B r 1(4) of the ROC, which deals with appeals from a decision of a deputy registrar to a DJ in chambers, is worded in similar terms to O 55C r 1(4).

2 In the present case, the application for extension of time was brought before a DJ in chambers. It was heard on 5 August 2014 and dismissed by the DJ on 5 September 2014 on the basis that a DJ does not have power to hear such an application after the expiration of the time limited for filing the appeal. The appeal before me was filed against the DJ's decision not to extend time. Having considered the submissions, I dismissed the appeal. In delivering my brief oral grounds, I indicated that I would adopt the broad reasoning stated by the DJ in her grounds of decision ("GD"). I now set out my reasons for my decision in full.

Background

3 This appeal arose out of District Court Suit No 3371 of 2012. The pleaded facts in relation to the claim therein had no actual bearing on this appeal. It only bears mentioning that this was a claim filed by the appellant ("LC"), who was the plaintiff in the action, in relation to outstanding payments for construction work done for the respondent ("JFCB") in respect of a hotel development project for which JFCB was the main contractor. In turn, JFCB filed a counterclaim alleging loss and damage as a result of defective works and project delays caused by LC, as well as the return of monies overpaid to LC due to inflated claims.

4 LC succeeded in an application for summary judgment on the claim on 25 June 2013 before a deputy registrar, to the extent that JFCB was ordered to pay LC a sum of $143,089.75. JFCB was given unconditional leave to defend the balance claim and to pursue the counterclaim. JFCB then applied in Summons No 16834 of 2013 ("SUM 16834/2013") some five months later for an extension of time to appeal against the order for summary judgment.

5 SUM 16834/2013 was fixed for hearing before another deputy registrar on 23 January 2014. At the hearing, JFCB's counsel submitted that since the time limited to file the notice of appeal against the summary judgment had expired, the application to extend time ought to be dealt with by a DJ in chambers. JFCB's counsel relied on an extract from the *Singapore Civil Procedure 2013*, vol 1 (G P Selvam gen ed) (Sweet & Maxwell, 2013) para 55B/1/8, which states:

> **Enlargement of time—**This rule must be read with O.3, r.4 so that the time limited for appeal may be extended by the registrar, and the time limited by the registrar may be extended by the judge in chambers after such time has expired or the 14 days for appealing have elapsed (see *Burke v. Rooney* (1879) 4 C.P.D 226). …

6 The deputy registrar proceeded to schedule SUM 16834/2013 to be heard by a DJ in chambers. After hearing full arguments, the DJ granted leave to JFCB on 9 April 2014 to file its notice of appeal against the summary judgment out of time. JFCB accordingly filed the notice of appeal (Registrar's Appeal No 72 of 2014) on 17 April 2014.

7 LC had it so wished, could have appealed to a High Court Judge in chambers under O 55C of the ROC within 14 days of the DJ's decision on 9 April 2014. The last day for LC to have filed the notice of appeal was 23 April 2014. Unfortunately, because of mistakes made in the Form, the notice of appeal was rejected twice by the State Courts' Registry. By the time the mistakes were rectified, the stipulated time for appeal had lapsed and the notice of appeal was thus rejected.

8 LC wanted to apply for an extension of time, and the Registry's response was that the application ought to be filed in the High Court since the 14 days had expired. LC disagreed and their solicitors wrote to the Registry maintaining that the application to extend time should be heard in the State Courts.

9 LC's solicitor's letter was referred to the DJ for directions and the DJ directed that the intended application be fixed before her for hearing and parties were to address the court on the preliminary issue of whether the DJ in chambers had the power to grant the extension of time under the ROC after the 14 days have expired. Eventually, LC filed the application in Summons No 9080 of 2014 which was heard by the DJ on 5 August 2014. She gave judgment on 5 September 2014 dismissing the application: see *Lioncity Construction Company Pte Ltd v JFC Builders Pte Ltd* [2014] SGDC 351.

Submissions in the proceedings below

10 The submissions canvassed were essentially the same in the proceedings below and on appeal. A key plank in counsel for LC's submission was the decision of *Management Corporation Strata Title Plan No 2911 v Tham Keng Mun and others* [2011] 1 SLR 1263 ("*Tham Keng Mun*"). It was contended that this provided support for LC's position that a DJ in chambers could extend the time limited under O 55C notwithstanding that such time had expired.

