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

[2022] SGHC 313

Originating Application No 551 of 2022

In the matter of Order 19, Rule (1), (2) &
(4) of the Rules of Court 2021
(S 914/2021)

And

In the matter of Zhou Wenjing

Between

Zhou Wenjing

… *Applicant*

And

Shun Heng Credit Pte Ltd

… *Respondent*

JUDGMENT

[Civil Procedure — Appeals — Leave]

Version No 1: 14 Dec 2022 (12:08 hrs)

TABLE OF CONTENTS

INTRODUCTION **1**

BACKGROUND FACTS **2**

THE PLAINTIFF'S CLAIM IN MC 7384 2

THE CIRCUMSTANCES LEADING TO THE DEFAULT JUDGMENT 3

THE APPLICANT'S APPLICATION TO SET ASIDE THE DEFAULT JUDGMENT 8

THE APPLICANT'S APPLICATION FOR PERMISSION TO APPEAL AGAINST THE DECISION IN RA 16 11

THE GENERAL LAW ON LEAVE OR PERMISSION TO APPEAL **11**

MY DECISION: THE APPLICANT SHOULD BE GRANTED PERMISSION TO APPEAL **12**

FIRST GROUND: PRIMA FACIE CASE OF ERROR 12

What is a prima facie case of error *12*

(1) Whether a "case of error" refers to an error of law, an error of fact, or both 13

(2) What is the applicable standard to determine that there is a "*prima facie* case of error" 16

There is a prima facie case of error of law that justifies the grant of permission to appeal in the present case *19*

(1) The DJ committed a number of errors of law 19

(A) The DJ failed to recognise that the DR had no basis to enter the Default Judgment *20*

(B) The DJ failed to recognise that even if the DR had the discretion to enter the Default Judgment, the discretion was exercised incorrectly *23*

Version No 1: 14 Dec 2022 (12:08 hrs)

(C) The DJ failed to recognise that even if the DR correctly exercised her discretion to enter the Default Judgment, the Default Judgment was irregularly obtained and the ex debito justitiae rule ought to have been applied 26

(D) The DJ had failed to consider the DR's qualification on when the Default Judgment can be set aside 28

(2) The DJ's errors of law constitute a "*prima facie* case of error" that justifies grant of permission to appeal 29

SECOND AND THIRD GROUNDS: QUESTION OF GENERAL PRINCIPLE AND QUESTION OF IMPORTANCE UPON WHICH FURTHER ARGUMENT AND A DECISION OF A HIGHER TRIBUNAL WOULD BE TO THE PUBLIC ADVANTAGE 30

CONCLUSION 31

Version No 1: 14 Dec 2022 (12:08 hrs)

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Zhou Wenjing
v
Shun Heng Credit Pte Ltd

[2022] SGHC 313

General Division of the High Court — Originating Application No 551 of 2022
Goh Yihan JC
30 November 2022

14 December 2022 Judgment reserved.

Goh Yihan JC:

Introduction

1 The applicant is Ms Zhou Wenjing. This is her application for permission to appeal to the General Division of the High Court against the decision of the learned District Judge ("DJ") in MC/RA 16/2022 ("RA 16").

2 The applicant was the second defendant in MC/MC 7384/2021 ("MC 7384"). The learned Deputy Registrar ("DR") had entered default judgment against the applicant ("the Default Judgment") on 24 January 2022. The applicant then applied in MC/SUM 373/2022 ("SUM 373") to set aside the Default Judgment. The DR refused to set aside the Default Judgment. The applicant then appealed against the DR's decision not to set aside the Default Judgment. This appeal was dismissed by the DJ in RA 16. The applicant then applied in MC/SUM 3233/2022 ("SUM 3233") for leave from the DJ to appeal

the decision in RA 16. The DJ dismissed that application and denied leave to appeal against his decision. The applicant therefore makes the present application for permission to appeal against the DJ's decision in RA 16.

3 After hearing the parties and having taken some time to consider the matter, I allow the applicant's application and grant permission for her to appeal against the DJ's decision in RA 16. In my respectful view, the applicant has succeeded in showing that there was a *prima facie* case of error by the DJ in RA 16. This is because, among others, the DJ wrongly proceeded on the basis that the Default Judgment should have been made in the first place. To be fair to the DJ, this is a case with unusual facts. Because of this, I provide my reasons for my decision in this judgment.

Background facts

The plaintiff's claim in MC 7384

4 It is important to set out the background facts in the present case. I start with the plaintiff's action in MC 7384. The plaintiff, Shun Heng Credit Pte Ltd, had claimed against the applicant (the second defendant therein) under a Guarantee executed in respect of a Hire Purchase Agreement.[1] By the terms of the Guarantee, the applicant jointly and severally guaranteed to pay the plaintiff on demand all sums due and payable by the first defendant to the plaintiff under the Hire Purchase Agreement.[2]

5 The applicant's pleaded defence is that she did not validly enter into the Guarantee because of various reasons, such as: (a) there being no explanation

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1 Statement of Claim in MC 7384.

2 Statement of Claim in MC 7384 at para 7(b).

Version No 1: 14 Dec 2022 (12:08 hrs)

of the terms of the Hire Purchase Agreement to her despite her being illiterate in English; (b) an occasion where she recalled accompanying the first defendant to sell her own vehicle, where she was asked to execute documents allegedly in relation to the sale of her vehicle; and (c) her having no knowledge or recollection of being a guarantor.[3] In essence, therefore, the applicant's defence centred on (a) her signing the Guarantee without knowledge of its contents, and/or (b) her signing the Guarantee thinking that it was a document fundamentally different from the one she did sign (*ie*, *non est factum*).

The circumstances leading to the Default Judgment

6 With the background of MC 7384 in mind, it is crucial to now recount the circumstances under which the Default Judgment was entered against the applicant.

7 On 24 January 2022, a Case Management Conference ("the CMC") for MC 7384 was fixed for hearing at 10.30am. At 10.27am, the DR started the hearing. However, only the plaintiff's counsel, Ms Lim Shu Yi ("Ms Lim"), was present. The applicant's counsel, who was to have been Mr Allan Chan ("Mr Chan"), was absent. Since the matter was heard over video conferencing, Ms Lim indicated in her display name that she was mentioning on behalf of Mr Chan. However, when questioned by the DR, Ms Lim clarified that she was actually *not* mentioning on behalf of Mr Chan. Rather, Ms Lim had put her display name as mentioning for Mr Chan as she "[d]idn't want [the DR] to be waiting for them so [she] just wanted to save time". This, as the DR rightly noted, was not proper.[4]

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3 Defence in MC 7384 at para 4.

