

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

[2026] SGHCR 37

Originating Claim No 308 of 2025 (Summons No 2676 of 2025)

Between

Lee Jia Yun

...Claimant

And

Barrie Tan

...Defendant

GROUND OF DECISION

[Civil Procedure — Striking out — Limitation defence — Whether appropriate to apply to strike out when no defence has been filed — Whether to dismiss]

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Lee Jia Yun

v

Barrie Tan

[2026] SGHCR 37

General Division of the High Court — Originating Claim No 308 of 2025
(Summons No 2676 of 2025)

AR Darryl Soh

4 December 2025 and 16 January 2026

25 August 2026

AR Darryl Soh:

Introduction

1 This matter concerns a medical negligence claim by a claimant patient against a surgeon who operated on her. Prior to filing his Defence, the Defendant applied to strike out the Originating Claim and Statement of Claim on the basis that the action is time-barred pursuant to the Limitation Act 1959 (2020 Rev Ed) (“LA”). The claimant consequently raised the preliminary procedural issue whether the striking out application was premature. On 16 January 2026, I agreed with the claimant that the striking out application was premature and directed, amongst other things, that the Defendant file his Defence. I elaborate on my decision herein.

Brief Background Facts and Parties

2 The Defendant is an Ear, Nose and Throat Surgeon and the Claimant was a previous patient of his. The Claimant first consulted the Defendant on 13 June 2020 for right-sided eustachian tube dysfunction, having selected him from a panel recommended by her health insurer. She consulted the Defendant in respect of a sensation of a blocked right ear which had persisted following an infection in the same ear after an undersea diving trip in or around early December 2019.

3 After an audiological assessment and nasoendoscopy, the Defendant advised the Claimant that she had symptoms indicative of Obstructive Eustachian Tube Dysfunction (“OETD”). He proposed two surgical options: (a) right-sided balloon tuboplasty under general anaesthesia as a day surgery, or (b) right-sided myringotomy with grommet tube insertion performed in clinic. The Claimant did not make a decision to proceed on 13 June 2020. After subsequent consultations on 12 and 15 June 2021, the Claimant elected to proceed with a right-sided balloon tuboplasty.

4 The Defendant performed a balloon tuboplasty procedure on the Claimant’s right ear on 26 July 2021. According to the Claimant’s pleaded case, she suffered post-surgical symptoms on 28 July 2021 and was subsequently diagnosed with Patulous Eustachian Tube symptoms.

5 HC/OC 308/2025 (“OC 308”) was commenced against the Defendant for negligence on 17 April 2025, being more than three years from the date of the procedure (*i.e.* 26 July 2021).

Striking Out Application, Preliminary Issue and Parties' Positions

6 The Defendant applied on 10 September 2025 in HC/SUM 2676/2025 to strike out the Originating Claim and Statement of Claim on the basis that the action is time-barred. As at 16 January 2026, the Defendant had filed a notice of intention to contest the Originating Claim on 2 May 2025 but had not filed his Defence. I observed, however, that the Learned Assistant Registrar presiding over the Registrar's Case Conference held the filing of the Defence in abeyance on 16 June 2025 and had yet to direct the filing of the Defence.

7 During the hearing on 4 December 2025, the Claimant raised a preliminary procedural issue of whether the striking out application could proceed when the Defence had yet to be filed and where the Defendant was relying on the action being time-barred pursuant to the LA. The Claimant consequently argued that the striking out application was premature since no Defence was filed, as required by s. 4 of the LA. The Defendant disagreed and argued that there was no requirement in O. 9 r. 16 of ROC 2021 for a Defence to be first filed. A striking out application could nevertheless be heard and decided without the filing of a defence.

Decision

8 Having considered the arguments, I agreed with the Claimant that the striking out application was premature because the Defence had not been filed. Where a claimant takes such a position and makes a procedural objection, a defendant relying on an action being time-barred under the Limitation Act should first file and plead such a defence before the striking out application is determined. This approach, in my view, would be both principled and consistent with jurisprudence.