11 In *Tham Keng Mun*, the appellants were the subsidiary proprietors and tenants of a building who had placed objects on the driveway of the building. The respondent, the MCST, commenced an action for, *inter alia*, an order against the appellants to remove the objects from the driveway. The appellants counterclaimed that the respondent was in breach of its duty of care to ensure that the driveway was not obstructed and that the respondent had exercised its powers in bad faith by commencing the action against the appellants.

12 The counterclaim was struck out by a DJ who held that the counterclaim was not within the District Court's jurisdiction under the then Subordinate Courts Act. The appellants sought to appeal to

the High Court but their notice of appeal was served out of time. The respondent filed an application to strike out the notice of appeal on the ground that it had been served out of time, whereupon the appellants then filed an application for extension of time to serve the notice of appeal. The applications were initially fixed for hearing in the High Court before Kan Ting Chiu J together with another appeal in the same case on discovery and further particulars.

13 Woo Bih Li J eventually dealt with the substantive appeal on discovery and further particulars as well as the appeal against the refusal to extend time to serve the notice of appeal. In setting out the chronology of the proceedings (at [13]), Woo J mentioned without comment that Kan J had directed that both the applications were to be heard together in the then Subordinate Courts.

14 Counsel for LC suggested that Kan J's directions served as a guide but conceded that there was no written judgment dealing with the issue. Counsel for JFCB countered by arguing that *Tham Keng Mun* could not be regarded as authority for the proposition that a DJ in chambers may extend the time limited under O 55C after such time had expired. From her reading of the facts in *Tham Keng Mun*, Kan J appeared to have directed that the summons for extension of time be heard in the Subordinate Courts because the respondent had also filed an application to strike out the appellants' notice of appeal. Hence both applications had to be heard at the same time to avoid an inconsistent outcome. No submissions had been put forward by either party in that case with respect to the jurisdiction of a DJ in chambers to extend time under O 55C.

15 Counsel for JFCB also brought up the case of *AD v AE* [2004] 2 SLR(R) 505 ("*AD v AE*") in which an appeal against the granting of an application for extension of time under O 55C r 1(4) was heard by the Court of Appeal. This involved a custody dispute, and a DJ awarded custody of the daughters to the wife while custody of the son was awarded to the husband. The wife had filed a notice of appeal within the 14 days but failed to serve it within 7 days as required by O 55C r 1(4). The wife applied for an extension of time for service of the notice of appeal and the application was heard by Choo Han Teck J in chambers. Choo J granted the application and the husband appealed. The Court of Appeal allowed the appeal.

16 Counsel for JFCB further argued that as the time limited under O 55C r 1(4) had expired, the office of the DJ in chambers was *functus officio.* In *Banque Cantonale Vaudoise v RBG Resources plc and another* [2004] 4 SLR(R) 856 ("*Banque Cantonale Vaudoise*"), the second defendant had appealed to the High Court Judge against an order for summary judgment granted by an assistant registrar. Before the appeal was heard, the second defendant applied for discovery of documents from the plaintiff. The appeal was then held in abeyance. The discovery application was heard and substantially dismissed by an assistant registrar. The second defendant appealed against the dismissal. Woo Bih Li J characterised the second defendant's discovery application and appeal against that decision as "premature" (at [15]). By the time the discovery application was filed, summary judgment had been granted. Accordingly, the office of the assistant registrar was *functus officio* as regards any subsequent discovery application, save for claims which were not the subject of the summary judgment. The discovery application therefore could not and should not have been made to the assistant registrar (at [17]).

17 Counsel for JFCB submitted that the doctrine of *functus officio* is to prevent the reopening of the matter before the same court which had rendered its decision. Since the DJ had heard the substantive merits of the extension of time application in SUM 16834/2013, the office of the DJ in chambers is *functus officio*, and the DJ no longer had the jurisdiction to extend the time limited under O 55C.

Decision on appeal

18 As indicated at [2], in dismissing LC's appeal, I had informed the parties that I would adopt the broad reasoning stated by the DJ in her GD. I now set out my reasons in full and my observations thereupon where relevant.

Case authorities/precedents

19 The DJ opined that LC's reliance on *Tham Keng Mun* did not help as no part of the judgment dealt with the issue at hand. I agreed that *Tham Keng Mun* was not a helpful precedent. The reasons for Kan J's decision to direct that both the applications involving striking out of the notice of appeal and extension of time to serve the notice of appeal be heard in the lower court were not articulated. It is also unclear whether any arguments were raised as to the appropriateness of the forum and the parties appeared to have been content to abide by Kan J's directions.