4 Notes of Evidence dated 24 January 2022 in MC 7384 ("NE 24 January 2022") at p 3.

Version No 1: 14 Dec 2022 (12:08 hrs)

8 When further questioned by the DR, Ms Lim said that Mr Chan had informed her that he would not be attending the hearing "because [he was] currently ill because he had the booster jab and [was] feeling unwell. And [their firm's other lawyer was] engaged in other matters in court but [she was] not sure what they [were]".[5] Ms Lim then said that while Mr Chan had asked her to mention on his behalf, Ms Lim had not agreed to do so.[6] I set out the relevant exchange between Ms Lim and the DR below:[7]

> Ct: … So DC [*ie*, Mr Chan] informed you they will not attend this hearing today?
>
> PC: Yes. Because DC Allan Chan is currently ill because he had the booster jab and is feeling unwell. And Dhanwant Singh is engaged in other matters in court but not sure what they are.
>
> Ct: And you have no instructions to mention on behalf of DC?
>
> They didn't ask you?
>
> PC: They called us to mention on their behalf. But we have no instructions from our client.
>
> Ct: Did DC ask PC to mention on DC's behalf at the CMC today.
>
> PC: Yes. But we didn't agree.
>
> Ct: What did they ask? What position did they inform you?
>
> PC: They didn't specify what they wanted us to mention on behalf for. Not a solicitor who called, it was a staff. They also sent an email to our general inquiry line to say the same things on the phone. But there was no specificity on what the reasons are and what they want us to mention.

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5 NE 24 January 2022 at p 3.

6 NE 24 January 2022 at p 4.

7 NE 24 January 2022 at pp 3 and 4.

Version No 1: 14 Dec 2022 (12:08 hrs)

9 The DR then asked Ms Lim what directions she was seeking at the CMC. Ms Lim replied that she was "[a]sking for trial dates" and for the DR "to fix PTC so [they could] get trial dates".[8] Thus, Ms Lim's initial request, despite knowing that Mr Chan was absent, was *not* to seek a default judgment but to obtain trial dates. To this request, the DR noted that Ms Lim could not have trial dates as the matter had not even been set down. As such, Ms Lim then requested for set down directions. The DR then said that if Ms Lim was seeking substantive directions, then the DR would need to hear from both sides, including Mr Chan. The DR then asked if Ms Lim was "seeking any specific directions under O 108".[9] The DR was referring to O 108 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC 2014"). Order 108 governs the "simplified process for proceedings in Magistrate's Court or District Court". The DR presumably had O 108 r 3(7) in mind, for that rule gave her the power to make certain orders if one or more of parties fail to attend a CMC. For completeness, I set out O 108 r 3(7):

> **Case management conference (O. 108, r. 3)**
>
> **3.—**(7) If one or more of the parties fails to attend the case management conference, the Court may –
>
> (*a*) give judgment or dismiss the case; or
>
> (*b*) make any other order, or give any direction, as the Court thinks just and expedient in the circumstances.

10 Returning to the DR's query, Ms Lim then said that because she "[didn't] know what the [applicant's] position [was] and they asked for some directions to take out third party proceedings at the last CMC but nothing [had] been done so far, [she was] asking [the DR] to dismiss".[10] When the DR queried

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8 NE 24 January 2022 at p 4.

9 NE 24 January 2022 at p 4.

10 NE 24 January 2022 at p 5.

Version No 1: 14 Dec 2022 (12:08 hrs)

her what "to dismiss" meant, Ms Lim finally said that she would like for the DR to "give judgment for [their] claim given that [the applicant had] failed to attend [the] CMC".[11] This exchange was recorded by the DR in her Notes of Evidence as such:[12]

> Ct: … Is Plaintiff seeking any specific directions under O108?
>
> PC: Asking for directions to strike out the answers given – filed yesterday night
>
> Ct: On what basis? Have you looked at O108?
>
> PC: Given that I don't know what the Defendant's position is and they asked for some directions to take out third party proceedings at the last CMC but nothing has been done so far, we are asking Your Honour to dismiss.
>
> Ct: Dismiss what?
>
> PC: Sorry – to give judgment for our claim given that Defendant has failed to attend CMC today.

11 Before the DR gave her decision, she clarified the circumstances in which Ms Lim came to know that Mr Chan was going to be absent. The DR recorded this exchange in her Notes of Evidence as follows:[13]

> Ct: Final point to clarify before I read out my orders.
>
> When DC's firm called PC to ask to mention on behalf, did PC inform DC's firm that PC would not be mentioning on behalf of DC.
>
> PC: I did not manage to. I tried to call before the CMC but no one picked up
>
> Ct: Would DC think that PC is mentioning on their behalf?
>
> PC: Don't think right for them to assume that. They didn't even send email directly to me. They sent to our general email line. And for phone call, my colleague picked up,

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11 NE 24 January 2022 at p 5.

12 NE 24 January 2022 at pp 4 and 5.

13 NE 24 January 2022 at pp 6 and 7.

Version No 1: 14 Dec 2022 (12:08 hrs)

> they just told us as a statement. I tried to call back but no one picked up.
>
> Even their email was only sent at 9.56am – didn't give me a lot of time to coordinate with the rest of my firm.

For completeness, I quote the email that Mr Chan's firm had sent. I note that the timestamp is 9.25am and not 9.56am as Ms Lim had mentioned to the DR:[14]

> Dear Sirs
>
> We refer to the above matter due for a CMC today. Our Mr. Allan Chan is not well following the booster jab on Sat 22/1/2022. Our Mr. Singh is engaged with our matters in the Court.
>
> Kindly mention on Mr. Allan Chan's behalf and let us know the Court's direction. Thank you.

12 Having clarified matters, the DR concluded that there was no agreement between Ms Lim and Mr Chan for the former to mention on behalf of the latter at the CMC. The DR therefore deemed Mr Chan to be absent at the CMC and proceeded to strike out the applicant's defence pursuant to O 108 r 3(7) of the ROC 2014 and entered the Default Judgment for the plaintiff.[15] However, the DR clarified the status of the Default Judgment in these terms:[16]

> The above is a default judgment, made in the absence of the [applicant's] counsel, not one on the merit. [Applicant] is at liberty to apply to set aside the default judgment with a supporting affidavit filed by [applicant's] counsel to explain his absence in Court today.

13 Ms Lim's firm then informed Mr Chan's firm via email on 25 January 2022 as to what happened during the CMC.[17] Ms Lim's firm maintained that

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14 Affidavit of Mr Chan Chun Hwee Allan dated 25 January 2022 filed in MC 7384 at p 4.

15 NE 24 January 2022 at p 7.

16 NE 24 January 2022 at p 8.

17 Affidavit of Mr Chan Chun Hwee Allan dated 25 January 2022 filed in MC 7384 at p 5.

Version No 1: 14 Dec 2022 (12:08 hrs)

they had taken the plaintiff's instructions and they were instructed that the plaintiff was not agreeable to mentioning the matter on the applicant's behalf. The email continued that Ms Lim "had sought directions from the Court for [her] client to make an application to strike out [the applicant's] Defence". However, the email then said that the DR "had instead exercised [her] discretion to award Judgment in favour of [the plaintiff] against [the applicant]". I pause to note that the DR's Notes of Evidence suggest that it was, in fact, Ms Lim who asked the court to enter default judgment against the applicant (see [10] above). It is, of course, technically true that the DR had to exercise her discretion to enter the Default Judgment, but the email suggests that Ms Lim never even sought a default judgment. This is not quite what happened.

