IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 59

Originating Summons No 9 of 2021

In the matter of Section 29D of the Supreme Court of Judicature Act (Cap 322)

And

In the matter of Order 56A, Rule 12 and Order 57, Rule 16(1) of the Rules of Court (Cap 322, Rule 5)

And

In the matter of HC/S 59/2015

And

In the matter of CA/CA 47/2018

And

In the matter of AD/CA 22/2021

Between

(1) Noor Azlin binte Abdul Rahman
(2) Azmi bin Abdul Rahman

… *Applicants*

And

Changi General Hospital Pte Ltd

… *Respondent*

JUDGMENT

[Courts and Jurisdiction] — [Judges] — [Transfer of cases]

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Noor Azlin bte Abdul Rahman and another
v
Changi General Hospital Pte Ltd

[2021] SGCA 59

Court of Appeal — Originating Summons No 9 of 2021
Andrew Phang Boon Leong JCA
19 April 2021

9 June 2021

Andrew Phang Boon Leong JCA:

Introduction

1 A little over two centuries since the founding of modern Singapore by the British and slightly over half a century since its establishment as an independent nation state, a profound and momentous change has been made to the Singapore court system. On 2 January 2021, the Appellate Division of the High Court ("the AD") was established pursuant to the coming into force of the Supreme Court of Judicature (Amendment) Act 2019 (Act 40 of 2019) ("SCJA(A)"). This introduced wide-ranging amendments into the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA").

2 As a result of this, Singapore now has a court which in some respects is akin to an intermediate appellate court. The Court of Appeal remains the apex court whilst the AD is situated between the Court of Appeal on the one hand

and the General Division of the High Court ("Gen Div") on the other. The Gen Div was formerly known as "the High Court of Singapore" and *all* legally eligible appeals from it would be heard by the Court of Appeal. At the time of the writing of this judgment, the AD has heard its first appeal case on 28 May 2021, with six more distinct cases scheduled for hearing during the week commencing 12 July 2021.

3 The reasons for the establishment of the AD have both quantitative as well as qualitative roots, which (as we shall see in a moment) are intertwined and interact to accomplish the wider mission of enhancing the administration of justice in Singapore as well as developing Singapore law in a manner that is indigenously strong yet international in outlook.

4 From a quantitative perspective, the restructuring of the Singapore court system in the manner just described is both necessary and timely. In particular, the Court of Appeal has experienced an enormous growth in its caseload for both criminal as well as civil matters. For example, in 2013, 314 civil and criminal matters were filed in the Court of Appeal; by 2018 (a mere five years later), the number had increased by 56% to 490. Just as importantly (and from a qualitative perspective), the cases that have come before the Court of Appeal have become increasingly complex. The combination of these factors has stretched the resources of the Court of Appeal. Interim measures such as increasing the number of sitting days for the Court of Appeal, whilst effective in the short term, could not furnish a long-lasting and sustainable solution (see the Second Reading of the Supreme Court of Judicature (Amendment) Bill (Bill No 33/2019), *Singapore Parliamentary Debates*, *Official Report* (5 November 2019), vol 94 (Mr Edwin Tong Chun Fai, Senior Minister of State for Law ("Senior Minister of State")) ("the 2019 Parliamentary Debates") as well as the

Address delivered at the Opening of The Legal Year 2020 on 6 January 2020 by the Honourable the Chief Justice Sundaresh Menon at paras 9–10).

5 Turning to specific developments proper, under the new regime the AD will hear a portion of the *civil appeals* from the Gen Div. As already alluded to at the outset of this judgment, *all* such appeals would have previously been heard by the Court of Appeal as the then sole appellate court. With the present structure, the AD serves *the purpose of alleviating the aforementioned growing caseload of the Court of Appeal (from a quantitative perspective) whilst simultaneously permitting the latter to focus its resources on matters which would benefit from its expertise as the apex court of the land (from a qualitative perspective)*. It should also be noted that the amendments introduced by the SCJA(A) aim to preserve the *status quo* in so far as the powers and jurisdiction of the Gen Div (*ie*, the former High Court) are concerned.

6 It bears mention that whilst in the vast majority of cases, once an appeal has been heard by the AD, the AD will serve as the final appellate court, there is nevertheless provision for a *tightly confined and highly limited* avenue of appeal *to the Court of Appeal.* The stringent requirements (which I elaborate upon below at [7], [38] and [61]) are not surprising as a liberal route that frequently bypasses the AD would result in a severe undermining of the rationale for establishing the AD in the first place. That having been said, in the interests of justice, there nevertheless exist provisions that will enable – in *rare and exceptional* instances – a qualifying appeal to be heard by the Court of Appeal.

7 In a broad sense, there are two avenues by which cases on the AD's docket may be heard by the Court of Appeal. The first is where ***leave*** to appeal

against a decision of the AD is sought and granted by the Court of Appeal pursuant to s 47 of the SCJA. In this situation, it should be noted that the AD has *already heard an appeal and delivered its decision*. It follows that any *further* appeal to the Court of Appeal would only be granted in *extremely rare* situations (which I elaborate upon below at [38]).

8 The second *is where an appeal is* ***transferred from the AD to the Court of Appeal*** pursuant to s 29D(1)(*a*) of the SCJA. Unlike the first situation, this particular avenue or route *bypasses* the AD in so far as the Court of Appeal would hear the appeal *instead of* the AD; put simply, the appellant concerned "leapfrogs" the AD and goes straight to the Court of Appeal. Indeed, the present application falls within this particular category. More specifically, it is an application by the appellants to ***transfer*** their appeal ("the Appeal") against the decision of the High Court judge ("the Judge") in *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd and others* [2021] SGHC 10 ("the Judgment") from the AD to the Court of Appeal.

9 It should also be noted that this application in CA/OS 9/2021 ("OS 9") is the ***first contested*** application to ***transfer*** an appeal from the AD to the Court of Appeal. It would therefore be apposite to first elaborate on the *background and context* of the amendments that brought the AD into operation as well as on the statutory provisions and principles governing the transfer of appeals from the AD to the Court of Appeal. However, before proceeding to do so, I set out the *particular facts and background* to the present application. In addition to their usual importance, the precise facts and circumstances of the present case are – as we shall see – *even more significant*, not least because the *prior* issues relating to *the substantive liability of the respondent* had, in fact, *already been dealt with by the Court of Appeal* in prior proceedings (see *Noor Azlin bte Abdul*

Rahman v Changi General Hospital Pte Ltd and others [2019] 1 SLR 834 ("the first CA Judgment")).

Facts and background

10 To say that the case has had a long tail is to put it mildly. The genesis of the dispute can be traced to 31 October 2007 when Ms Noor Azlin bte Abdul Rahman ("Ms Azlin") visited the Accident and Emergency Department of the respondent, Changi General Hospital Pte Ltd ("A&E" and "CGH", respectively), complaining of lower chest pain and shortness of breath. Ms Azlin subsequently visited CGH three more times (specifically, on 15 November 2007, 29 April 2010 and 31 July 2011). On all four occasions, X-rays and other medical procedures revealed an opacity in Ms Azlin's lungs. It was only on 16 February 2012 that a biopsy of the growth of abnormal tissues (*ie*, the nodule) in Ms Azlin's lungs revealed that the nodule was malignant.

11 Ms Azlin commenced legal proceedings against CGH on 20 January 2015 in HC/S 59/2015 ("Suit 59"). Her claim was dismissed by the Judge in *Noor Azlin bte Abdul Rahman v Changi General Hospital Pte Ltd and others* [2019] 3 SLR 1063 ("the first HC Judgment") after a 28-day trial ("the Original Hearing"). Ms Azlin appealed and her appeal in CA/CA 47/2018 ("the Original Appeal") was allowed in part by the Court of Appeal in the first CA Judgment.

12 The most relevant findings in the first CA Judgment can be summarised briefly:

(a) First, Ms Azlin had shown, on a balance of probabilities, that she had lung cancer by July 2011 (see the first CA Judgment at [105] and [114]).

(b) Second, CGH had breached its duty of care to Ms Azlin by failing to ensure that there was proper follow-up in her case even though the radiological reports from April 2010 and July 2011 recommended follow-up on the opacity in the right mid-zone of her chest. There were also serious inadequacies in CGH's patient management system (see the first CA Judgment at [96]–[101]).

(c) Third, CGH's negligence caused a delay in diagnosing Ms Azlin with lung cancer (see the first CA Judgment at [116]) which, more likely than not, caused her to suffer from nodal metastasis and all the consequences that may have followed (see the first CA Judgment at [122]).

(d) Fourth and finally, the case was remitted back to the Judge to assess and quantify the loss and damage occasioned to Ms Azlin due to the delayed diagnosis of lung cancer (see the first CA Judgment at [124]–[125]).

13 As will be seen later, it is of particular relevance to OS 9 that Suit 59 was not bifurcated. This meant that while the Original Appeal focussed on the Judge's finding that CGH was not liable for the losses occasioned to Ms Azlin, *a portion of the evidence* (albeit somewhat lacking) before the Court of Appeal was relevant to the quantification of her losses.

14 Ms Azlin passed away on 1 April 2019 from lung cancer, a month after the first CA Judgment was released. After her passing, the second appellant, Mr Azmi bin Abdul Rahman ("Mr Azmi"), her older brother, was added as a party to continue the action in his capacity as executor of her estate ("the Estate") .

15 The Judge heard the parties on damages over a 6-day trial in August and September 2020 ("the AOD Hearing") and released the Judgment on 19 January 2021. She awarded the Estate a sum of $326,620.61. This was broken down as follows:

(a) $304,000 in general damages comprising $250,000 for pain and suffering and loss of amenity, and $54,000 for the dependency claim; and

(b) $22,620.61 for special damages comprising $19,620.61 for medical expenses and $3,000 for transport expenses.