20 In my view, the circumstances in that case should be considered; the notice of appeal was in fact filed in time but had to be served out of time. More importantly, as counsel for JFCB had rightly noted, due regard must be given to the nature of the two applications before the court in that case. One was an application to strike out the notice of appeal on the ground that it had been served out of time; the other was an application to extend the time for service of the notice of appeal. Evidently the two applications would stand or fall together. The former application (to strike out the notice of appeal) was heard in the District Court. As the notice was struck out by the District Court, it would inexorably follow that an extension of time to serve the notice should not be granted. This was in fact the outcome, from which the appeal was filed and eventually heard before Woo J (who, in the event, allowed the appeal).

21 As for JFCB's reliance on *AD v AE*, the DJ noted that this case "merely served to illustrate that the approach taken by the State Court's Registry has been consistent throughout". This was also a case where the notice of appeal had been filed within time but had to be served out of time. Choo J, in the High Court, heard the application for extension of time to serve the notice of appeal. However, like *Tham Keng Mun*, this case was unfortunately of little assistance for the same reasons I had stated earlier – no arguments were apparently raised as to the appropriateness of the forum and the judgment contained no comments or elaboration in that regard.

22 The DJ had also considered *Burke v Rooney* (1879) 4 CPD 226, an old English case cited in *Singapore Civil Procedure 2015* (G P Selvam gen ed) (Sweet & Maxwell, 2014) ("the White Book 2015") as a general authority for the proposition that applications to extend time after the time for appeal has lapsed should be made before the relevant 'judge in chambers' and not a deputy or assistant registrar (see, *eg*, paras 55B/1/8 and 56/1/5). I agreed with the DJ that this case was not of substantial assistance either since the relevant provisions under consideration were very different in wording from our O 55C. Nevertheless the case did seem to provide some support, albeit slender, for the State Courts Registry's consistent practice as noted by the DJ. I understand that this also reflects the general practice at the Supreme Court Registry.

23 As for the *functus officio* argument raised by counsel for JFCB, citing *Banque Cantonale Vaudoise* in support, the DJ remarked in passing that she was attracted by the argument but declined to elaborate further. Although this point was pursued by counsel during the appeal, I shall not venture to offer my views as it did not appear to me that the DJ had relied on this argument at all. The other grounds stated by the DJ were sufficient in my opinion to support her decision and I shall now turn to address them.

The relevant rules: O 55B, O 55C and O 55D

24 In undertaking a holistic examination of the applicable rules, the DJ focused on a key issue: what did the ROC contemplate for applications for extension of time which were made after the expiry of the time stipulated? The provisions governing appeals in the State Courts are found in O 55B, O 55C and O 55D and they deal with three types of appeals as outlined below:

(a) Order 55B – Appeals from decisions of the Registrar to a District Judge in Chambers (denoted as "RA" by the Registry);

(b) Order 55C – Appeals from decisions of District Judges or Magistrates in Chambers to a Judge of the High Court in Chambers (denoted as "RAS" by the Registry); and

(c) Order 55D – Appeals from the State Courts to the High Court (denoted as "DCA" by the Registry).

25 The provision governing the time specified for filing of appeals is identical in both O 55B and O 55C for RA and RAS cases. This is contained in r 1(4) of both Orders which reads as follows:

Unless the Court otherwise orders, the notice must be issued within 14 days after the judgment, order or decision appealed against was given or made and served on all other parties within 7 days of it being issued.

26 For appeals under O 55D, the provision governing the time specified for filing of appeals is in r 4(1) which provides:

Subject to this Rule, every notice of appeal must be filed and served under Rule 3(8) within 14 days —

(*a*) in the case of an appeal against the refusal of an application, from the date of the refusal; and

(*b*) in all other cases, from the date on which the judgment or order appealed against was pronounced.

27 In respect of extension of time applications, O 55D r 14 further provides specifically:

Without prejudice to the power of the High Court under Order 3, Rule 4, to extend the time prescribed by any provision of this Order, the period for filing and serving the notice of appeal under paragraph (1) of Rule 4 may be extended by the Court below on application made before the expiration of that period.

28 The general provision for extension of time is contained in O 3 rr 4(1) and 4(2) and they state:

4.—(1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules or by any judgment, order or direction, to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.