The applicant's application to set aside the Default Judgment

14 One day after the CMC, on 25 January 2022, the applicant filed SUM 373 to set aside the Default Judgment. Mr Chan also filed a supporting affidavit to explain his absence from the CMC. He explained that he had gone for his COVID-19 booster shot on 22 January 2022. On the early morning of 24 January 2022, which was the date of the CMC, he began to feel body aches and fever. He therefore instructed his office to write to Ms Lim and to request for Ms Lim to mention on his behalf as his firm's other counsel was engaged in a trial.[18]

15 On 23 June 2022, the same DR who presided over the CMC heard SUM 373. On 5 July 2022, she dismissed the application. She held that the applicable test for setting aside was whether the applicant had raised a *prima facie* case in the sense of showing that there are triable or arguable issues,

[18] Affidavit of Mr Chan Chun Hwee Allan dated 25 January 2022 filed in MC 7384 at para 3.

Version No 1: 14 Dec 2022 (12:08 hrs)

following the Court of Appeal decision of *Mercurine Pte Ltd v Canberra Development Pte Ltd* [2008] 4 SLR(R) 907 ("*Mercurine*").[19] On this basis, the DR found that the applicant had not raised any triable issue that warranted the setting aside of the Default Judgment for the following primary reasons:[20]

(a) First, contrary to the applicant's arguments, there was no legal obligation on the plaintiff's part to interpret the Guarantee to the applicant or advise the applicant to seek legal advice before signing the Guarantee, nor was this a condition precedent of the Guarantee.

(b) Second, the documentary evidence did not support the applicant's claim that she was misled by the first defendant or that she thought she was executing documents relating to the sale of her own vehicle.

16 Crucially, however, the DR did not explain in her reasoning how Mr Chan's absence at the CMC affected the status of the Default Judgment. This is despite the DR's own direction at the CMC that the "[applicant] is at liberty to apply to set aside the default judgment with a supporting affidavit filed by [applicant's counsel] to explain his absence in Court today".[21] Given that the DR had considered in SUM 373 the substantive merits of the applicant's defence to ascertain if any triable issues had been raised, she had presumably regarded the Default Judgment as a *regular* one.

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19 Oral Judgment for SUM 373 (Notes of Evidence dated 5 July 2022) at para 3.

20 Oral Judgment for SUM 373 (Notes of Evidence dated 5 July 2022) at paras 11 and 12.

21 NE 24 January 2022 at p 8.

Version No 1: 14 Dec 2022 (12:08 hrs)

17 In RA 16, the applicant maintained much of her pleaded defence, but also argued that her ex-husband (the first defendant in MC 7384) had forged her signature in the Guarantee.[22] The DJ dismissed the applicant's appeal against the DR's decision for essentially the same reasons as the DR:[23]

(a) First, the DJ found that the plaintiff was not contractually obliged to interpret the Guarantee to the applicant or to advise her to seek legal advice before signing the Guarantee.

(b) Second, the DJ found that the documentary evidence did not support the applicant's assertion that she thought she was executing documents relating to the sale of her own vehicle.

(c) Third, as for the applicant's fresh allegation that her ex-husband had forged her signature, the DJ found that there was no evidence before the court to support this allegation.

18 As such, the DJ concluded that the applicant did not show any triable issues to warrant the setting aside of the Default Judgment. As with the DR, the DJ did not mention in his reasoning how Mr Chan's absence at the CMC affected the status of the Default Judgment. Also, given that the DJ had considered the substantive merits of the applicant's defence to ascertain if any triable issues had been raised, he too presumably regarded the Default Judgment as a *regular* one.

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22 Notes of Evidence dated 22 July 2022 in MC 7384 ("NE 22 July 2022") at pp 7 and 8.

23 Oral Judgment for RA 16 (NE 22 July 2022) at para 5.

Version No 1: 14 Dec 2022 (12:08 hrs)

The applicant's application for permission to appeal against the decision in RA 16

19 The applicant then applied for leave to appeal to the General Division of the High Court in SUM 3233. The same DJ dismissed the application on the basis that none of the three grounds in *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 ("*Lee Kuan Yew*") which would have justified such leave to appeal was satisfied.[24]

20 The applicant has now made an application to the High Court for permission to appeal against the DJ's decision in RA 16. This forms the present application before me.

The general law on leave or permission to appeal

21 I begin with the general law on permission to appeal. I will deal with more particular aspects of the law below. Section 21(1) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA") provides as follows:

> **Appeals from District and Magistrates' Courts**
>
> **21.—**(1) Subject to the provisions of this Act or any other written law, an appeal lies to the General Division from a decision of a District Court or Magistrate's Court only with the permission of that District Court or Magistrate's Court or the General Division in the following cases:
>
> (*a*) any case where the amount in dispute, or the value of the subject matter, at the hearing before that District Court or Magistrate's Court (excluding interest and costs) does not exceed $60,000 or such other amount as may be specified by an order made under subsection (3);
>
> (*b*) any case specified in the Third Schedule.

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24 Oral Judgment for SUM 3233 (Notes of Evidence dated 12 September 2022) at paras 1 to 4.

Version No 1: 14 Dec 2022 (12:08 hrs)

22 It is undisputed that s 21(1)(*a*) of the SCJA applies in the present case. As such, the applicant will succeed in her present application if she can show a valid ground for the grant of permission to appeal. In this regard, the Court of Appeal has laid down the grounds for granting permission to appeal in *Lee Kuan Yew* to include the existence of: (a) a *prima facie* case of error; (b) a question of general principle decided for the first time; or (c) a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage. The courts have also said that disputes on fact, or questions of fact, are not grounds on which permission to appeal should be granted (see [26] and [27] below).

My decision: the applicant should be granted permission to appeal

23 As I mentioned above (at [3]), I have concluded that the applicant should be granted permission to appeal against the DJ's decision in RA 16. I turn to examine the three grounds for the grant of permission to appeal in *Lee Kuan Yew*.

First ground:* Prima facie *case of error

24 On the first ground, for reasons I will develop below, I find that the DJ had committed a *prima facie* case of error in RA 16.

What is a prima facie *case of error*

25 I begin by discussing what amounts to a "*prima facie* case of error" in the terms of *Lee Kuan Yew*. In my view, there are two relevant questions, namely: (a) whether a "case of error" refers to an error of law, an error of fact, or both; and (b) what is the standard to apply to determine if the error of law or fact (or both) amounts to a "*prima facie*" case of error. It is important to keep

Version No 1: 14 Dec 2022 (12:08 hrs)

the two questions conceptually separate. For example, it would not be right to conclude that there is a "*prima facie* case of error" simply on showing that there is an error of law. In this example, there is the *further* question of whether the error of law is a sufficiently serious one as to amount to a "*prima facie*" case of error for the purposes of the grant of permission to appeal.