16 Dissatisfied, the appellants filed a notice of appeal in AD/CA 22/2021 on 18 February 2021 (*ie*, the present forum for the Appeal). OS 9 was filed on 12 March 2021. Apart from the Appeal, there remain four pending proceedings related to Ms Azlin's claim:

(a) The determination of costs for the Original Appeal remains pending before the Court of Appeal.

(b) The determination of costs for Suit 59 remains pending before the Court of Appeal.

(c) The taxation of the bill of costs for disbursements in the AOD Hearing for Suit 59.

(d) The costs of HC/SUM 3339/2019 to add Mr Azmi to Suit 59.

17 With this background in mind, I turn to the issues raised in OS 9.

The issues

18 The overarching issue in OS 9 is whether it would be more appropriate for the Court of Appeal to hear the Appeal. As argued by the parties, this may be broken down into the following sub-issues:

(a) Issue 1: Whether the Appeal relates to a matter of national or public importance under O 56A r 12(3)(*a*) of the Rules of Court (Cap 322, R 5, 2014 Ed) ("ROC").

(b) Issue 2: Whether the Appeal will raise a point of law of public importance under O 56A r 12(3)(*b*) of the ROC.

(c) Issue 3: Whether the Appeal relates to complex and novel issues under O 56A r 12(3)(*c*) of the ROC.

(d) Issue 4: Whether the results of the Appeal will be of significance under O 56A r 12(3)(*f*) of the ROC.

(e) Issue 5: Whether there are any other relevant matters which militate in favour of a transfer under O 56A r 12(3)(*g*) of the ROC.

The parties' cases

19 As a preliminary point, the appellants submit that the Appeal can only be heard by the Court of Appeal, and not the AD, because Suit 59 was commenced in 2015 and thus predated the new amendments to the SCJA and ROC.

20 Even if the AD is the correct court to hear the Appeal, the appellants contend that a transfer should be ordered under s 29D(1)(*a*) of the SCJA on the following statutorily prescribed grounds under O 56A r 12(3) of the ROC:

(a) First, the Appeal relates to a matter of public importance and/or will raise a point of law of public importance – *ie*, in what circumstances will s 10(3)(*a*) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA") apply (see O 56A rr 12(3)(*a*) and 12(3)(*b*) of the ROC)?

(b) Second, the Appeal relates to a matter of public importance and/or will raise a point of law of public importance – *ie*, in what circumstances will punitive and/or aggravated damages be awarded for a defendant's unreasonable conduct of proceedings (see O 56A rr 12(3)(*a*) and 12(3)(*b*) of the ROC)?

(c) Third, the Appeal raises novel issues and its results will be of significance because there are no precedents quantifying damages for cancer patients (see O 56A rr 12(3)(*c*) and 12(3)(*f*) of the ROC).

(d) Fourth, there are other relevant matters which make it more appropriate for the Court of Appeal to hear the Appeal (see O 56A r 12(3)(*g*) of the ROC).

21 CGH, on the other hand, argues that the new amendments to the SCJA and ROC apply to the present case. In its view, no good reasons militate in favour of the Court of Appeal hearing the Appeal.

The applicable principles

A brief overview of the statutory scheme governing the allocation of appeals between the Court of Appeal and the AD

22 The AD is designed to share in the Court of Appeal's caseload by hearing civil appeals against decisions of the Gen Div (see above at [5]). To bring flexibility to this allocation while maintaining efficiency, there is a default allocation of appeals and a subsequent opportunity to transfer the already-allocated appeals between the two appellate courts.

23 As the statutory scheme governing the allocation of appeals is new, and as yet unexplored, I take the opportunity to explain the design and architecture of the default allocation of appeals in the following section. A broad overview of the statutory scheme will also be set out at [37] below.

The default allocation

24 The default allocation of appeals has both a temporal and subject matter dimension. The temporal dimension refers to the version of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) that applies to the appeal concerned – *ie*, the present SCJA ***or*** the version prior to 2 January 2021 ("pre-2 Jan 2021 SCJA"). The subject matter dimension refers to the categories of civil appeals that are in a sense "reserved" to the Court of Appeal by default under the SCJA. It is necessary to first determine the appropriate version of the legislation because the subject matter dimension is premised on the applicability of the SCJA to the appeal.

(1) The temporal dimension

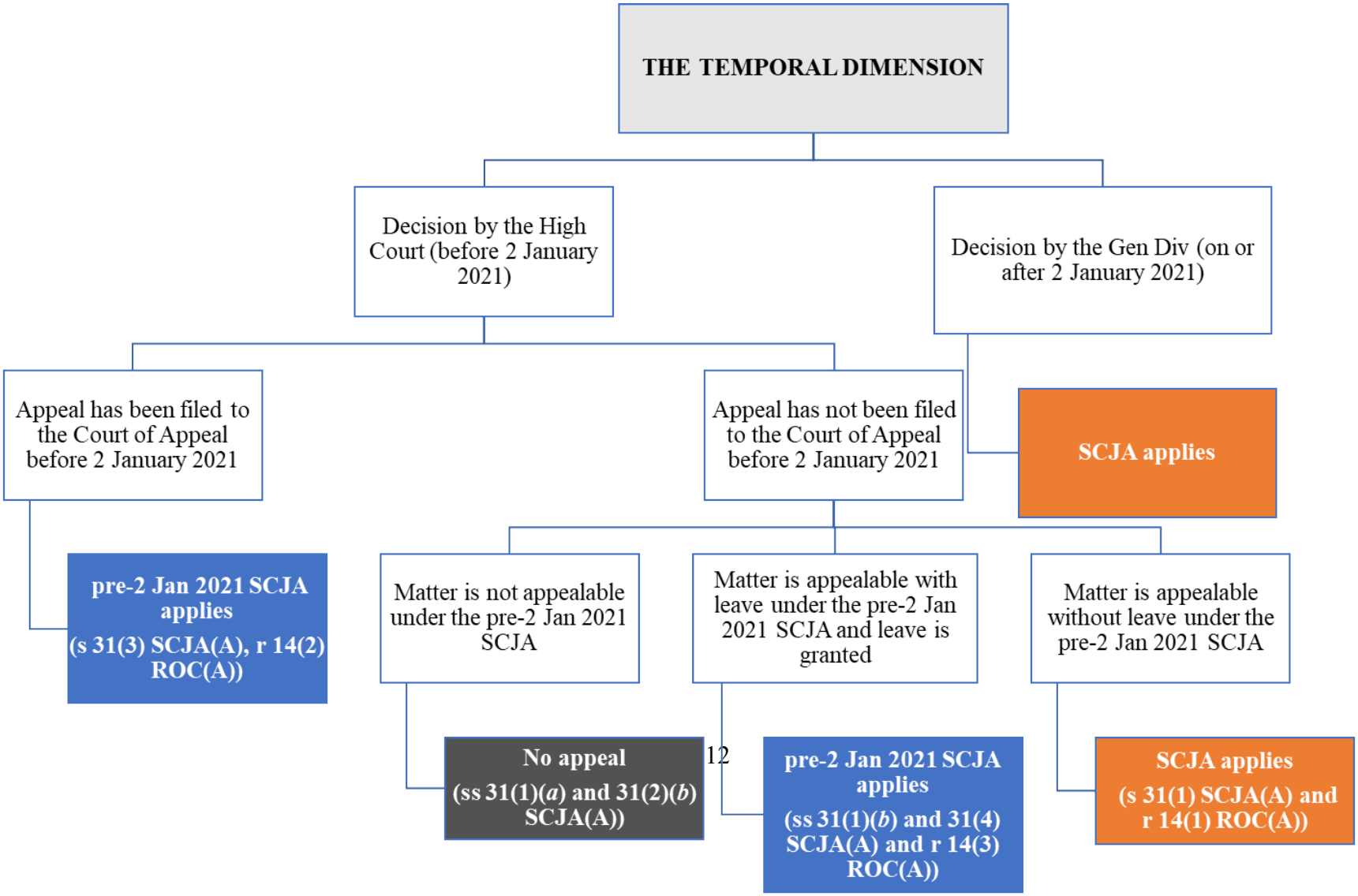
25 The savings and transitional provisions governing the amendments to the SCJA as well as the accompanying amendments to the 2 January 2021 version of the ROC as provided for in the Rules of Court (Amendment No 5) Rules 2020 (S 1043/2020) ("ROC(A)") can be found at ss 31 and 32 of the SCJA(A) and r 14 of the ROC(A) respectively. For ease of reference, I refer to the version of the ROC prior to 2 January 2021 as the "pre-2 Jan 2021 ROC".

26 The key date when considering the above provisions is 2 January 2021. On that day, the old High Court became the Gen Div and the AD came into operation. Section 31(5) of the SCJA(A) is of particular importance. It makes explicit that proceedings in the High Court begun prior to 2 January 2021 are deemed to be proceedings in the Gen Div on or after 2 January 2021. The subsection provides as follows:

> (5) To avoid doubt, *proceedings begun in the High Court* (other than proceedings of the Family Division of the High Court or of the Singapore International Commercial Court) *before the date of commencement of this subsection continue, on or after that date, in the General Division of the High Court, as if the proceedings had begun in the General Division of the High Court.*
>
> [emphasis added]

By way of illustration, a suit or originating summons commenced in the High Court on 1 January 2021, continues as a matter before the Gen Div on 2 January 2021. Any judgment rendered in respect of this matter on or after 2 January 2021 is a decision of the Gen Div rendered by a judge of the Gen Div.

27 The temporal dimension to the default allocation of appeals can be represented through the following chart:



28 In essence, if a decision is released by the Gen Div on or after 2 January 2021, the new amendments in the SCJA and ROC apply.

29 The situation is slightly more complex if a decision had been released by the High Court prior to 2 January 2021. If an appeal had been successfully filed to the Court of Appeal prior to 2 January 2021, the pre-2 Jan 2021 SCJA and ROC apply and the appeal remains in the Court of Appeal (see s 31(3) of the SCJA(A) and r 14(2) of the ROC(A)).