29 Order 3 does not define the term "Court". The general definition of "Court" under O 1 r 4(2) therefore applies and this includes any judge (High Court judge and below), whether acting in open

court or in chambers; and registrars, "unless the context otherwise requires". O 1 r 4(2) therefore clearly contemplates that the relevant "Court" for the appropriate situation(s) must be understood in the relevant context. Hence, in the context of O 55B, the relevant "Court" that should hear an application for extension of time after the time for appealing against a decision of the State Courts Registrar has expired would be the court that has jurisdiction to hear the appeal, *ie*, the District Court. This was exactly what had transpired when JFCB made their application in SUM 16834/2013 for extension of time, and the matter was heard before a DJ in chambers. This is also consistent with the practice reflected in the White Book 2015 at paragraph 55B/1/8.

30 It is clear that an application for extension of time to file and serve the notice of appeal under O 55D must be heard by the High Court if the time specified for the filing and service of the notice has expired. This was held by the High Court in *Tjo Kwe In v Chia Song Kwan* [2002] 2 SLR(R) 560 ("*Tjo Kwe In*"), as cited in the White Book 2015 at paragraph 55D/14/3 which states:

> **Time for applying—**Any application for extension of time should be made promptly. An application to extend time for filing the notice of appeal should be made before filing of the notice. The application should be made to the lower court before the expiry of the period for filing and serving of the notice of appeal by way of a summons supported by an affidavit setting out the reasons for the delay and explaining why the court should make an order to enlarge the time. Where the period had expired, the application could only be made by filing an originating summons to the High Court pursuant to its general powers to extend time under O.3 r. 4. See *Ratnam v Cumarasamy & Anor* [1965] 1 MLJ 228, *Asia Commercial Finance (M.) Bhd v Pasadena Properties Development Sdn Bhd* [1991] 1 MLJ 111 and *Tjo Kwe In v Chia Song Kwan* [2002] 2 SLR(R) 560.

31 The approach in *Tjo Kwe In's* case has been followed without any controversy in the context of O 55D. I should add for completeness that for matters heard by a High Court Judge, the relevant provision in O 57 r 17 on extension of time to file the notice of appeal to the Court of Appeal once the time specified has expired mirrors that in O 55D r 14. Both provisions expressly refer to the general power of the High Court or the Court of Appeal (as the case may be) under O 3 r 4 to extend time prescribed by the ROC.

32 It is equally clear and uncontroversial that an application for extension of time to file and serve the notice of appeal under O 57 must be heard by the Court of Appeal if the time for the filing and service of the notice of appeal has expired: see *Chen Chien Wen Edwin v Pearson Judith Rosemary* [1991] 1 SLR(R) 348 per Chao Hick Tin J (as he then was), as confirmed by the Court of Appeal in *Wee Soon Kim Anthony v UBS AG and others* [2005] SGCA 3. In interpreting O 57 r 17, Chao J read the reference to the Court of Appeal's power to extend time in any event as effectively implying that the High Court could only extend time to file and serve the notice of appeal if the extension application was made before the expiry of the prescribed time limit.

Analysis of the submissions

33 It can be seen from the foregoing analysis that the practice and procedure for such extension applications for cases falling within O 55B (RA), O 55D (DCA), O 56 and O 57 is settled. The present appeal was occasioned by an apparent lacuna in O 55C in dealing with a similar scenario. The DJ went on to make the following helpful analysis at [25] of her GD on the manner in which the relevant rules are drafted. I set out her analysis verbatim for convenient reference:

> (a) A different wording is used in the provisions relating to the period for filing the notice of appeals for O 55B (RA) and O 55C (RAS) cases as compared to the O 55D (DCA) cases.

(b) In both O 55B and O 55C, the same rule that sets out the period within which the notice of appeal must be filed also contains the provision that allows the Court to impose a different period. The words used – "*Unless the Court otherwise orders, the notice must be issued within 14 days after the judgment, order or decision appealed against was given or made*…" – suggest that the same Court which gave the judgment, order or decision which is the subject of appeal has the discretion to order a different period instead of the 14 days. By implication, the order for a different period must necessarily be given before the 14-day period runs out. In practical terms, it means that the Court below can extend the period for filing the notice of appeal on application made before the expiration of that period. Although rare, circumstances can arise where such an application is made, *eg*, in a case where a decision is given and counsel is unable to take instructions within time because the client is away or indisposed.