(1) Whether a "case of error" refers to an error of law, an error of fact, or both

26 Turning to the first question, there appears to be some uncertainty as to whether a "case of error" in the "*prima facie* case of error" ground refers to an error of law, an error of fact, or both. To begin with, in *Lee Kuan Yew* itself, the Court of Appeal merely referred (at [16]) to a "*prima facie* case of error" without stipulating whether this was an error of law or fact. It was perhaps the High Court decision of *Abdul Rahman bin Shariff v Abdul Salim bin Syed* [1999] 3 SLR(R) 138 ("*Abdul Rahman*") which first held that a case of error should only refer to an error of law. Tay Yong Kwang JC (as he then was) had said this (at [30] and [31]):

> 30 I should clarify here the words 'a *prima facie* case of error' used in *Anthony Savarimiuthu*'s case … In another application of this nature heard by me, the applicant there sought to demonstrate a *prima facie* case of error by referring me to the evidence adduced at the trial and attempting to show that the collision could not have occurred in the way described by the plaintiff there on such evidence. That, in my view, was no more than an attempt to show an erroneous conclusion on the facts of the case for which leave to appeal must be and was denied. If it were otherwise and facts have to be examined in detail in each case to demonstrate the error, the High Court might as well hear the appeal proper.
>
> 31 In my opinion, leave of court to appeal may be granted where the applicant is able:
>
> > (a) to demonstrate a **prima facie *case of error of law*** that has a bearing on the decision of the trial court;
> >
> > …

Version No 1: 14 Dec 2022 (12:08 hrs)

> [emphasis added in bold italics]

27 Subsequently, the Court of Appeal in *IW v IX* [2006] 1 SLR(R) 135 ("*IW v IX*") referred to Tay JC's explanation in *Abdul Rahman* as "a useful amplification of the first guideline set in *Lee Kuan Yew*" (at [20]). The Court of Appeal had stated its understanding of Tay JC's explanation in the following terms (at [20]):

> In *Abdul Rahman bin Shariff v Abdul Salim bin Syed*, Tay Yong Kwang JC (as he then was) clarified at [30] that the test of *prima facie* case of error would not be satisfied by the assertion that the judge had reached the wrong conclusion on the evidence. ***Leave should not be granted when there were mere questions of fact to be considered.*** He said that it must be a *prima facie* case of error of law that had a bearing on the decision of the trial court. …
>
> [emphasis added]

Hence, on one reading, the italicised part of the Court of Appeal's statement above suggests that "case of error" could only refer to an error of law and not of "mere questions of fact".

28 However, the Court of Appeal in *IW v IX* did not expressly overrule cases such as *Essar Steel Ltd v Bayerische Landesbank and others* [2004] 3 SLR(R) 25 ("*Essar Steel*"), which have held that "case of error" can include errors of fact. In *Essar Steel*, Kan Ting Chiu J recognised Tay JC's concern in *Abdul Rahman* that if any alleged error of fact could be relied on to seek permission to appeal, that would virtually result in the appeal hearing being conducted at the leave stage to establish whether there was an error of fact (at [25]). However, the learned judge opined that it is possible to "avoid shutting out all errors of fact and also avoiding having virtual appeal hearings in applications for leave by restricting such errors to those that are clear beyond reasonable argument" (at [26]). Kan J concluded that "[w]here it is

Version No 1: 14 Dec 2022 (12:08 hrs)

demonstrated that a clear error of fact has contributed or led to a judgment, the aggrieved party should be allowed to rely on it to seek leave to appeal" (at [26]).

29 Indeed, there has been a line of cases decided after *Essar Steel* that have continued to regard the "*prima facie* case of error" ground as including errors of fact, despite the decision of the Court of Appeal in *IW v IX*. For example, in the High Court decision of *Lin Jianwei v Tung Yu-Lien Margaret and another* [2020] SGHC 229, Tan Siong Thye J seems to have accepted the plaintiff's submission that "*prima facie* case of error" can include both errors of law and errors of fact (at [64]). However, the learned judge agreed with Kan J's approach in *Essar Steel* that an error of fact for this purpose must be "clear beyond reasonable argument".

30 More recently, the Appellate Division of the High Court has, in a number of cases, cut back on the line of cases following *Essar Steel*. In *UD Trading Group Holding Pte Ltd v TA Private Capital Security Agent Limited and another* [2022] SGHC(A) 3 ("*UD Trading Group Holding*"), the Appellate Division held that (at [21]), in relation to the first ground of a *prima facie* case of error, the general principle is that the *prima facie* case of error must be one of law and not fact. However, the Appellate Division also recognised that it had, in its earlier decision of *Engine Holdings Asia Pte Ltd v JTrust Asia Pte Ltd* [2022] 1 SLR 370 ("*Engine Holdings*") (at [10]), left open the question of whether, in exceptional circumstances, permission to appeal may be granted if there was an error of fact which was obvious from the record. Further, in *Hwa Aik Engineering Pte Ltd v Munshi Mohammad Faiz and another* [2021] 1 SLR 1288, the Appellate Division described (at [8]) the first of the three established grounds for granting permission to appeal as "a *prima facie* case of error *of law*" [emphasis added], citing *Lee Kuan Yew* and *IW v IX*.

Version No 1: 14 Dec 2022 (12:08 hrs)

31 Accordingly, in my respectful view, the binding position on the General Division can be derived from the Appellate Division's approach in *UD Trading Group Holding*, which is that a "case of error" in the "*prima facie* case of error" ground can, on present law, only comprise an error of *law*. Given that the Appellate Division (see *Engine Holdings* at [10]) has "left open the question" of whether a *prima facie* case of error can include an obvious error of fact, I think that until the Appellate Division deals with the question squarely to decide on the vexed question of whether in exceptional circumstances leave to appeal may be granted if there is an error of fact which is obvious from the record, the current binding position on the General Division as discerned from *UD Trading Group Holding* (at [21]) is that "a case of error" in the "*prima facie* case of error" ground in *Lee Kuan Yew* must be one of law and not of fact.

32 Given that the parties have not argued that a "*prima facie* case of error" should include an error of fact, I will follow the binding position that it only includes an error of law for the purposes of this application.

(2) What is the applicable standard to determine that there is a "*prima facie* case of error"

33 I turn to the second question, which relates to the applicable standard to determine that there is a "*prima facie* case of error" that would justify the grant of permission to appeal. In *IW v IX*, our Court of Appeal was faced with the argument that the guidelines in the English Court of Appeal decision of *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538 ("*Smith v Cosworth*") should guide the application of the grounds in *Lee Kuan Yew*. In particular, it was argued, in relation to the "*prima facie* case of error" ground, that a court should only refuse permission if it was satisfied that the applicant had "no realistic prospect of succeeding on the appeal" (at [12]).

