

Ng Chan Teng v Keppel Singmarine Dockyard Pte Ltd
[2009] SGHC 17

Case Number : OS 556/2008
Decision Date : 13 January 2009
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : N Srinivasan (Hoh Law Corporation) for the plaintiff; K Anparasan and Sharon Lim (Khattar Wong) for the defendant
Parties : Ng Chan Teng — Keppel Singmarine Dockyard Pte Ltd

Civil Procedure – Jurisdiction – Transfer of proceedings from District Court to High Court – Whether assessment of damages proceedings could be transferred to High Court where interlocutory judgment had been entered in District Court – Whether plaintiff estopped from seeking transfer of proceedings after having taken out application under O 14 r 12 Rules of Court (Cap 322, R 5, 2006 Rev Ed) for determination of preliminary point – Section 54B(1) Subordinate Courts Act (Cap 321, 2007 Rev Ed)

Courts and Jurisdiction – High court – Power to transfer proceedings from District Court to High Court – Meaning of "sufficient reason" in s 54B(1) Subordinate Courts Act (Cap 321, 2007 Rev Ed) – Whether assessment of damages proceedings could be transferred to High Court where interlocutory judgment had been entered in District Court – Whether defendant would be prejudiced if assessment of damages proceedings were transferred to High Court – Section 54B(1) Subordinate Courts Act (Cap 321, 2007 Rev Ed)

13 January 2009

Tay Yong Kwang J:

Introduction

1 The present Originating Summons No 556 of 2008 ("OS 556") concerns an application by the plaintiff, Ng Chan Teng, to transfer his action commenced in the District Court against the defendant, Keppel Singmarine Dockyard Pte Ltd, to the High Court. The plaintiff's application is made pursuant to s 54B of the Subordinate Courts Act (Cap 321, 2007 Rev Ed) ("SCA") read with s 18 and paragraph 10 of the First Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed).

2 The parties filed written submissions and it was originally agreed that oral arguments and replies would be made before me on a date to be fixed. At the fixing of dates, the parties informed the Assistant Registrar that they would stand by their written submissions without the need for further elaboration. Accordingly, I deliver my decision based on the parties' written submissions.

The facts

3 The plaintiff, a shipwright and a former employee of the defendant, was involved in an industrial accident on 13 November 2001 ("the accident") while working on the defendant's premises. As a result of the accident, he sustained severe injuries to his right arm. The plaintiff subsequently commenced legal proceedings in DC Suit No 4765 of 2002/Z in the District Court against the defendant for personal injury and loss.

4 The parties then negotiated on the quantum of damages payable and the plaintiff's then solicitors ("the plaintiff's former solicitors") quantified the total damages at \$725,000 in their letter dated 20 March 2003 to the defendant. Despite the fact that the total damages quantified by the

plaintiff's former solicitors exceeded the \$250,000 jurisdictional limit of the District Court, the action remained in the District Court. On 7 May 2004, the parties entered into a consent interlocutory judgment wherein the defendant accepted 70% liability for the accident and the plaintiff accepted 30% liability for contributory negligence, with damages to be assessed. After the consent interlocutory judgment was entered, another letter was sent by the plaintiff's former solicitors on 9 November 2005 which proposed quantifying the total damages at \$923,790. This was not accepted by the defendant. Since the parties could not agree on the damages payable, the matter proceeded for an assessment of damages hearing. Just prior to the hearing, on 25 May 2006, the plaintiff appointed his present solicitors.

5 Although the total damages quantified by the plaintiff's former solicitors exceeded the \$250,000 jurisdictional limit of the District Court, the plaintiff's present solicitors did not apply to transfer the action from the District Court to the High Court after taking over the plaintiff's case because of the consent interlocutory judgment and the Court of Appeal's decision in *Ricky Charles s/o Gabriel Thanabalan v Chua Boon Yeow* [2003] 1 SLR 511 ("*Ricky Charles*").