9 Two provisions were central to the dispute. The Claimant relied primarily on s. 4 of the LA whilst the Defendant relied primarily on O. 9 r. 16 of the Rules of Court 2021 (“ROC 2021”) in response. Section 4 of the LA provides:

Limitation not to operate as a bar unless specially pleaded

4. Nothing in this Act shall operate as a bar to an action ***unless this Act has been expressly pleaded as a defence thereto*** in any case where under any written law relating to civil procedure for the time being in force such ***a defence is required to be so pleaded.***

[Emphasis in bold and italics added]

10 The Claimant reasoned that s. 4 of the Limitation Act expressly provides that limitation is not to operate as a bar unless it has been expressly pleaded as a defence. The Claimant’s focus in the preliminary issue lay with the first part of s. 4 of the LA whilst the Defendant’s focus and reliance was on the second part of s. 4 of the LA. The second part expressly provides that the limitation defence needs to be pleaded if such a defence is required by any written law relating to civil procedure to be pleaded. To this end, the Defendant submitted that such a requirement is absent in O. 9 r. 16 of ROC 2021. That rule provides:

Striking out pleadings and other documents (O. 9, r. 16)

16.—(1) The Court may order any or part of any pleading to be struck out or amended, on the ground that —

- (a) it discloses no reasonable cause of action or defence;
- (b) it is an abuse of process of the Court; or
- (c) it is in the interests of justice to do so,

and may order the action to be stayed or dismissed or judgment to be entered accordingly.

(2) No evidence is admissible on an application under paragraph (1)(a).

(3) This Rule applies to an originating application as if it were a pleading.

(4) The Court may order any affidavit or other document filed in Court to be struck out or redacted on the ground that —

- (a) the party had no right to file the affidavit or document;
- (b) it is an abuse of process of the Court; or
- (c) it is in the interests of justice to do so.

11 The narrow conceptual issue in this dispute is therefore whether the Defendant *can* rely on a limitation defence in support of a striking out application when the Defendant has not expressly pleaded it. In my view, the Defendant should not be able to do so given the factual matrix of this matter.

12 A *prima facie* analysis of the above-mentioned provisions read together suggested that the Defendant could do so. Section 4 of the LA requires that the limitation defence be expressly pleaded if there is a written law relating to civil procedure that requires it. O. 9 r. 16 of ROC 2021 governs striking out applications and there is no positive requirement therein for a Defence to be first filed before a party applies for striking out. It is however critical, as I will explain below, to distinguish between the substantive availability of a defence and the procedural determination of a limitation defence.

13 The Defendant’s position that a striking out application can be heard and decided without filing a defence appeared to be supported in *Far East Opus Pte. Ltd. v Kuvera Properties Pte. Ltd.* [2025] SGHC 109 (“*Far East Opus*”). This was a case where the claimant brought a claim against the defendant for allegedly inducing the claimant to purchase a medical unit by making certain misrepresentations. The defendant’s application to strike out the claimant’s action for being time-barred was dismissed by the learned Assistant Registrar but this was overturned on appeal. Materially in *Far East Opus*, as in the present

matter, the defendant had yet to file its defence and rested its case for striking out on the facts as pleaded by the claimant. The High Court observed that if the presumed facts are still capable of establishing the requisite knowledge on the part of the claimant, it would be appropriate to strike out the cause of action for being time-barred. See [13] and [70]. To this end, the Defendant argued that time-barred claims are legally unsustainable.