(c) Reading O 3 r 4(2) which sets out the general power to grant extension of time – "*(t)he Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period*" together with O 55C r 1(4), it must be implied that O 3 r 4(2) would govern a situation not specifically provided for, namely applications for extension after the expiry of the 14-day period.

(d) It is noted that O 3 r 4 has no definition for "Court". We thus have to rely on O 1 r 4(2) for the general definition of "Court" which means the High Court or any of its Judges, or the District Court or District Judge whether sitting in Court or in Chambers, and including the registrars.

(e) If we accept that r 1(4) of O 55C allows the lower court to extend the period for filing the notice of appeal before the expiry of the period, it would only be coherent when we invoke the general power in O 3 r 4(2), that the "Court" stated therein must refer not to the lower court, but to the court appealed to. If this were not so, r 1(4) would have specifically provided for the lower court to have the power to also grant an extension on an application made after the expiry of the period.

34 To begin with, there is no express provision in O 55C allowing a DJ to hear an application to extend time for an appeal after expiry of the time limit of 14 days as stipulated. In the absence of such express provision, it would not be correct to assume that the District Court is empowered to hear such an application. I concurred entirely with the DJ's analysis and agreed that the approach outlined above should be adopted so as to afford parity of treatment with appeals under O 55D.

35 Having regard to O 3 r 4(2) as well as O 1 r 4(2), the relevant "Court" which may extend any period stipulated even after the expiration of the period should be understood in the present context as a reference not to the lower court, but the court which has jurisdiction to hear the appeal. Adopting a contrary view would only be correct if O55C r 1(4) had specifically and expressly empowered the lower court to grant an extension after the expiry of the stipulated time for appeal.

36 The DJ further reasoned (at [26] of her GD) that O 55D was introduced to align the procedure for DCAs with that in O 57 for appeals to the Court of Appeal. I have noted the similarities between the relevant provisions in O 55D r 14 and O 57 r 17 above and I do not propose to repeat my observations.

37 The DJ turned next to examine the rationale for the present O 55C (at [27] of her GD), observing that O 55C had been introduced into the ROC as an expedited track for appeals to the High Court from decisions of a DJ in chambers by way of amendments to the ROC which came into operation on 1 January 1999. Prior to these amendments, appeals relating to matters in the then Subordinate Courts in the 1996 version of ROC were in found in two orders, O 55B and O 55C. The

former dealt with appeals from the judgment, order or decision of a registrar to a DJ while the latter dealt with all appeals from the then Subordinate Courts to the High Court (except for appeals in respect of proceedings for summary judgment under O 14 of the ROC).

38 The DJ went on to say (at [28]–[29] of her GD) that, in 1998, the existing O 55C was deleted and the amendments introduced two new orders in the form of O 55C and O 55D. These provisions were meant to distinguish between an appeal from a decision of a DJ in chambers and an appeal from a decision of a DJ or magistrate in open court. The new O 55C would govern the former set of appeals (where the DJ was not acting in his capacity as a registrar) and would include the DJ's orders or decisions made on appeal from the registrar. The new O 55C provided a faster and simpler process for appeals to the High Court while O 55D would govern appeals from decisions of the DJ or magistrate made in open court to the High Court.

39 I concurred with the DJ's observation (at [30] of the GD) that as both O 55C and O 55D deal with appeals to the High Court, it would make sense to treat the appeals on a similar footing when considering whether to allow extensions of time for such appeals to proceed to the High Court. If the intending appellant has failed to act timeously, it would be right to require him to convince the court that has jurisdiction to hear the appeal that its doors should remain open to him. LC can of course still apply to the High Court for an extension of time if it wishes.

Conclusion

40 For the foregoing reasons, I dismissed the appeal. My ruling is in line with the practice adopted by the Supreme Court Registry, which has been to fix such applications for extension of time after expiry of the time limited for appeal for hearing before the High Court. I understand that similar extension applications have previously been filed in the High Court and have been heard.

41 Ultimately it would be beneficial and neater to adopt a consistent approach towards extension applications. If LC's contentions were accepted, it would mean a bifurcation in the approaches. With respect, I could not see why this would be a logical and sensible course to take when the ROC did not appear to have contemplated such an outcome. It is true that O 55C contains no similar provision to O 55D r 14, but in my view it is precisely because the rules are silent in this regard that a streamlined and consistent approach ought to be preferred.

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