Version No 1: 14 Dec 2022 (12:08 hrs)

34 The Court of Appeal interpreted the "realistic prospect of success" test as amounting to an "arguable case" test, which would not be difficult to satisfy. However, in the context of Singapore, the court did not think that the "*prima facie* case of error" ground referred to such a test, for it would be relatively easy to satisfy and thus result in many cases going further to the Court of Appeal (at [21]). The Court of Appeal did not think that this was consistent with the legislative intent of reserving only one tier of appeal as of right for family cases (which was the type of case at hand in *IW v IX*) (at [22]–[24]). As such, the court declined to adopt the more liberal "realistic prospect of success" test propounded in *Smith v Cosworth*.

35 However, because it only had to consider whether the test propounded in *Smith v Cosworth* applied, the Court of Appeal did not really set out the applicable standard for determining when an error of law amounts to a "*prima facie* case of error". There also does not appear to be a case which has defined the applicable standard. This is because most cases have turned on what the court considered *not* to be a *prima facie* case of error, without necessarily setting out the applicable standard to begin with.

36 In my view, guidance on the applicable standard to assess whether an error of law (I exclude errors of fact based on my discussion of the law above at [31]) is a "*prima facie* case of error" that justifies the grant of permission to appeal can be derived from *IW v IX*. First, the applicable standard is a "much higher" one than an "arguable case". This can be seen by the Court of Appeal's comparison of the two standards in *IW v IX* in the following terms (at [14]):

> … While under the *Smith v Cosworth* guideline (a), all that needs to be established for leave to be granted is really just an arguable case, that is not the position under this court's guideline in *Lee Kuan Yew v Tang Liang Hong*, ***which requires a much higher threshold to be met before leave may be***

Version No 1: 14 Dec 2022 (12:08 hrs)

> ***granted***, namely, the establishment of a *prima facie* case of error. …
>
> [emphasis added in bold italics]

37 Second, the Court of Appeal referred to GP Selvam J's alternative formulation of the test in *Smith v Cosworth*, namely, "whether the appeal is likely to succeed and whether, if leave is not granted, there is a likelihood of substantial injustice" (in the High Court decision of *Pandian Marimuthu v Guan Leong Construction Pte Ltd* [2001] 2 SLR(R) 18) as being more consistent with the "*prima facie* case of error" test (see *IW v IX* at [18]):

> … Although in the later High Court case of *Pandian Marimuthu v Guan Leong Construction Pte Ltd* [2001] 2 SLR(R) 18, G P Selvam J had referred to the test enunciated in *Smith v Cosworth*, the judge had stated the test in a somewhat different form, namely (at [11]), ***"whether the appeal is likely to succeed and whether, if leave is not granted, there is a likelihood of substantial injustice". It seems to us that this is more akin to the test of* prima facie *case of error rather than to the arguable case test***.
>
> [emphasis added in bold italics]

Accordingly, in my view, the standard applicable to determine when an error of law amounts to a "*prima facie* case of error" for the grant of permission to appeal is informed by two conjunctive considerations, namely, (a) whether the appeal is likely to succeed, which is a standard that goes beyond merely an arguable case, and (b) broadly, whether there is a likelihood of substantial injustice if permission is not granted (or a miscarriage of justice: see *Anthony s/o Savarimiuthu v Soh Chuan Tin* [1989] 1 SLR(R) 588 at [2]). Only when these two considerations are met would an error of law amount to a "*prima facie* case of error" so as to justify the grant of permission to appeal.

Version No 1: 14 Dec 2022 (12:08 hrs)

There is a prima facie *case of error of law that justifies the grant of permission to appeal in the present case*

38 With the above principles in mind, I turn to the facts of the present case and explain why I find that there is a *prima facie* case of error *of law* that *justifies* the grant of permission to appeal.

(1) The DJ committed a number of errors of law

39 In my respectful view, the DJ had committed a number of errors of law in RA 16. To be entirely fair to the DJ, this is not a usual case. Indeed, it might be said that Mr Chan was *technically* absent since Ms Lim had not agreed to mention on his behalf. In that light, it might also be said that the DR was *technically* entitled to exercise her own case management powers under O 108 r 3(7) of the ROC 2014 to strike out the defence and enter the Default Judgment against the applicant because the applicant had failed to attend the CMC. However, taking a step back, is this a *substantively fair* manner of characterising the situation? I ask this bearing in mind that the purpose of O 108 is not only to ensure the efficient disposal of cases but, as O 108 r 1(3) expressly states, is also "to facilitate the *fair*, expedient and inexpensive determination of all civil proceedings to which this Order applies …" [emphasis added]. To my mind, it is critical that the word "fair" appears before "expedient and inexpensive" even though this is not required by an alphabetical order. This shows that *substantive fairness* must trump procedural notions of expedience or cost savings.

40 Accordingly, taking this more substantive view of the present case, and with respect to the DJ, I find that he had committed the following errors of law.

Version No 1: 14 Dec 2022 (12:08 hrs)

(A) THE DJ FAILED TO RECOGNISE THAT THE DR HAD NO BASIS TO ENTER THE DEFAULT JUDGMENT

41 To begin with, the DJ committed an error of law by failing to recognise that the DR had no basis to enter the Default Judgment. The legal basis for the DR's power to enter the Default Judgment flows from O 108 r 3(7) of the ROC 2014, which I reproduce again for ease of reference:

> **Case management conference (O. 108, r. 3)**
>
> **3.—**(7) If one or more of the parties fails to attend the case management conference, the Court may –
>
> (*a*) give judgment or dismiss the case; or
>
> (*b*) make any other order, or give any direction, as the Court thinks just and expedient in the circumstances.

Accordingly, the DR could only enter the Default Judgment if one or more of the parties "fail[ed] to attend" the CMC. Put differently, if none of the parties "fail[ed] to attend" the CMC, then the DR would not have the discretion to enter the Default Judgment in the first place. Further, it is not mandatory for the DR to enter default judgment against a party who was absent. This is because O 108 r 3(7) uses the word "may" to connote that whether to do so is at the DR's discretion.

42 In my view, a "fail[ure]" to attend in the terms of O 108 r 3(7) of the ROC 2014 must connote an absence *without reason*. Indeed, while a party may have been physically absent from a hearing, if that party had a good reason for his or her absence, then it should not count as his or her having "fail[ed]" to attend the hearing concerned. In this regard, I do not think that it is right to regard Mr Chan as having been absent from the CMC without reason. Mr Chan had given notice to Ms Lim that he could not attend the hearing because he was feeling unwell. In saying this, I do not absolve Mr Chan of any blame for he

Version No 1: 14 Dec 2022 (12:08 hrs)

could have done more, such as informing Ms Lim much earlier or instructing his firm to make sure the message was clearly communicated to Ms Lim. Granted that Mr Chan could have done more to let Ms Lim know, but the fact is that Ms Lim *did know* that Mr Chan was unwell and would be absent from court for that reason.