30 On the other hand, if no appeal had been filed to the Court of Appeal prior to 2 January 2021, the inquiry turns on whether leave to appeal is required to file an appeal pursuant to the pre-2 Jan 2021 SCJA:

(a) *If leave to appeal is not required*, the SCJA and ROC will apply to any appeal that is filed after 2 January 2021 and any applications filed therein (see s 31(1) of the SCJA(A) and r 14(1) of the ROC(A)).

(b) *If leave to appeal is required*, the two-tier framework for leave to appeal under the pre-2 Jan 2021 SCJA and ROC will continue to apply to the decision. If leave is granted by the Gen Div (or the High Court prior to 2 January 2021) or the Court of Appeal, then the appeal is to proceed to the Court of Appeal and the pre-2 Jan 2021 SCJA and ROC will continue to apply to the appeal and the applications filed therein. In this regard, s 31(4) of the SCJA(A) preserves the two-tier framework for leave to appeal in such cases, r 14(4) of the ROC(A) preserves the application of the pre-2 Jan 2021 ROC to the second tier application for leave to appeal to the Court of Appeal, and r 14(3) of the ROC(A) preserves the application of the pre-2 Jan 2021 ROC such

that if leave to appeal is granted, the appeal will be heard by the Court of Appeal (see also s 31(1)(*b*) of the SCJA(A)).

(c) *If the matter is not appealable in the first place*, no appeal can be brought in respect of the decision. The amendments to the SCJA do not change this (see ss 31(1)(*a*) and 31(2)(*b*) of the SCJA(A)).

(2) The subject matter dimension

31 The subject matter dimension applies only if the new provisions in the SCJA and ROC govern an appeal and the applications filed therein. This is because if the pre-2 Jan 2021 SCJA and ROC apply, any and all appeals from the decisions of the High Court can only be filed to the Court of Appeal.

32 Division 9 of Part III of the SCJA governs the "*Allocation of appeals*" [emphasis in original] from decisions of the Gen Div. Section 29C grounds the subject matter dimension and provides as follows:

> **Court to which appeal is to be made**
>
> **29C**.—(1) Subject to subsection (2), an appeal against a decision of the General Division in the exercise of its original or appellate civil jurisdiction, whether under this Act or any other written law, is to be made to the Appellate Division.
>
> (2) An appeal against a decision of the General Division is to be made to the Court of Appeal if the Sixth Schedule or any other written law so provides.
>
> (3) To avoid doubt, this section does not create any right of appeal against a decision of the General Division.

33 It bears mention that the AD does not have any appellate criminal jurisdiction and all criminal appeals whether from the old High Court or the Gen Div proceed directly to the Court of Appeal (see ss 31(1), 31(2) and 35 of the SCJA). It will also be obvious that s 29C of the SCJA takes an "either-or"

(or binary) approach towards the default allocation of ***civil*** *appeals.* Simply put, if an appeal deals with an area of law that falls within the Sixth Schedule to the SCJA ("6th Schedule") or if some other written law so provides, it will be placed on the docket of the Court of Appeal by default. Otherwise, it will be adjudicated upon by the AD. Parties should file their appeals or leave applications accordingly.

34 It is not necessary for the purpose of OS 9 to exhaustively list the categories of appeal prescribed in the 6th Schedule. However, to provide a flavour of the cases that are reserved to the Court of Appeal, the 6th Schedule includes appeals that arise from cases relating to constitutional or administrative law, contempt of court, arbitration, insolvency and the law of patents; and appeals against decisions of the Singapore International Commercial Court.

35 These categories have been selected by the drafters with care and the cogent considerations behind their selection were laid out in the speech of the Senior Minister of State during the 2019 Parliamentary Debates:

> The appeals that have been prescribed are generally those that:
>
> (a) are likely to have *substantial consequences for individuals or society*;
>
> (b) may involve questions of *law of public interest* which would benefit from guidance of the apex court in Singapore;
>
> (c) concern the general administration of justice;
>
> (d) may involve *novel questions of law, or new areas of law* which would benefit from guidance from the Court of Appeal;
>
> (e) may involve *issues that are likely to be important and require earlier clarification from the Court of Appeal*; or
>
> (f) relate to strategic areas that would benefit from the stature of the apex court, such as the areas of laws

> which seek to bolster Singapore's status as a dispute resolution hub or debt restructuring hub.
>
> Based on these principles, appeals arising from cases relating to constitutional or administrative law, appeals arising from decisions of the [Singapore International Commercial Court] and appeals arising from cases relating to the law of arbitration will ordinarily be allocated to the Court of Appeal. Those are examples; the list is not exhaustive.
>
> [emphasis added]

36 As will be seen later, a number of these considerations are mirrored in the wording of O 56A r 12(3) of the ROC – the rule which contains a non-exhaustive list of matters that the Court of Appeal may have regard to when considering whether to transfer an appeal from the AD to itself. This is unsurprising. After all, the purpose of the AD is ***not*** to replace the Court of Appeal, but rather to alleviate its caseload and allow the apex court to focus its resources on matters which would benefit from its expertise as the apex court of the land (see above at [5]). The prescribed categories under the 6th Schedule thus serve as a rough preliminary gauge of when an appeal will more appropriately be heard by the Court of Appeal.

Summary of the statutory scheme

37 I summarise the current statutory scheme governing the allocation of appeals between the Court of Appeal and the AD as follows:

(a) First, the applicable version of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) and the Rules of Court (Cap 322, R 5, 2014 Ed) should be ascertained (*ie*, the *temporal* dimension).

(i) If the pre-2 Jan 2021 SCJA and ROC apply to the case, the appeal lies only to the Court of the Appeal.

(ii) If the SCJA and ROC apply to the case, move to the second step ([37(b)], below).

(b) Second, ascertain if the case falls within any of the prescribed grounds in the 6th Schedule or if any other written law provides that the appeal is to be heard by the Court of Appeal pursuant to s 29C(2) of the SCJA (*ie*, the *subject matter* dimension).

(i) If the above question is answered in the affirmative, the appeal and other related applications are to be filed in the Court of Appeal.

(ii) If, however, the above question is answered in the negative, the appeal and other related applications are to be filed in the AD.

(c) Third, a transfer of the appeal may be effected pursuant to ss 29D and 29E of the SCJA (as elaborated upon in the next section of this Judgment).

38 To complete the picture, it should be added that in the vast majority of cases, once an appeal has been heard by the AD, the AD will serve as the final appellate court. However, the AD is not the apex court and *some* of its decisions are subject to a tightly confined and highly limited avenue of appeal pursuant to s 47 of the SCJA – *ie*, if *leave* is granted by the Court of Appeal on the basis that "the appeal will raise a point of law of public importance" (see s 47(2) of the SCJA and O 57 r 2A(3) of the ROC). As has been stressed repeatedly by the Senior Minister of State in Parliament, the AD is not to be seen as a further tier of appeal that must be crossed before a matter can reach the Court of Appeal. It is meant to *share* in the workload, not *delay* it. It should be emphasised once

again that ***the AD will usually be the final stop for parties***. Applications for leave to appeal from the AD to the Court of Appeal will be assessed on criteria that are far more stringent than the usual principles that govern applications for leave to appeal against a decision of the Gen Div. Leave will only be granted in *rare* circumstances.

The statutory scheme governing the transfer of proceedings from the Court of Appeal to the AD

Introduction

39 The default allocation of appeals is neither immutable nor cast in stone. If s 29C of the SCJA serves as a broad-brush mechanism for the default allocation of appeals, ss 29D and 29E of the SCJA carve out parallel fine-tuning channels to *transfer* appeals from the Court of Appeal to the AD, and *vice versa* (collectively, "the transfer provisions").

40 The transfer provisions inject flexibility into the allocation of appeals and their purpose is to "help to ensure that the Court of Appeal's resources are focused on the matters that necessitate a decision from the apex court" (see the 2019 Parliamentary Debates). Sections 29D(5) and 29E(5) of the SCJA make explicit that the transfer provisions are capable of overriding s 29C of the SCJA and the prescribed categories under the 6th Schedule.

41 I focus my attention on s 29D of the SCJA as OS 9 is an application by the appellants under this section. Section 29D stipulates that:

> **Power to transfer appeal to Court of Appeal**
>
> **29D.**—(1) The Court of Appeal may transfer the following appeals to itself:

> (*a*) any appeal against any decision of the General Division that has been made to the Appellate Division;
>
> (*b*) where an order under section 39A of the Land Acquisition Act (Cap. 152) is in force, any appeal made to the Appellate Division under section 29(2) or 38(2) of the Land Acquisition Act.
>
> (2) The power in subsection (1) may be exercised by the Court of Appeal —
>
> (*a*) on its own motion;
>
> (*b*) on a reference by the Appellate Division; or
>
> (*c*) on an application to the Court of Appeal by any party to the appeal, but such an application may only be made —
>
> (i) on the ground that the appeal was not made to the Appellate Division in accordance with section 29C; or
>
> (ii) on grounds prescribed by the Rules of Court.
>
> (3) In deciding whether to exercise the power in subsection (1), the Court of Appeal is to have regard to matters prescribed by the Rules of Court.
>
> (4) To avoid doubt, Rules of Court made for the purpose of subsection (3) may prescribe different matters for the different circumstances mentioned in subsection (2)(*a*), (*b*) and (*c*).
>
> (5) To avoid doubt, an appeal may be transferred under subsection (1) even if it was made to the Appellate Division in accordance with section 29C(1).