14 In response, the Claimant was unable to point to any local authority that supported its position that a limitation defence must first be pleaded. He instead relied on a Malaysian Federal Court decision in *Tasja Sdn Bhd v Golden Approach Sdn Bhd* [2011] MLJU 67 (“*Tasja*”) in support. In that case, the plaintiff was engaged by the defendant to undertake certain construction works in a particular project. Under the contract, a firm of engineers was appointed as the consultant and the defendant would have to pay to the plaintiff within 30 days after the consultant has issued to the plaintiff an interim valuation certificate certifying the work completed and the amount due. The plaintiff claimed that it was not paid. After the plaintiff’s statement of claim was served on the defendant, the defendant applied to strike out the plaintiff’s claim on the ground that the claim was time-barred pursuant to the Malaysian Limitation Act. The Malaysian High Court allowed the defendant’s application. Materially, although s. 4 of the Malaysian Limitation Act requires the defence of limitation to be pleaded, this can be exempted in an application for striking out. The plaintiff appealed to the Malaysian Court of Appeal. The appeal was dismissed, with the Malaysian Court of Appeal supporting the reasoning of the Malaysian High Court. On further appeal to the Malaysian Federal Court, the court considered the issue of whether a defence of limitation under s 4 of the Limitation Act 1953 must be pleaded before a claim can be dismissed on the ground that it is time-barred. There is no dispute that s. 4 of the Malaysian Limitation Act is in *pari materia* with s. 4 of the Singapore Limitation Act.

15 Critically, the Malaysian Federal Court held that in a situation where limitation is not absolute, as in the case of limitation under the Malaysian Limitation Act, such an application for striking out should not be allowed until and unless limitation is pleaded as required under s. 4 of the Malaysian Limitation Act. First, the court reasoned that s. 4 of the Malaysian Limitation Act demands the defendant to expressly state this as a defence before it can become effective, *i.e.* “nothing in this Act shall operate as a bar to an action unless this Act has been expressly pleaded...”. Second, there are exceptions provided in the Malaysian Limitation Act as well as the option for the defendant to waive this defence. Thus, to allow a defendant’s application to strike out the plaintiff’s case even before such events have occurred and deprive the plaintiff of an opportunity to explain why limitation does not apply would cause injustice to the plaintiff. Third, it is against the express provision of the law (*i.e.* s. 4 of the Malaysian Limitation Act) which requires a defence of limitation to be pleaded before it can be effected. When such a defence of limitation under the Limitation Act is not absolute and is required by law to be pleaded before it can be considered, then a defendant’s application for striking out based on this Act should not be allowed.

16 The Defendant argued robustly that *Tasja* was not persuasive and should not be followed because the Malaysian Federal Court did not consider the entirety of s. 4 of the Malaysian Limitation Act, *i.e.* specifically the qualification that the limitation defence needs to be “expressly pleaded as a defence thereto in any case where under any written law relating to civil procedure for the time being in force such a defence is required to be so pleaded”. I was not persuaded by the Defendant’s arguments. Whilst the Defendant is correct that there is no express provision prescribing a requirement for a Defence to be filed first, or for the Limitation Act to be pleaded in a Defence, O. 9 r. 16 of ROC 2021 must be appreciated in the proper context and purpose. It is a *general* provision on

striking out in respect of any or part of any pleading. Further, it does not address the operation of the Limitation Act or the jurisprudence concerning a limitation defence. To this end, I was of the view that *Far East Opus* did not substantively assist the Defendant. The observations made by the High Court were *obiter dicta*. It also does not appear that the High Court was seized of the issue whether, having regard to s. 4 of the LA, a striking out application is premature if a Defence has yet to be filed or whether such an argument was even advanced by the claimant therein.

17 Further and materially, I was of the view that the observations in *Far East Opus* must be considered alongside the High Court decision in *Yim Lok Foong Elsie v Asia First Star Capital Pte Ltd and another* [2021] SGHC 156 (“*Yim Lok Foong Elsie*”). In that case, the High Court found that the Limitation Act could not apply as the first defendant did not specifically plead limitation as a defence since it did not file a Defence, let alone enter an appearance. See D/4/1 of the *Singapore Civil Procedure 2025, Volume II*. I found *Yim Lok Foong Elsie* to be more on point as it directly addresses the significance of a limitation defence not having been pleaded.