43 However, the DR seemed to think that because Ms Lim did not have the plaintiff's instructions to mention on Mr Chan's behalf, this rendered her communication of Mr Chan's reason for his absence ineffective. Put differently, the DR thought that it was *as if* Ms Lim never told the court that Mr Chan had a reason to explain his absence.

44 While it is true that Ms Lim did not have instructions from the plaintiff to mention on Mr Chan's behalf, I doubt whether such instructions were needed in the circumstances. I can well understand that clear instructions would be needed if Mr Chan was seeking a substantive order from the court that would affect Ms Lim's client (the plaintiff), and he had asked Ms Lim to mention that request on his behalf. In that situation, Ms Lim would obviously need the plaintiff's instruction on whether to agree to that requested-for order. Indeed, this is provided for by the State Courts Practice Directions 2014 ("PD 2014") (which is the version that governed MC 7384). Paragraph 112(1) of the PD 2014 provides as follows:

> **112. Attendance of solicitors in Court**
>
> (1) Subject to Practice Directions 20(12), 20(15) and 28, and except for Pre-Trial Conferences in any action under the Protection from Harassment Act (Cap 256A), a solicitor appearing in any cause or matter may mention for counsel for all other parties provided that:
>
> > (a) the solicitor obtains confirmation of his authority to mention on their behalf for the purpose of the hearing; and

Version No 1: 14 Dec 2022 (12:08 hrs)

> (b) parties have agreed on the order sought.
>
> …

Paragraph 20(12) of the PD 2014, to which paragraph 112(1) refers, relates to case management conferences, and provides as such:

> **20. Case management conference [CMC]**
>
> (12) The purpose of the CMC is for the court to consider all available options in the case jointly with the parties. It is therefore necessary that the solicitor in charge of the case for that party (*ie*, the solicitor who has been handling the case for that party and who is familiar with it) attend the CMC. Solicitors for both parties shall attend the CMC.

For completeness, the equivalent provisions in the State Courts Practice Directions 2021, which are paragraph 12 concerning the attendance of solicitors in court, and paragraph 36(16) concerning the now-renamed "Civil Simplified Case Conference", are materially the same.

45 When paragraph 112(1) is read together with paragraph 20(12) of the PD 2014, they seem to suggest that, even in respect of a case management conference, a lawyer can mention on behalf of another lawyer when the former is seeking an order which the latter has agreed to. But apart from this situation where *an order is being sought*, it seems to me that mentioning on behalf of a fellow lawyer can include a situation where the former is acting as the *messenger* of the other, with no order being sought. Since no order is being sought, paragraph 112(1) of the PD 2014 would not be engaged. When I put this to both Mr Foo Ho Chew (who appeared on behalf of the applicant) and Mr Huang Po Han (who appeared for the respondent, *ie*, the plaintiff in MC 7384), they both agreed that this must be the case. Indeed, this would be in the interests of the efficient administration of justice so that a lawyer can convey another lawyer's message to the court effectively.

Version No 1: 14 Dec 2022 (12:08 hrs)

46 Therefore, if all that Mr Chan wanted Ms Lim to do was to convey his message to the court that he was absent due to his discomfort, I cannot see why Ms Lim would need the plaintiff to agree to that. As such, and with respect, I do not think the DR was correct to think that Ms Lim needed the plaintiff's instruction or agreement to mention on Mr Chan's behalf in the circumstances of the present case. The DR was therefore also wrong to think that, in the absence of such instruction, Ms Lim's message from Mr Chan was effectively *not* communicated, such that Mr Chan should be deemed absent from the CMC *without reason* (though I note paragraph 114 of the PD 2014 on absence from court on medical grounds), and that this warranted the entering of the Default Judgment. On the contrary, Ms Lim *had* mentioned on Mr Chan's behalf. The message that Mr Chan was unwell was validly communicated to the court. Mr Chan was therefore *not* absent from the CMC without reason. At the very least, the DR should have considered the veracity of this reason. She did not do that. Accordingly, the legal basis for the DR to enter the Default Judgment, *viz*, that one or more of the parties had failed to attend the CMC, did not arise in the present case. The DR therefore had *no* discretion (or power) to enter the Default Judgment in the first place. Because the DJ had not recognised this in RA 16, he had committed an error of law.

(B) THE DJ FAILED TO RECOGNISE THAT EVEN IF THE DR HAD THE DISCRETION TO ENTER THE DEFAULT JUDGMENT, THE DISCRETION WAS EXERCISED INCORRECTLY

47 Furthermore, the DJ committed an error of law by failing to recognise that the DR had exercised her discretion to enter the Default Judgment incorrectly. In this regard, as I had mentioned above (at [41]), the power to, among others, enter a default judgment pursuant to O 108 r 3(7)(*a*) of the ROC 2014 is a discretionary one due to the use of the word "may" within. This discretion must be exercised judiciously as is "just and expedient" in the

Version No 1: 14 Dec 2022 (12:08 hrs)

circumstances, which is the expression used in O 108 r 3(7)(*b*). The overarching consideration must therefore be one of fairness as between the parties concerned. In the present case, even if I were to assume that the DR had the discretion to enter the Default Judgment, I am of the view that she had exercised that discretion incorrectly for the following reasons that arise from the circumstances of the present case.

48 First, from Ms Lim's perspective, it seems unfair that, despite knowing that Mr Chan was unwell, Ms Lim would think to seek a default judgment in Mr Chan's absence. This is especially since there was a clear reason (albeit not set out by way of an affidavit) why Mr Chan was not present (see *National Australia Bank Limited v Singh* [1995] 1 Qd R 377 as an example of an application for the setting aside of a default judgment where illness was held to be an acceptable reason for absence). Indeed, as I have detailed above (at [9]), Ms Lim had initially wanted to seek trial dates, which indicates that she was not considering a default judgment to begin with. It was only after a confusing spate of requests from Ms Lim that she concluded she actually wanted the court to "give judgment for [the plaintiff's] claim given that [the applicant] had failed to attend [the] CMC". Given this overarching characterisation of the factual matrix, I do not think the DR was correct to have exercised her discretion (if it arose at all) to enter the Default Judgment.

49 Second, from Mr Chan's perspective, he really had no idea that Ms Lim was going to take out an application for a default judgment. This was since Mr Chan had in good faith thought that Ms Lim was going to mention for him. In this regard, I disagree with Ms Lim's response to the DR (which the DR accepted) that it would be incorrect for Mr Chan to assume that Ms Lim would mention on his behalf. This is because, on my analysis above (at [43]−[46]), Ms Lim *had* in fact mentioned on Mr Chan's behalf. But more substantively,

Version No 1: 14 Dec 2022 (12:08 hrs)

taking a step back, when Mr Chan asked Ms Lim to mention on his behalf, surely the last thing he expected was that Ms Lim would "use" the fact of his illness against him to obtain a default judgment. That would amount, *in essence*, to procedural and substantive injustice against the applicant that a court should never encourage. Accordingly, for this reason as well, I find that the DR had incorrectly exercised her discretion (if it arose at all) to enter the Default Judgment.