42 A plain reading of s 29D of the SCJA reveals three important points. First, the power to transfer an appeal from the AD to the Court of Appeal lies solely with the Court of Appeal. Second, this power is excised at its discretion – a fact made clear by the repeated use of the word "may" and s 29D(3) of the SCJA. Third, this power is exercisable in three situations: (a) on the Court of Appeal's own motion; (b) on a reference by the AD; or (c) on an application by any party to the appeal before the AD – as is the case in OS 9.

43 Pursuant to s 29D(3) of the SCJA read with s 29D(1) of the SCJA, the Court of Appeal is to have regard to the matters prescribed in the ROC when faced with an application for transfer under s 29D of the SCJA. This is a reference to the grounds as prescribed under O 56A r 12 of the ROC which a party seeking a transfer must rely upon pursuant to s 29D(2)(*c*)(ii) of the SCJA.

44 Order 56A r 12 of the ROC provides as follows:

> **Transfer of appeal under section 29D(1)(*a*) of Supreme Court of Judicature Act (O. 56A, r. 12)**
>
> **12.**—(1) For the purposes of section 29D(2)(*c*)(ii) of the Supreme Court of Judicature Act, the Court of Appeal may exercise its power under section 29D(1)(*a*) of that Act, on an application to the Court of Appeal to transfer an appeal that has been made to the Appellate Division, *on the ground that it is more appropriate for the Court of Appeal to hear the appeal*.
>
> (2) For the purposes of section 29D(3) of the Supreme Court of Judicature Act, the Court of Appeal may, on its own motion or on a reference by the Appellate Division, exercise its power under section 29D(1)(*a*) of that Act only where —
>
> (a) the appeal was not made to the Appellate Division in accordance with section 29C of that Act;
>
> (b) it is *more appropriate* for the Court of Appeal to hear the appeal; or
>
> (c) one or more of the legal issues raised in the appeal engage one or more of the matters set out in the Sixth Schedule to that Act.
>
> (3) For the purposes of paragraphs (1) and (2)(*b*), *when determining whether it is* ***more appropriate*** *for the Court of Appeal to hear an appeal that has been made to the Appellate Division, the Court of Appeal may have regard to one or more of the following matters*:
>
> (*a*) whether the proceedings relate to a matter of national or public importance;
>
> (*b*) whether the appeal will raise a point of law of public importance;

> (*c*) the complexity and novelty of the issues in the appeal;
>
> (*d*) whether there is a decision of the Court of Appeal in relation to a point of law raised in the appeal which may be material to the outcome of the appeal;
>
> (*e*) whether there are conflicting judicial decisions;
>
> (*f*) the significance of the results of the proceedings;
>
> (*g*) any other relevant matter.
>
> …
>
> [emphasis added in italics and bold italics]

45 A simple reading of O 56A r 12 of the ROC reveals three points. First, the overarching inquiry which governs the exercise of the Court of Appeal's discretion to transfer an appeal to itself from the AD is whether "it is more appropriate for the Court of Appeal to hear the appeal" (O 56A rr 12(1) and 12(3) of the ROC). Second, the seven grounds for a transfer prescribed under O 56A r 12(3) of the ROC are not exhaustive and a case may engage one or more of them. In fact, the expansiveness of the court's inquiry is built into O 56A r 12(3)(*g*) of the ROC which expressly provides that the Court of Appeal may consider "any other relevant matter". Third and as mentioned above at [35]–[36], the grounds contained within O 56A r 12(3) of the ROC bear marked similarities to the elucidated considerations governing the selection of categories prescribed under the 6th Schedule.

46 With this, I turn to consider the general principles applicable to each of the grounds that the appellants seek to rely upon in support of their transfer application in OS 9, bearing in mind the general principles of statutory interpretation laid out in the decision of this court in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*").

O 56A r 12(3)(a) of the ROC

47 Order 56A r 12(3)(*a*) of the ROC provides that when determining whether it is more appropriate for the Court of Appeal to hear an appeal that has been made to the AD, the Court of Appeal may have regard to:

> (*a*) whether the proceedings relate to a matter of national or public importance;

48 It will be immediately apparent that O 56A r 12(3)(*a*) of the ROC refers specifically to "proceedings" which relate to a "matter" of national or public importance. When this is read in the context of O 56A r 12 as a whole and contrasted with the pointed (and narrower) references to "appeal" and "point of law" in O 56A rr 12(3)(*b*) and 12(3)(*d*) of the ROC, it is clear that O 56A r 12(3)(*a*) of the ROC has a broader scope than the two aforementioned provisions. Cases that involve issues of *fact* and law which are of national or public importance may fall within this ground. Further, these matters of national or public importance do not necessarily have to arise squarely for the court's determination – *ie*, they do not need to have a substantial bearing on the outcome of the appeal.

49 The broad scope of the words "proceedings" and "matter" in O 56A r 12(3)(*a*) of the ROC does not mean that *any* transfer applicant may avail himself or herself of this particular ground. Rather, the scope of the provision is delimited by the words "*national or public importance*" [emphasis added]. The determination of whether a matter engages these words must depend on the facts and circumstances of each case. The words "public importance" indicate that the matter will have weighty ramifications that go far beyond the parties to the dispute. Parliament does not legislate in vain and the addition of the requirement of "national or public importance" in O 56A r 12(3)(*a*) of the ROC indicates

that the drafters envisaged that cases falling under this ground will not only affect a segment of society, but also have the potential to impact Singapore on a macro-level.

50 The above reading of O 56A r 12(3)(*a*) of the ROC is aligned with its general and specific purposes. As mentioned above at [40], the general purpose of the transfer provisions is to "help to ensure that the Court of Appeal's resources are focused on the matters that necessitate a decision from the apex court". The specific purpose of O 56A r 12(3)(*a*) of the ROC is apparent from the plain wording of the provision itself. It ensures that the Court of Appeal has the discretion to transfer appeals to itself when they bear on areas of national or public importance (see also *Tan Cheng Bock* at [40]–[41]).

51 This specific purpose can further be gleaned from the Senior Minister of State's speech at the 2019 Parliamentary Debates in which he states that one of the guiding considerations for determining whether a case should be decided by the Court of Appeal by default is whether it "relate[s] to strategic areas that would benefit from the stature of the apex court, such as the areas of laws which seek to boost Singapore's status as a dispute resolution hub or debt restructuring hub" (see *Tan Cheng Bock* at [47]; see also s 9A(2)(*a*) of the Interpretation Act (Cap 1, 2002 Rev Ed)).

*O 56A r 12(3)(*b*) of the ROC*

52 Order 56A r 12(3)(*b*) of the ROC provides that when determining whether it is more appropriate for the Court of Appeal to hear an appeal that has been made to the AD, the Court of Appeal may have regard to:

> (*b*) whether the appeal will raise a point of law of public importance;

53 Order 56A r 12(3)(*b*) of the ROC merits special attention because it is unique amongst all the grounds listed in O 56A r 12(3) of the ROC – its wording is entirely replicated in s 47(2) of the SCJA as a precondition for the grant of leave to appeal against a decision of the AD. The provision can be broken down into three parts: (a) "the appeal will raise"; (b) "a point of law"; and (c) "of public importance". I address each in turn.

(1) "The appeal will raise"

54 As alluded to above at [48], a careful reader will observe that O 56A r 12(3)(*b*) of the ROC is narrower in scope than O 56A r 12(3)(*a*) of the ROC. The targeted words "the appeal will raise" indicate that the point of law of public importance must be a live issue in the appeal, *ie*, one which directly arises for the court's determination, and which has a substantial bearing on the outcome of the appeal. It cannot be a hypothetical or merely theoretical question which is peripheral or irrelevant to the appeal.

(2) "A point of law"

55 The explicit reference to "law" in O 56A r 12(3)(*b*) of the ROC makes clear that this provision will not be engaged if the appeal relates to points which are factual in nature, even if they are of public importance. The distinction between questions of law and mere questions of fact has been clearly laid down by this court in *Chew Eng Han v Public Prosecutor* [2017] 2 SLR 1130 ("*Chew Eng Han*") at [42]–[44]. The former is necessarily normative in nature given that it would apply generally or universally to other (similar) situations. The latter, on the other hand, is necessarily confined or limited to the case at hand.

(3) "Point of law of public importance" and the court's restrictive approach to O 56A r 12(3)(*b*) of the ROC

56 The question of whether a point of law of public importance arises in an appeal must depend upon the facts and circumstances of the case (see also [49] above). An ordinary reading of the words indicates that the point (when adjudicated upon) will have weighty ramifications that go beyond the parties to the dispute such that it would be more appropriate for the Court of Appeal than the AD to deal with the appeal by virtue of its powers and stature as the apex court of the land.

57 By way of a brief aside, the interpretation of the requirement of "question of law of public interest" is to a similar effect in the context of the requirements for leave to bring a criminal reference under s 397 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (see *Chew Eng Han* at [43], citing the decision of this court in *Mohammad Faizal bin Sabtu and another v Public Prosecutor and another matter* [2013] 2 SLR 141 at [19]).

58 Obvious examples of appeals within this provision will include appeals that will engage new questions of law of general application and those that will involve conflicting decisions of the Court of Appeal or the AD which need to be resolved so as to bring certainty to significant areas of law. Conversely, appeals which simply pertain to well-established principles of law or centre on whether the Gen Div or the former High Court has correctly applied established legal principles to the facts of the case, will not fall into this category.

59 The words "point of law of public importance" must also be read in the context of the written law as a whole. Quite apart from the dictates of the interpretive framework in *Tan Cheng Bock* at [37(a)], this is important because

the wording of the provision is wholly replicated under s 47(2) of the SCJA as a pre-requisite for obtaining leave to appeal against a decision of the AD to the Court of Appeal.