18 In my view, the decision in *Tasja* is persuasive as a matter of reasoning. Whilst the Defendant correctly pointed out that the Malaysian Federal Court in *Tasja* did not specifically consider the condition that “time-bar limitation needs to be pleaded if such a defence is required by any written law relating to civil procedure to be pleaded”, I did not consider this to be determinative of the issue. The Defendant relies on s. 4 of the LA and O. 9 r. 16 of ROC 2021 when read together but it is critical to understand that the two provisions address different issues. O. 9 r. 16 of ROC 2021 prescribes the Court’s procedural striking out power but s. 4 of the LA sets out the circumstances in which the substantive limitation defence may be invoked. As such, s. 4 of the LA does not

automatically extinguish an action, but its operation as a bar is tied to pleadings. O. 9 r. 16 of ROC 2021 permits striking out without requiring a Defence first to be filed, but that does not itself determine when the limitation defence is invoked or relied upon. Further, O. 9 r. 16 of ROC 2021 must also be understood in the context of the other rules in ROC 2021 governing pleadings, including those governing the filing and service of a Defence at the case conference.

19 *Tasja* is persuasive because as a matter of concept the defence of limitation is not absolute and a claimant must be given an opportunity *via* a reply, where applicable, to respond to the limitation defence and to raise any applicable exception. This approach is principled because time-bar under the LA is not an automatic extinction of the cause of action, and its application may depend upon matters beyond the claimant's existing pleadings. A defendant must therefore elect to rely on the limitation defence, and the claimant may consequently need an opportunity to respond to the pleaded limitation defence. As such, determining time-bar before it has been pleaded would be premature. Further, *Tasja* is consistent with the observations by the High Court in *Yim Lok Foong Elsie*. What is perhaps material in *Tasja* and the present matter is that the claimant resisted the striking out application on the ground that the Defence was not filed. In *Far East Opus*, the court proceeded without the procedural irregularity being raised. However, where a defendant seeks to invoke the LA as the basis for striking out an originating claim before a Defence is filed, and the claimant objects on the basis that the limitation defence has not been pleaded, the appropriate course is then to require the defendant first to plead the limitation defence before determining the striking out application.

20 A related query is consequently when a claimant should raise this procedural issue. In my view, a claimant intending to rely on such a procedural objection should ordinarily raise it at the earliest opportunity, and preferably at

the case conference rather than at the hearing of the striking out application. Such a balanced approach addresses both the procedural issue of pleading and the determination of the striking out application on the merits. Otherwise, this would result in an inefficient use of the court's resources in respect of the time allocated to the striking out application and cause unnecessary delay if the defendant is directed only at a hearing to file a Defence.

21 In summary, whilst s. 4 of the LA requires that the limitation defence be expressly pleaded if there is a written law relating to civil procedure that requires it, it was unnecessary for me to decide the full scope of that express qualifier. The High Court's conclusion in *Yim Lok Foong Elsie*, the non-absolute nature of the limitation defence, and the procedural framework of ROC 2021 suggested that the ordinary course is first to require the limitation defence to be pleaded in a Defence before hearing the merits of the striking out application.

Consequential Issue and Conclusion

22 Having decided that the striking out application is premature, the consequential issue was whether the premature striking out application ought then to be dismissed. The Claimant argued that it should be dismissed. After considering this issue, I am of the view that it would not be in the interest of justice to do so as this preliminary procedural issue of the non-filing of the Defence was not raised earlier during previous Registrar's Case Conferences where it could have been easily rectified by a direction, and also that there was a specific direction for the filing of the Defence to be held in abeyance. In my view, such a procedural step can be easily rectified as a matter of formality by directing that the Defence be filed – see above at [19]–[20]. Pursuant to the ROC

2021 *Ideals*, specifically an efficient use of court resources and fair and practical results suited to the needs of the parties, I directed, *inter alia*, that:

- (a) the Defendant is to file his defence by 2 February 2026; and
- (b) the Claimant to thereafter consider whether a Reply needs to be filed pursuant to O. 6, r. 10 of ROC 2021.

23 The hearing on the merits of the striking out application was consequently adjourned to a date to be fixed by the Assistant Registrar presiding over the Registrar's Case Conference.

Darryl Soh
Assistant Registrar

Edmund Kronenburg, Tang Kai Qing and Glenn Ang (Braddell
Brothers LLP) for the Claimant;
Mak Wei Munn and Ivan Khoo Yi (Allen & Gledhill LLP) for the
Defendant.