50 Indeed, I think that the proper thing for Ms Lim to have done in the circumstances was to have sought a short adjournment on her own volition to find out more from Mr Chan. That would have been the professionally courteous thing to do, even if the court might have rejected that request. It would also have been the right thing to do. While I do not think that Ms Lim was trying to take advantage of the situation, I do think that she could have exercised better judgment and not come to the point when she found herself seeking a default judgment against the applicant. Similarly, and with respect, I think that the DR should not have been so quick to enter the Default Judgment in these circumstances. I also do not think that the DR should have "prompted" Ms Lim to make a request for a default judgment by pointing her to O 108 of the ROC2014. Instead, I respectfully suggest that she should have adjourned the hearing and sought clarifications from Mr Chan at the next CMC.

51 Accordingly, even if the DR had the discretion (or power) to enter the Default Judgment, I find that she had exercised this discretion incorrectly in the circumstances. Because the DJ had not recognised this in RA 16, he had committed an error of law (*ie*, in the sense that the DJ made the error of failing to appreciate that the DR's discretion was exercised incorrectly such that there was no proper basis to enter the Default Judgment).

Version No 1: 14 Dec 2022 (12:08 hrs)

(C) THE DJ FAILED TO RECOGNISE THAT EVEN IF THE DR CORRECTLY EXERCISED HER DISCRETION TO ENTER THE DEFAULT JUDGMENT, THE DEFAULT JUDGMENT WAS IRREGULARLY OBTAINED AND THE *EX DEBITO JUSTITIAE* RULE OUGHT TO HAVE BEEN APPLIED

52 Moreover, even if I were to accept that the DR rightly exercised her discretion to enter the Default Judgment, I am of the view that the Default Judgment was an *irregular* one. As such, the DJ had committed an error of law by failing to apply the *ex debito justitiae* rule to set aside the Default Judgment as of right. This was in turn because the DJ did not regard the Default Judgment to have been irregularly obtained. This therefore requires an explanation as to why I regard the Default Judgment to have been irregularly obtained.

53 The most common type of irregular default judgment is one that was entered in violation of one or more relevant procedural rules by the plaintiff, for example, rules on service. Thus, in *Mercurine*, the Court of Appeal explained (at [43]) that "a judgment may be irregular not only because of the plaintiff's intentional failure to comply with procedural rules, but also because of clerical or accidental mistakes made by the plaintiff". I do not understand the Court of Appeal to be laying down an exhaustive definition of what an irregular default judgment might be. Indeed, I should emphasise, and this is implicit in the Court of Appeal's holding in *Mercurine*, that a finding that a default judgment is irregular does not automatically impute any wrongdoing on the plaintiff's part; this could have been due to an unintentional mistake or inadvertence.

54 On the facts of the present case, even if Mr Chan is regarded as having been technically absent such that the DR's discretion to enter the Default Judgment did arise, *and* this discretion was exercised correctly, I would still find that the Default Judgment was irregularly procured as technical adherence to the procedural rules here would not be substantively fair. In *MS v A local*

Version No 1: 14 Dec 2022 (12:08 hrs)

authority [2020] EWHC 1622 (QB) ("*MS*"), the English High Court set aside a judgment entered in default of appearance during the COVID-19 pandemic. In that case, the plaintiff had served the relevant documents on the defendant by posting them on 25 March 2020. As the deemed date of service was 27 March 2020, the defendant was to have acknowledged receipt by 9 April 2020, failing which default judgment could be entered against it. On 10 April 2020, when the defendant still had not acknowledged receipt, the plaintiff moved to and obtained judgment in default of appearance against the defendant on 15 April 2020. On the defendant's application, Julian Knowles J set aside the default judgment on, among others, the implied basis that it was irregularly obtained despite the plaintiff having complied with the technical requirement of service by way of post. This is because the papers were posted when the United Kingdom was put into lockdown during the pandemic. The defendant had shut its office premises on 23 March 2020, two days before the lockdown. In a memorable passage, Knowles J said (at [34]):

> … The world shifted on its axis on 23 March 2020 and it was incumbent on [the plaintiff's solicitor] as a responsible solicitor and an officer of the court to contact the [defendant] to acknowledge that the situation had changed, and to discuss how proceedings could best and most effectively be served … I do not find that [the plaintiff's solicitor] unscrupulously took advantage of the situation, but I do find he exercised poor [judgment]. A moment's thought on his part would have shown that it was not fair or reasonable for him simply to place papers in the post to an office that he knew or should have known had been closed down two days before because of a national emergency.

55 While *MS* was distinguished by Chua Lee Ming J in the High Court decision of *Genuine Pte Ltd v HSBC Bank Middle East Ltd, Dubai* [2021] 5 SLR 1186, the learned judge did not disagree with the general proposition from *MS*, which is that a default judgment obtained in technical compliance with the relevant procedural rules could nonetheless be regarded as

Version No 1: 14 Dec 2022 (12:08 hrs)

an irregular one based on the facts of the case. I find this to be so in the present case. Just like in *MS*, a moment's thought on Ms Lim's part would have shown that it is not fair or reasonable for her to allow the CMC to progress to a stage where she would seek a default judgment in the absence of appearance by Mr Chan, when she knew that Mr Chan had informed her (through her firm) that he was feeling unwell, and that he had asked her to mention on his behalf.

56 In these circumstances, considering the overarching importance of substantive fairness, I find that the Default Judgment cannot be regarded as a regular one. If so, then as the Court of Appeal in *Mercurine* pointed out (at [91]), subject to the court's overriding discretion, the *ex debito justitiae* rule would apply by default. As such, the Default Judgment should have been set aside as of right. The DJ thus committed an error of law in failing to apply the *ex debito justitiae* rule in relation to the Default Judgment.

(D) THE DJ HAD FAILED TO CONSIDER THE DR'S QUALIFICATION ON WHEN THE DEFAULT JUDGMENT CAN BE SET ASIDE

57 Finally, the DJ had committed an error of law by failing to consider the effect of the DR's qualification to the Default Judgment. In this regard, the DR had qualified the default judgment as one handed down in Mr Chan's absence, which could be set aside upon Mr Chan providing reasons for his absence on affidavit. At the very least, this suggests that the Default Judgment should continue to stand only if Mr Chan could not provide a satisfactory explanation for his absence at the CMC. Yet, in considering whether to set aside the Default Judgment, neither the DR nor the DJ alluded to this fact in their reasoning. They both proceeded to consider the matter as if the Default Judgment was obtained regularly *without qualification*. In doing so, I find that the DJ had committed an error of law by failing to have regard to the qualification with which the Default Judgment was entered.