60 Section 47 of the SCJA provides as follows:

> **Leave required to appeal**
>
> **47.**—(1) An appeal against a decision of the Appellate Division made in the exercise of its appellate civil jurisdiction may only be brought with the leave of the Court of Appeal.
>
> (2) The Court of Appeal may grant leave under subsection (1) *only if the appeal will raise* ***a point of law of public importance***.
>
> (3) In deciding whether to grant leave under subsection (1) or in determining, for the purposes of subsection (2), whether an appeal will raise a point of law of public importance, the Court of Appeal is to have regard to matters prescribed by the Rules of Court.
>
> …
>
> [emphasis added in italics and bold italics]

61 It has been previously mentioned that such leave to appeal is granted on very narrow grounds (at [38] above), and certainly on more stringent criteria than a transfer application under s 29D of the SCJA. The identical wording in these provisions indicates that "a point of law of public importance" in O 56A r 12(3)(*b*) of the ROC must be interpreted narrowly as well, and on the basis of similar principles, there being no reason to suggest otherwise (see the decision of this court in *Skyventure VWT Singapore Pte Ltd v Chief Assessor and another and another matter* [2021] SGCA 40 ("*Skyventure*") at [38]–[39], citing *Tan Cheng Bock* at [58(c)(i)]).

62 While O 56A r 12 of the ROC does not provide any further clues as to what constitutes a "a point of law of public importance", these can be found in

O 57 r 2A(3) of the ROC which elaborates on some relevant matters which may go toward fulfilling this ground. Order 57 r 2A(3) of the ROC provides that:

> **Application to Court of Appeal for leave to appeal against decision of General Division or Appellate Division (O. 57, r. 2A)**
>
> …
>
> (3) For the purposes of section 47(3) of the Supreme Court of Judicature Act, in deciding whether to grant leave under section 47(1) of that Act, the Court of Appeal is to have regard (in addition to the matter specified in section 47(2) of that Act of whether the appeal will raise a point of law of public importance) to whether it is appropriate for that Court to hear a further appeal from the Appellate Division, taking into account all relevant matters, including either or both of the following:
>
> (*a*) *whether a decision of the Court of Appeal is required to resolve the point of law*;
>
> (*b*) *whether the interests of the administration of justice, either generally or in the particular case, require the consideration by the Court of Appeal of the point of law*.
>
> [emphasis added]

Hence, relevant matters to be taken into account in order to ascertain whether a point of law of public importance arises in the appeal for the purposes of a transfer application under s 29D of the SCJA would include those matters prescribed under O 57 rr 2A(3)(*a*) and 2A(3)(*b*) of the ROC, as set out above.

63 For the avoidance of doubt, it should be emphasised that a case which fulfils O 56A r 12(3)(*b*) of the ROC may not necessarily fulfil the requirement for leave under s 47(1) of the SCJA in the light of the heightened scrutiny by the Court of Appeal in relation to such applications. This much is clear from s 47(4)(*b*) of the SCJA.

(4) The purpose and object of O 56A r 12(3)(*b*) of the ROC

64 The specific purpose of this particular provision is to ensure that questions of law of public importance receive early clarification and guidance from the Court of Appeal, which constitutes the final arbiter of the law in Singapore. This view finds support once again in the Senior Minister of State's speech at the 2019 Parliamentary Debates (as reproduced at [35] above) in which he states that appeals allocated to the Court of Appeal by default are those that "may involve questions of law of public interest which would *benefit from guidance of the apex court in Singapore*" [emphasis added]. This being the case, the plain and restrictive reading of O 56A r 12(3)(*b*) of the ROC (as set out at [54]–[63] above) is entirely consistent with the specific purpose of the provision as well as with the general purpose of the transfer provisions (see above at [40]).

O 56A r 12(3)(c) of the ROC

65 Order 56A r 12(3)(*c*) of the ROC provides that when determining whether it is more appropriate for the Court of Appeal to hear an appeal that has been made to the AD, the Court of Appeal may have regard to:

> (*c*) the complexity and novelty of the issues in the appeal;

66 There are two parts to this provision. First, it relates to "issues in the appeal". In a similar vein to [54] above, these issues must not only feature in the appeal but also arise directly for the court's determination and have a substantial bearing on the outcome of the case. It cannot be a hypothetical or merely theoretical question which is peripheral or irrelevant to the appeal.

67 Second, the court must have regard to the "complexity and novelty" of the issues in the appeal. The use of the conjunctive word "and" makes it clear

that both *complexity* ***and*** *novelty* must be present. Furthermore, this is a matter of degree. Whether the threshold is crossed is for the court to determine after having regard to the facts and circumstances of the case. The mere fact that an issue has not arisen before in the same exact form does not immediately render that issue sufficiently "novel". After all, all issues are "novel" if framed with sufficient specificity. By way of illustration, the current Guinness World Record for the most balls juggled is 11 balls for 23 consecutive catches. This was set on 3 April 2012, a Tuesday (see https://www.guinnessworldrecords.com/world-records/most-balls-juggled/ (accessed, 31 May 2021)). While juggling 11 balls for 23 consecutive catches on a Wednesday has never been done before, doing so would hardly count as novel.

68 In so far as the degree of complexity is concerned, one should bear in mind that the increasing complexity of matters on the Court of Appeal's docket in recent years was one of the reasons that prompted the establishment of the AD in the first place (see above at [5]). The specific purpose of O 56 r 12(3)(*c*) of the ROC is to ensure that appeals that raise novel and complex issues can receive early clarification and guidance from the apex court in the land. On the other hand, more straightforward and uncontroversial appeals may be decided by the AD so as to "ensure that the Court of Appeal's resources are focused on the matters that necessitate a decision from the apex court" (see the 2019 Parliamentary Debates).

69 This is consistent with Parliament's intention as made manifest in the Senior Minister of State's speech at the 2019 Parliamentary Debates:

> … [T]he Court of Appeal may transfer to itself, an appeal which is ordinarily allocated to the Appellate Division, if the appeal concerns a dispute involving complex and novel points of law, and ***the Court of Appeal is satisfied that it will be more***

> ***appropriate for the matter to be resolved by an earlier decision of the apex court, in other words, giving guidance at an earlier stage so that the law becomes settled on a key and important issue***. The Court of Appeal may also consider factors such as whether there are conflicting judicial decisions on the point of law in question which merits clarification.
>
> Conversely, the Court of Appeal may also decide to transfer to the Appellate Division, an appeal which is ordinarily allocated to the Court of Appeal. For instance, an appeal arising from a case relating to constitutional law is ordinarily allocated to the Court of Appeal. However, if the General Division has already rendered its decision on the case and the only issue on the appeal is one of costs, for example, then the Court of Appeal may well decide to transfer the appeal to the Appellate Division. *So, the overall subject matter may fall within, but the issue at stake between the parties, might well relate to something straightforward*. In that scenario, the Court of Appeal can exercise its discretion to transfer it to the Appellate Division.
>
> As another example, an appeal arising from a case relating to contempt of court is ordinarily allocated to the Court of Appeal. *However, if all issues on appeal relate to uncontroversial points of law,* then the Court of Appeal may transfer the appeal to the Appellate Division. The same principles as I have explained will apply. Parties themselves may also apply to the Court of Appeal for the appeal to be transferred to the Appellate Division, if the appeal has not been filed to the correct Appellate Court. To be clear, after the Appellate Division has issued its decision on an appeal that has been transferred for its determination, it remains possible – although not the usual course – but possible for a party to bring a further appeal to the Court of Appeal. This will however be subject to the fulfilment of stringent criteria that I will come to in a while.
>
> ***The transfer powers help to ensure that the Court of Appeal's resources are focused on the matters that necessitate a decision from the apex court.*** …
>
> [emphasis added in italics and bold italics]

*O 56A r 12(3)(*f*) of the ROC*

70 Order 56A r 12(3)(*f*) of the ROC provides that when determining whether it is more appropriate for the Court of Appeal to hear an appeal that has been made to the AD, the Court of Appeal may have regard to:

(*f*) the significance of the results of the proceedings;

71 Order 56A r 12(3)(*f*) of the ROC relates to "the results" of the proceedings and their "significance". Unlike the other provisions which focus on issues in the appeal or the proceedings as a whole, the focus here is on ***the outcome***.

72 The interesting thing about the word "significance" is that it is unaccompanied by any stipulation as to who or to what the outcome matters. This suggests that O 56A r 12(3)(*f*) of the ROC may be satisfied even in cases where the determination of the appeal will only affect the parties concerned if the results are of *substantial and critical consequence to them*. In all cases, the question of whether the outcome of the appeal is of "significance" is for the court to determine, having regard to the facts and circumstances of the case.

73 The preceding paragraph should not be misconstrued as a suggestion that O 56A r 12(3)(*f*) is a general ground available to all and sundry so long as they can demonstrate some personal interest in the results of the appeal. This would render O 56A r 12(3)(*f*) of the ROC so broad as to be meaningless. Almost all appeals will then fulfil this ground, rendering the default allocation of appeals and transfer provisions under ss 29C to 29E of the SCJA nugatory. If, therefore, an applicant wishes to avail himself or herself of O 56A r 12(3)(*f*) of the ROC where the results of the appeal will be confined only to himself or herself and (where applicable) any other parties to the appeal, a high and exceptional degree of personal consequence (*ie*, substantial and critical) would have to be demonstrated for the matter to even be considered as potentially coming within the rule and even then, I could imagine the court having considerable difficulties if indeed the consequences were truly personal in nature. However, as it is not necessary for me to decide the point finally, I

leave it at that. After all, it is a well-established canon of statutory interpretation that Parliament does not intend an unworkable or impracticable result (see *Tan Cheng Bock* at [38]).

74 The above view finds support in the Senior Minister of State's speech at the 2019 Parliamentary Debates on the considerations that went into crafting the prescribed categories under the 6th Schedule. Specifically, the drafters included in the 6th Schedule those appeals that "are likely to have *substantial* consequences for *individuals or* society" [emphasis added].

O 56A r 12(3)(g) of the ROC

75 Order 56A r 12(3)(*g*) of the ROC provides that when determining whether it is more appropriate for the Court of Appeal to hear an appeal that has been made to the AD, the Court of Appeal may have regard to:

> (*g*) any other relevant matter.

76 This provision is worded broadly and serves as a catch-all category for reasons that do not fall within any of the other six grounds under O 56A r 12(3) of the ROC but which nonetheless make it "more appropriate for the Court of Appeal to hear an appeal that has been made to the Appellate Division".

77 It is not necessary at this stage to prescribe any hard and fast rules in relation to this ground. All that needs to be said is that, whether or not this ground is in fact fulfilled is the decision of the court hearing the transfer application, having regard to the facts and circumstances of the case. Bearing in mind the purpose of the establishment of the AD and the transfer provisions, any court hearing a transfer application premised on this ground will undoubtedly be vigilant in scrutinising the veracity of any reasons put forth in

support of a transfer of an appeal to the Court of Appeal, so as to prevent any abuse of it.

*Brief observations on O 56A rr 12(3)(*d*) and 12(3)(*e*) of the ROC*

78 Order 56A rr 12(3)(*d*) and 12(3)(*e*) of the ROC are not squarely engaged in OS 9. While they are more appropriately considered by a future court which has the benefit of hearing arguments from counsel, some brief (and non-binding) observations are provided about them.

79 Order 56A rr 12(3)(*d*) and 12(3)(*e*) of the ROC provide that the Court of Appeal (when faced with a transfer application under s 29D of the SCJA) will have regard to:

> (*d*) whether there is a decision of the Court of Appeal in relation to a point of law raised in the appeal which may be material to the outcome of the appeal;
>
> (*e*) whether there are conflicting judicial decisions;

80 Focussing first on O 56A r 12(3)(*d*) of the ROC, it appears that this ground contains many of the same elements found in O 56A r 12(3)(*b*) of the ROC – namely, "a point of law" "raised" in "the appeal". Consequently, similar principles in relation to these same elements are presumed to apply in respect of O 56A r 12(3)(*d*) of the ROC (see *Skyventure* at [38]–[39], citing *Tan Cheng Bock* at [58(c)(i)]). The difference between the aforementioned provisions is that, in so far as O 56A r 12(3)(*d*) of the ROC is concerned, there must be a prior decision of the Court of Appeal which relates to the "point of law" which may be "material to the outcome of the appeal". In other words, the prior decision must have a substantial bearing on the outcome of the case. It cannot be a merely hypothetical or merely theoretical question which is peripheral or irrelevant to the appeal. This makes logical sense because if it is

indeed the case that the law as laid down by a prior *coram* of the Court of Appeal ought to be reconsidered, the only court with the power to do so under the doctrine of *stare decisis* is the Court of Appeal and not the AD.

81 Similar considerations apply in relation to the interpretation of O 56A r 12(3)(*e*) of the ROC. The Court of Appeal, as the final arbiter of the law in Singapore, is uniquely placed to develop and bring clarity to the law by resolving conflicting judicial decisions. Examples of situations in which this ground may be engaged include cases involving conflicting decisions of the Court of Appeal (*cf* O 56A r 12(3)(*d*) of the ROC) or the AD itself. While it is noted that this particular provision places no restrictions on the nature of the conflict itself, it appears that leave to transfer an appeal from the AD to the Court of Appeal will seldom be granted solely on this ground where the conflict pertains only to decisions of the Gen Div. This is because the AD, by virtue of its position of precedence above the Gen Div, is well placed to resolve conflicting decisions of the Gen Div.

My decision

82 Bearing in mind the relevant principles set out above, let me now turn to consider the parties' arguments. Before this, however, it is necessary to deal with a preliminary point raised by the appellants – *ie*, whether the new amendments to the SCJA apply to the Appeal such that it ought to be heard by the AD by default.

83 The answer to the question just posed is in the affirmative. The Appeal is against a decision of the Judge released on 19 January 2021 – *ie*, after 2 January 2021. This was thus a decision of *the Gen Div* to which the amendments in the SCJA and ROC apply (*ie*, the temporal dimension). In OS 9,

none of the parties contends that the Appeal falls within any of the prescribed categories in the 6th Schedule (*ie*, the subject matter dimension). As such, the SCJA and ROC apply to the Appeal and there is no error in the allocation of the Appeal to the AD by default.

84 The appellants do not dispute this. Instead, they argue that as the amendments to the SCJA and ROC came into effect on 2 January 2021, "the provisions should apply *prospectively* to cases commenced in the High Court after 2 January 2021" [emphasis added]. They add that the statutory provisions "***were silent*** as to whether the amendments would apply to cases commenced in the High Court after 2 January 2021 or whether it would retrospectively apply to existing cases" [emphasis added], and that giving them retrospective effect would therefore be tantamount to depriving litigants of the right to be heard by the Court of Appeal.

85 The submission is wholly without merit for two reasons. First, on 2 January 2021, the old High Court was renamed the Gen Div. Section 3 of the SCJA excludes any reference to "the High Court" and declares that "the General Division of the High Court, the Appellate Division of the High Court and the Court of Appeal are superior courts of record". Strictly speaking, it is thus incorrect to refer to "cases commenced in the High Court after 2 January 2021".

86 Second and more fundamentally, a careful reading of s 31(5) of the SCJA(A) renders the appellants' assertion that the amendments to the SCJA can only apply *prospectively* to actions commenced in the *Gen Div* after 2 January 2021 completely baseless. To recapitulate, s 31(5) of the SCJA(A) stipulates that:

> **Saving and transitional provisions**
>
> …
>
> (5) To avoid doubt, *proceedings begun in the High Court* (other than proceedings of the Family Division of the High Court or of the Singapore International Commercial Court) *before the date of commencement of this subsection continue, on or after that date, in the General Division of the High Court, as if the proceedings had begun in the General Division of the High Court.*
>
> [emphasis added]

87 It is unfortunate that both parties to OS 9 appear to have overlooked this provision when it was enacted precisely to provide the answer to the preliminary issue of the retrospective effect of the amendments to the SCJA and ROC raised by the appellants. Section 31(5) of the SCJA(A) makes clear that proceedings begun in the High Court prior to 2 January 2021 will be deemed to continue as proceedings in the Gen Div on, or after, 2 January 2021. In other words, even though Suit 59 was commenced in the High Court on 20 January 2015 and the AOD Hearing was completed in September 2020, Suit 59 is a proceeding that continues in the Gen Div on and after 2 January 2021 as if it had been started there from the outset.

88 This being the case, the appellants had correctly filed the Appeal to the AD (as a default position).

Issues 1 & 2: O 56A rr 12(3)(a) and 12(3)(b) of the ROC

89 The appellants' arguments in respect of O 56A rr 12(3)(*a*) and 12(3)(*b*) of the ROC do not, unfortunately, properly distinguish between these two grounds. As will be apparent from the discussion above, the seven grounds under O 56A r 12(3) of the ROC are distinct and should, as a matter of good practice, be argued separately by counsel, even if the overall argument

comprises a combination of two or more of these matters. Nonetheless, to avoid unnecessary repetition, the two arguments that have been raised by the appellants in respect of both O 56A rr 12(3)(*a*) and 12(3)(*b*) of the ROC will be dealt with together.

90 The appellants' first argument is that the Judge's decision has rendered it unclear when s 10(3)(*a*) of the CLA will apply, this being a point which merits clarification from the Court of Appeal. Ms Azlin was alive when Suit 59 was commenced and at the time of the first CA Judgment, and thus the appellants ought to be allowed to claim for her loss of take-home earnings and Central Provident Fund ("CPF") savings for the years *after* she had passed away (from 2019 to 2044). This claim was disallowed by the Judge on the basis that s 10(3)(*a*) of the CLA applied to bar the claim (see the Judgment at [154]–[158]). The appellants aver that the applicability of s 10(3)(*a*) of the CLA is a matter of public importance and/or a point of law of public importance as: (a) there are other terminally ill plaintiffs who may wish to pursue claims against their tortfeasors; and (b) a claim for loss of future earnings and CPF savings often results in much higher awards being made to the estate than a loss of inheritance claim when the deceased persons do not have dependents.

91 Section 10 of the CLA provides as follows:

> **Effect of death on certain causes of action**
>
> **10.**—(1) Subject to this section, on the death of any person, *all causes of action subsisting against or vested in him shall survive* against, or, as the case may be, for the benefit of his estate.
>
> (2) Subsection (1) shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to any claim for damages on the ground of adultery.

> (3) Where a cause of action survives as specified under subsection (1) for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person —
>
> (*a*) ***shall not*** *include —*
>
> (i) *any exemplary damages; and*
>
> (ii) *any damages for loss of income in respect of any period after that person's death;*
>
> …
>
> [emphasis added in italics and bold italics]

92 In my view, the appellants' first reason must be rejected. The wording of s 10(3)(*a*) of the CLA is ***clear***. Exemplary damages and damages for loss of income "in respect of any period after that person's death" are disallowed. The purpose of this provision was explained by the then Second Minister for Law, Professor S Jayakumar, on 4 March 1987 (*Singapore Parliamentary Debates, Official Report* (4 March 1987), vol 49 at col 67). In gist, Parliament was concerned that double compensation may be payable in cases where the deceased claimant's dependents are not beneficiaries of the deceased's estate. In such cases the wrongdoer may have to pay damages both to the deceased's estate for lost years and to his or her dependents for loss of dependency. Parliament was aware that the claim for "lost years" (*ie*, loss of income and CPF savings) "is often higher than the 'loss of dependency claim'. In some cases, dependents may obtain damages which are more than their actual loss of dependency". However, the enactment of the provision was prompted by the need to eliminate the potential overlap between the two (see also the decision of the High Court in *China Taiping Insurance (Singapore) Pte Ltd and another v Low Yi Lian Cindy and others* [2018] 4 SLR 523 ("*China Taiping*") at [53] and [55]).