Version No 1: 14 Dec 2022 (12:08 hrs)

(2) The DJ's errors of law constitute a "*prima facie* case of error" that justifies grant of permission to appeal

58 I am of the view that the DJ's errors of law identified above constitute a *prima facie* case of error that justifies the grant of permission to appeal. This is because, in my view, the presence of these errors is well-established and go beyond being merely arguable. Also, there would be a likelihood of substantial injustice if the applicant were not allowed permission to appeal. I say so for the following reasons.

59 First, procedural injustice has been occasioned to the applicant. Whereas the Default Judgment should have been set aside as of right so that the plaintiff can file a fresh application to strike out the defence if needed, the DJ and the DR have both unintentionally reversed the burden of proof and spared the plaintiff from having to discharge the burden of a striking out application. Put another way, the applicant has been put on the backfoot because she now has to deal with a judgment entered against her.

60 Second, substantive injustice has been occasioned to the applicant. Because of the Default Judgment, the applicant is now held to her pleaded defence in respect of the Default Judgment, when she could have, for instance, applied to amend her pleadings had the matter gone to trial (which was what Ms Lim had initially sought at the CMC). Relatedly, Ms Lim said at the CMC that the applicant had indicated she wanted to take out third-party proceedings before the CMC.[25] It is unclear how those proceedings, if Mr Chan had attended and indicated at the CMC that he would have taken them out, would have affected the outcome in MC 7384. The point is that MC 7384 could have taken on an entirely different complexion had it not been for the Default Judgment.

[25] NE 24 January 2022 at p 5.

Version No 1: 14 Dec 2022 (12:08 hrs)

However, with the Default Judgment, the applicant now finds herself not only seeking to set aside the Default Judgment, but also facing a situation where the DR and the DJ have both ruled that her defences as they stood at the time of the Default Judgment do not raise any triable issues.

61 Of course, it might be said that there is no substantive injustice precisely because the DR and the DJ have assessed the applicant's defences as not raising any triable issues. Therefore, the outcome, whether permission is granted to appeal or not, would be the *same*. I do not take such a view because not only is the applicant entitled to her day in court, but there are also options for the judge who eventually hears her appeal to ensure that the injustice occasioned to her can be minimised. This might include, for example, permission for the applicant to amend her defence.

62 For these reasons, I find that the errors of law committed by the DJ amount to a *prima facie* case of error that would justify the grant of permission to appeal.

Second and third grounds: Question of general principle and question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage

63 For completeness, I turn to the second and third grounds in *Lee Kuan Yew* that would justify the grant of permission to appeal. The applicant makes several arguments in this regard. In essence, the applicant says that the important question is "if the court making the order lays conditions for the setting aside of the same … is another court entitled to insist on merits as if it's a judgment entered for noncompliance with the Rules of Court".[26]

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[26] Affidavit of Ms Zhou Wenjing dated 6 October 2022 at para 10.

Version No 1: 14 Dec 2022 (12:08 hrs)

64 I disagree with the applicant that there is either a question of general principle (much less one being decided for the first time) or a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage. The present case does not turn on any such question but on the proper application of established principles found in cases like *Mercurine*. However, the applicant still succeeds in obtaining permission to appeal because I have found that the ground of a *prima facie* case of error is satisfied in the present case.

Conclusion

65 In summary, I allow the applicant's application for permission to appeal to the General Division of the High Court. The applicant is to seek the appropriate directions in relation to the hearing of the substantive appeal from the Registry.

66 In my view, this unfortunate state of affairs could have been avoided had Ms Lim sought an adjournment of the CMC on her own volition, or if the DR had adjourned the CMC instead of giving the plaintiff a bird in hand, so to speak, by granting the Default Judgment in circumstances that are unusual. In this connection, I make two points for future consideration. First, it must be commonplace that lawyers can mention on behalf of each other so as to convey a message to the court. It would be untenable for the efficient functioning of our courts if lawyers had to seek their clients' agreement to convey a simple message from the other side that does not impinge upon the client's position. Where a lawyer has conveyed to the court a message from opposing counsel that the latter cannot attend court and the reason for her absence, that should count as the lawyer having mentioned on behalf of opposing counsel for that purpose. In that situation, the lawyer who is unable to attend court *has* let the

Version No 1: 14 Dec 2022 (12:08 hrs)

court know why he or she cannot turn up. The court should not automatically regard that lawyer as being absent for the purposes of, among others, entering a judgment in default of appearance. Instead, the court should consider the circumstances and be prepared to grant a short adjournment if one is needed.

67 Second, and ultimately, despite the need for discipline in the case management process, a court should grant a default judgment only if it is utterly satisfied that there is no proper explanation for a lawyer's absence. This is because a default judgment is a draconian measure that effectively shuts out the defendant from having his or her day in court. It should never be hastily granted. And a court should be slow to impose the consequences of a default judgment on a defendant based on the acts of his or her *lawyer* alone. In the present case, the applicant likely had no idea that Mr Chan was not well enough to attend court. Even if Mr Chan is deemed to have acted improperly, a one-off occurrence should not result in the *applicant* being deprived of her day in court. This situation is therefore very different from one where the defendant does not even enter an appearance or is consistently absent after that; in contrast, the applicant had entered an appearance, filed a defence, and there is no indication that she or her lawyer had been consistently absent. Also, as this present case has shown, it is cold comfort to a defendant to say that a judgment granted in default of appearance can be set aside once an explanation is provided for the absence. Instead, a default judgment effectively puts the defendant on the backfoot and confers a very substantial advantage to the plaintiff. Even if the default judgment can be set aside, the defendant would have been put through expenses to do so. There is every danger of substantive injustice being occasioned to the defendant if a default judgment is granted in circumstances where it ought not, from a *substantive* point of view, to have been so granted.

Version No 1: 14 Dec 2022 (12:08 hrs)

68 In the end, I understand that efficiency is important in our courts, especially in the State Courts where the volume of cases is very high. However, it bears repeating that procedural efficiency should never be at the cost of substantive justice. Sometimes, rather than regard a technical adherence to procedural rules as a barometer for the right course of action, it might be helpful to take a step back, assess the situation, and listen to that inner voice within all of us as to what is the right thing to do. More often than not, if we take the time to listen carefully, we all innately know the answer.

69 Unless the parties are able to agree on costs, they are to write in, bearing in mind the year-end holidays, within 21 days of this judgment with their brief (no more than five pages) submissions on the appropriate costs order.

Goh Yihan
Judicial Commissioner

Foo Ho Chew (H C Law Practice) for the applicant;
Vijai Dharamdas Parwani and Huang Po Han (Parwani Law LLC) for the respondent.

Version No 1: 14 Dec 2022 (12:08 hrs)