93 The established case law also makes clear that s 10(3)(*a*)(ii) of the CLA excludes an estate's claim for loss of income in respect of *any period after the death* of the claimant (see the decisions of the High Court in *Lassiter Ann Masters (suing as the widow and dependant of Lassiter Henry Adolphus, deceased) v To Keng Lam (alias Toh Jeanette)* [2005] 2 SLR(R) 8 at [11] and [28], *China Taiping* at [54]; as well as *AOD (a minor suing by his litigation representative) v AOE* [2016] 1 SLR 217 at [192]). While the cases do not make a distinction between a claimant who passes away prior to the bringing of the action and a claimant who passes away in the process of vindicating his or her claim, this is unsurprising given the clear and express words of the statutory provision as well as Parliament's expressed concern regarding double recovery.

94 Save for repeatedly stressing that Ms Azlin was alive at the time of the first HC Judgment and the first CA Judgment, the appellants make no proper attempt to grapple with the unambiguous wording of the provision and the manifest intention of Parliament, and provide no reason whatsoever to cast any doubt on the clear line of case law. There is, in my view, therefore no reason to reconsider the settled legal principles in relation to s 10(3)(*a*) of the CLA. The Appeal involves only the *application* of settled legal principles on s 10(3)(*a*) of the CLA. It is neither a case which involves a point of law of public importance under O 56A r 12(3)(*b*) of the ROC, nor one which relates to a matter rising to the level of "national or public importance" under O 56A r 12(3)(*a*) of the ROC.

95 The appellants' second argument is that both O 56A rr 12(3)(*a*) and 12(3)(*b*) of the ROC are engaged because: (a) save for cases involving defamation and in criminal proceedings, there is no case authority awarding aggravated or punitive damages for a defendant's unreasonable conduct of proceedings; (b) there are no precedents for the grant of such damages in cases

of medical negligence or medical negligence cases involving cancer; and (c) in the circumstances where the claimant has passed on.

96 This argument ought to be rejected for three reasons. Firstly, s 10(3)(*a*)(i) of the CLA explicitly states that exemplary damages (*ie*, punitive damages) cannot be claimed after the death of the claimant.

97 Secondly, *even if* both forms of damages are recoverable in principle, the case involves the *application* of established principles in relation to an award of punitive and aggravated damages. This is not denied by the appellants and is in fact implicit in paras 23 to 26 of its submissions in OS 9 which focus on punishing CGH's *unreasonable conduct of proceedings***,** deterring would-be defendants from acting in the same "reprehensible" manner and the injury caused to Ms Azlin through its conduct which "put [her] through the rigours of a trial lasting some 6 years from 2015 up to the point of her demise in 2019 and even beyond". These are clear references to the test for punitive and aggravated damages laid out at [156] of this court's decision in *ACB v Thomson Medical Pte Ltd and others* [2017] 1 SLR 918*,* notwithstanding the appellants' repeated averments that they are basing this claim on the "conduct of proceedings" rather than the medically "negligent conduct" of CGH. There is thus no point of *law* of public importance which would benefit from a decision of the Court of Appeal.

98 Thirdly and relatedly, the mere fact that established principles of recovery are being applied in a novel fact scenario (*ie*, the allegedly unreasonable way in which CGH conducted itself, the lack of precedents on the award of the abovementioned forms of damages in a medical negligence suit and the novelty of a case involving the assessment of damages premised on late

diagnosis of cancer) does *not* elevate the Appeal to the level of "national importance" or "public importance". It is not sufficient to say that "there is public interest in ensuring that future defendants are deterred from conducting proceedings unreasonably" – such an overbroad reading of "public importance" or "national or public importance" would render the terms meaningless. The appellants' arguments on this are highly fact-centric, a point that is best illustrated with regard to para 25 of their written submissions for OS 9 where they lay out all the alleged forms of unreasonable conduct by CGH, including the making of "ludicrous submissions for $20,800 in damages to be awarded by the Trial Judge".

99 As for the appellants' claim that the guidance of the Court of Appeal is necessary in the light of the confusion and misunderstanding in the medical community caused by this court's decision in the first CA Judgment, this too ought to be rejected as it ignores the fact that these "new" questions are *operational in nature* as they concern matters which are to be worked out by the *management teams of hospitals in conjunction with the Ministry of Health.* This is obvious from the very same passage of the Statement by the Minister of Health cited by the appellants in their reply submissions for OS 9 (*Singapore Parliamentary Debates, Official Report* (1 April 2019), vol 94 (Mr Gan Kim Yong, Minister for Health)):

> …
>
> Sir, both the medical community and the public have raised serious concerns regarding … a decision of the Court of Appeal in a civil suit against Changi General Hospital (CGH). Members have asked various questions on these cases, which I will address in this Statement.
>
> …
>
> The Court of Appeal's decision in the civil suit concerned a case of negligence against CGH for delaying the diagnosis of a

> patient's cancer. … The Court of Appeal's decision has been interpreted by the medical profession to mean that, in the majority of cases, radiologists are well placed to decide which specialist or hospital department should follow up on a radiological report with an adverse finding. ***This is different from the current general practice,*** *which is to return the radiological and test reports to the doctor and team who had seen the patient, ordered the investigations and had the continuing obligation to care for the patient.*
>
> *Radiologists are understandably worried that they do not have the same care relationship with patients and are not in a position to decide which department or specialist is most appropriate for the continuing care of the patient.* Our lawyers have told us that the medical profession may not have interpreted the Court of Appeal's decision correctly. Nevertheless, we must deal with the medical profession's concerns and clarify the position.
>
> …
>
> [emphasis added in italics and bold italics]

100 The highlighted passages in the quotation in the preceding paragraph demonstrate that the questions which arise from the first CA Judgment concern the administration of, and protocols used within, hospitals so as to give effect to the findings and pronouncements *within the judgment.* This is *entirely operational* and well within the realm of hospital administrators and regulators – the questions are *not legal* in nature. This being the case, the reasons advanced by the appellants do *not* make out the grounds for transfer pursuant to O 56A rr 12(3)(*a*) or 12(3)(*b*) of the ROC.

*Issues 3 & 4: O 56A rr 12(3)(**c**) and 12(3)(**f**) of the ROC*

101 The appellants aver that the grounds under O 56A rr 12(3)(*c*) and 12(3)(*f*) of the ROC are satisfied as the Appeal raises novel issues on the quantification of damages for pain and suffering. They argue that there being no prior cases involving patients who are terminally ill due to a delay in the diagnosis of cancer and/or the treatment for cancer, *"[t]he result of this Appeal*

would therefore be significant as there are no precedents" [emphasis added]. Further, "[c]onsidering the prevalence of cancer in modern society, the significance of these proceedings cannot be overstated".

102 The glaring problem with the appellants' arguments in this regard, and, in particular, the sentence italicised above, is the suggestion that the lack of analogous precedents in a particular area of law will *ipso facto* mean that the results of the proceedings (which will generate a precedent) are significant such that the fulfilment of O 56A r 12(3)(*c*) of the ROC will lead to the automatic establishment of O 56A r 12(3)(*f*) of the ROC without the need for further analysis or explanation. While there may well be cases which engage both grounds due to the novelty of the issues raised, the submission is problematic from a conceptual perspective – the seven grounds under O 56A r 12(3) are distinct and should not be conflated with each other. This being the case, they should be addressed separately with due attention being paid to the requirements of "complexity and novelty" and "significance", respectively. Only then can arguments be made if both provisions are sought to be invoked by the applicant concerned.

103 A further issue is that under O 56A r 12(3)(*c*) of the ROC, both the "complexity" ***and*** "novelty" of the issues on appeal must be addressed. Novelty alone is insufficient – in other words, the novelty of an issue cannot supply the requisite complexity which makes it more appropriate for the Court of Appeal to hear the appeal than the AD.

104 In any event, the issues raised in respect of the quantification of damages for pain and suffering do *not* raise "novel" issues. The principles governing the award of such damages are well established in our law – in fact, they inevitably

crop up whenever personal injury cases appear before our courts (see, *eg*, State Courts of Singapore, *Assessment of Damages: Personal Injuries and Fatal Accidents* (LexisNexis, 3rd Ed, 2017) at paras 5-5 to 5-7). Whilst the present case involves arguments based on treatment for cancer and the pain and suffering engendered by chemotherapy, this simply calls for an application of well-established principles to the facts. Accepting that this is sufficiently "novel" within the meaning of O 56A r 12(3)(*c*) of the ROC would set a bad and unprincipled precedent as any litigation concerning a previously unexplored mode of injury infliction (in respect of which the possibilities are infinite) would essentially be seen as ripe for the Court of Appeal's determination even if the methodology of quantification follows the exact same route as adopted in earlier cases involving more common injuries.

105 As the appellants' arguments on the significance of the results of the proceedings under O 56A r 12(3)(*f*) of the ROC are premised entirely on the novelty of the issue, these fall away in the light of my observations at [104] above. The mere fact that the prevalence of cancer is, unfortunately, on the increase in Singapore is insufficient on its own to supply the requisite significance to the results of these proceedings.

Issue 5: O 56A r 12(3)(g) of the ROC

106 The appellants submit that it would be more appropriate for the Court of Appeal to hear the Appeal as it adjudicated on the subject matter of Suit 59 in 2019 and a number of pending proceeding remain in relation to it. In my view, the appellants are entitled to succeed on this argument. Let me elaborate.

107 The first CA Judgment was an appeal from the Judge's decision in the first HC Judgment which focussed on CGH's liability for the progression and

severity of Ms Azlin's cancer. While this court reversed the Judge's decision in respect of a finding of non-liability and remitted the case back to the Judge for her to assess and quantify the loss and damage occasioned to Ms Azlin due to the delay in diagnosis (as summarised above at [12]), this court observed at [125] of the first CA Judgment that the Original Hearing before the Judge was not bifurcated. This meant that while the evidence adduced during the Original Hearing may not have been specifically tailored to the Court of Appeal's findings in the first CA Judgment, some evidence as to the quantum of damages to be awarded to Ms Azlin was already before the Court of Appeal during the Original Appeal. This court also made certain observations pertaining to Ms Azlin's damages in the first CA Judgment (at [126]). As such, it is unsurprising that a brief survey of the fresh evidence adduced during the AOD Hearing reveals a variety of similar themes and the development of facts and lines of inquiry that will be familiar to those acquainted with the Original Appeal (see, *eg*, the Judge's discussion of the difference between clinical and pathological staging of tumours at [35]–[39] of the Judgment which directly engages with some of this court's discussion of the same in determining whether Ms Azlin had cancer in July 2011 at [106] of the first CA Judgment). The very same medical experts who testified in the Original Hearing (and whose evidence was placed before this court on appeal) testified again in the AOD Hearing (see the Judgment at [4]). To put it another way, the Appeal exists as a result of a rare and peculiar set of circumstances whereby the *prior* issues relating to the *substantive liability of CGH* had in fact, already been dealt with by the Court of Appeal in *prior proceedings* (*ie*, the first CA Judgment) and some of this same evidence is also highly relevant to the Appeal. This being the case, I agree with the appellants that the Court of Appeal is already familiar with the circumstances and background to the Appeal and thus better placed to hear it than the AD.

108 In addition, it is not merely the case that proceedings remain pending in respect of Suit 59 generally but rather that proceedings remain *pending before the Court of Appeal in relation to the first CA Judgment* (as laid out above at [16(a)] and [16(b)]). The outcome of these proceedings will depend, in part, on the determination of the Appeal because they concern the costs of Suit 59 as well as the Original Appeal from which the Appeal springs.

109 As this court observed at [127] of the first CA Judgment, the litigation proceedings in respect of Suit 59 have been protracted and deeply acrimonious. It would be far more efficient for the same court (which is already familiar with the subject matter of the proceedings) to deal with both the Appeal and the pending issues of costs in the Original Appeal. Any extension of this litigation is to no one's benefit and everyone's detriment, especially Ms Azlin's family who continue to suffer under the weight and expense of continued litigation.

110 As mentioned above at [77], transfer applications which hinge on O 56A r 12(3)(*g*) of the ROC will be subject to searching scrutiny by the Court of Appeal and will, barring exceptional and rare circumstances, generally fail to warrant an exercise of the court's powers under s 29D(1) of the SCJA. That said, the combination of factors mentioned above has, in my judgment, generated a unique and exceptional situation which makes it more appropriate for the Court of Appeal to hear the Appeal than the AD. I thus grant the appellants' application for a transfer of proceedings.

Observations on the conduct of counsel

111 The reasons above suffice to deal with OS 9, however, it is incumbent on me to deal with one final argument raised by the appellants, or more specifically, their counsel, Mr Vijay Kumar Rai ("Mr Rai").

112 Mr Rai's parting shot in support of OS 9 is embodied in the following heading, as follows:

> **IT WOULD BE INAPPROPRIATE FOR THE APPELLATE DIVISION TO HEAR THE MATTER AS THE TRIAL JUDGE IS ALREADY SITTING IN THE APPELLATE DIVISION AS ITS PRESIDENT AND THE MEMBERS OF THE APPELLATE DIVISION MAY BE CONSTRAINED AGAINST OVERTURNING OR OVERRULING HER DECISIONS**
>
> [emphasis in original]

113 Mr Rai elaborates upon this heading by stating that:

> The timing of the [Judge's] appointment as president of the Appellate Division on 18 December 2020, just before the release of her Grounds of Decision, is unfortunate as it is likely to be misperceived by the public as an attempt to constrain the [appellants'] appeal.

114 He then follows up by stating that:

> 36. Further, the [appellants] believe that it is not inconceivable that the Appellate Division will feel constrained against overturning and/or overruling the decision(s) made by the President of the Appellate Division herself. It would seem that the Appellate Division is hearing an appeal against its very own decision.
>
> 37. The [Judge] specifically acknowledged at [185] of the AOD Judgment that this Honourable Court was greatly assisted by Professor Goh Boon Cher. The [Judge] then went on to extrapolate that both Professor Goh and Dr. Lynette Teo Li San were independent witnesses who had properly discharged their duties as expert witnesses to the satisfaction of the Court, which cannot be correct as their testimonies were the very basis for the [Judge] to have wrongly made the finding that the nodule had not been malignant, which was subsequently overturned by [the Court of Appeal]. In light of the President of the Appellate Division of the High Court making such findings, there is a real possibility that the Appellate Division may feel constrained in overturning these findings. It should be for the Court of Appeal and not the [Judge] to determine the true extent to which the Court of Appeal was assisted by the Respondent's witness and their conduct in the matter.

115 It is deeply troubling that such allegations are being levelled against the Judge and the other members of the AD, especially when no basis – whether reasoned or otherwise – has been provided for them.

116 It bears mention that in CGH's written submissions, CGH voiced its concern and disagreement "in the strongest terms" with Mr Rai's statements. Despite being alerted to the problematic nature of his arguments, Mr Rai remained unrepentant. His reply, which I set out in full, is as follows:

> While the Respondent states that it believes the Appellate Division will be able to hear the matter impartially, *it has cited no grounds for such belief*. It is precisely because justice must be done and seen to be done. The [appellants] repeat paragraphs [34] to [37] of the [appellants'] Written Submissions. [emphasis added]

117 The spurious and unwarranted nature of the allegations levelled by Mr Rai needs no further elaboration. I would only observe that the Judge had heard the AOD Hearing and delivered her decision in her capacity as a judge sitting in the Gen Div, *not* as President of the AD. There is absolutely no indication (and certainly none has been provided by Mr Rai) that ***any judge sitting in the AD*** will be influenced by this fact when hearing the Appeal. A decision by a Judge of the Appellate Division sitting in the Gen Div or the old High Court, is *not the same as a decision of the AD* itself. In my view, Mr Rai's intemperate submission is wholly without basis.

118 Whilst it is undoubtedly the duty of every counsel to put forward all available arguments in the best interests of his or her client, it is equally important for counsel to recognise his or her overarching duty as an officer of the court (see, *eg*, the decisions of the High Court in *Public Trustee and another v By Products Traders Pte Ltd and others* [2005] 3 SLR(R) 449 at [26] and [35];

Mia Mukles v Public Prosecutor [2017] SGHC 252 ("*Mia Mukles*") at [6]; and the decision of this court in *Imran bin Mohd Arip v Public Prosecutor and other appeals* [2021] 1 SLR 744 ("*Imran*") at [81]). The balancing of these twin duties requires counsel to make submissions in a responsible manner (see *Mia Mukles* at [6] and *Imran* at [81]). More specifically, as was pointed out by CGH in its written submissions, allegations of bias against sitting judges in Singapore have the potential to undermine public confidence in the administration of justice and are never to be taken lightly. The irresponsible as well as intemperate manner in which Mr Rai has made these baseless allegations is entirely at odds with his duty as an advocate and solicitor of the Supreme Court of Singapore.

119 It is appropriate at this juncture to deal with a further aspect of Mr Rai's conduct which pertains specifically to his submissions on costs. Mr Rai submits that the appellants should be awarded the costs of the application on the basis that costs follow the event and:

> … the *[appellants] had abided by all timelines and directions by this Honourable Court, which cannot be said of the Respondent* who had replied to the [appellants'] submissions without leave, thereby necessitating this Honourable Court having to direct the parties to file these Reply Submissions to avoid any prejudice to the [appellants]. [emphasis added]

120 This submission lays blame at the wrong door and is at odds with reality. Mr Rai filed the appellants' submissions on 26 March 2021. CGH filed its submissions on 5 April 2021. Mr Rai immediately followed up with a letter to the court on 5 April 2021 stating that as CGH had not filed their submissions by "the deadline of 26 March 2021" this court should "disregard and/or give no weight to [CGH's submissions]". He added that this had also prejudiced the appellants because the counsel for CGH had taken the opportunity to rebut a

number of his arguments in CGH's submissions when the directions of the Registry envisaged a simultaneous exchange of submissions.

121 The reality is that it was Mr Rai who had *miscalculated* the applicable timelines for the filing of submissions. CGH's submissions were filed on time. Notwithstanding this, this court had taken notice of the fact that counsel for CGH had availed themselves of an advantage which would ordinarily not be available to them (albeit one that is entirely attributable to Mr Rai) and therefore permitted the parties to file reply submissions. Rather than to exercise reasonable diligence and to check on the applicable provisions in the ROC governing the calculation of the timelines for filing (as helpfully laid out in CGH's letter to the court dated 6 April 2021), Mr Rai now seeks to leverage on this court's directions to seek an exorbitant award of costs (*viz*, $27,000) when the costs guidelines in Appendix G of the Supreme Court Practice Directions entitled *Guidelines for Party-and-Party Costs Awards in the Supreme Court of Singapore* provide for a reasonable range of $1,000 to $3,000 in costs (excluding disbursements). In contrast, CGH's figure is much more reasonable at $3,000 (all-in).

Conclusion

122 For the reasons set out at [106]–[110] above, I grant the appellants' application to transfer the Appeal from the AD to the Court of Appeal and allow OS 9. It is much more appropriate for the Court of Appeal to hear this matter than the AD given its familiarity with the Appeal, the presence of pending proceedings before it and the interests of ensuring a speedy end to long-running and acrimonious proceedings.

123 In the light of the delay and expense occasioned by Mr Rai's miscalculation of the relevant timelines for the filing of submissions and his unreasonable conduct in seeking to blame CGH's counsel for his own mistake, I make no order as to costs for OS 9.

Andrew Phang Boon Leong
Justice of the Court of Appeal

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