6 Shortly thereafter, an issue arose between the parties on the maximum amount of damages that the District Court could award on the basis of the defendant's 70% liability. The plaintiff took the view that the maximum sum ought to be the District Court limit as defined in s 2 of the SCA, *ie*, \$250,000, while the defendant's position was that the maximum amount that could be awarded was 70% of the District Court limit, *ie*, \$175,000. In other words, there was a dispute as to whether the deduction for contributory negligence was to be made from the District Court limit or from actual damages assessed. Consequently, the plaintiff referred the matter to the District Court for determination pursuant to O 14 r 12 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the O 14 r 12 application"). The matter eventually went all the way up to the Court of Appeal and was finally resolved by the Court of Appeal in March 2008 (see *Keppel Singmarine Dockyard Pte Ltd v Ng Chan Teng* [2008] 2 SLR 839 ("*Keppel Singmarine Dockyard*").

7 The history of the O 14 r 12 application, which culminated in the Court of Appeal's decision of *Keppel Singmarine Dockyard*, are summarised at [7]-[9] of that decision and I need not repeat them here. The Court of Appeal resolved the matter in the plaintiff's favour (*Keppel Singmarine Dockyard* at [29]-[30]) and also went on to express the view that the specific holding in *Ricky Charles* that an action commenced in the District Court may not be transferred to the High Court after interlocutory judgment has been entered in the District Court should no longer be followed (*Keppel Singmarine Dockyard* at [32]). I will elaborate on the Court of Appeal's decisions in both *Ricky Charles* and *Keppel Singmarine Dockyard* in the later part of this judgment.

8 With the Court of Appeal's ruling in *Keppel Singmarine Dockyard*, the plaintiff was no longer constrained by *Ricky Charles* from applying for a transfer of the action. He therefore proceeded with this application to transfer the District Court action to the High Court. The plaintiff's solicitors had written to the defendant's solicitors to seek a transfer by consent but they were not agreeable to a transfer.

The parties' submissions

9 The plaintiff submitted that the crux of his application lies in the prospect of the quantum of damages exceeding the jurisdiction of the District Court. This, according to the plaintiff, would constitute "sufficient reason" under s 54B of the SCA to transfer his action to the High Court. Although a consent interlocutory judgment has already been entered in the District Court, this would not be an impediment to the transfer so long as no prejudice is caused to the defendant, given the Court of Appeal's latest decision in *Keppel Singmarine Dockyard*. The plaintiff further submitted that

the Court of Appeal in *Keppel Singmarine Dockyard* made it clear that the fact that the damages awarded may exceed \$250,000 if the transfer is allowed cannot be a "prejudice" to the defendant that would justify the refusal of such a transfer.

10 The defendant, on the other hand, submitted that the plaintiff has not shown sufficient reason to justify the transfer of the proceedings and that irretrievable prejudice will be caused to the defendant if such a transfer is allowed. In respect of the former contention, the defendant argued that no reason or explanation has been offered by the plaintiff's former solicitors why the action was commenced in the District Court. There has been no material change in the circumstances after the commencement of the action and the plaintiff has not shown that he made a genuine mistake regarding the quantum of his claim. In respect of the latter contention, the defendant argued that it would be [\[note: 1\]](#):

... deprived of the benefit of the consent Interlocutory Judgment in respect of the Plaintiff's admission of 30% liability in part or in full if the Plaintiff is now allowed to re-litigate the maximum quantum payable by taking this matter to the High Court as the Plaintiff is already time barred from commencing any fresh action in the High Court.

11 The defendant, in fact, questioned whether the defendant could now seek to transfer the action after consent interlocutory judgment was entered below. The defendant submitted that the Court of Appeal's comments in *Keppel Singmarine Dockyard* on the specific holding in *Ricky Charles* were merely *obiter* and the Court of Appeal did not overrule its previous decision in *Ricky Charles*. According to the defendant, *Ricky Charles* was thus still good law and remained binding. The defendant further questioned if this was an appropriate case for the transfer of proceedings as the plaintiff's present solicitors had taken out the O 14 r 12 application to dispose of the entire case on the point of law and should not now change their position and apply to transfer the action to the High Court as that would defeat the very purpose of taking out the O 14 r 12 application. The defendant submitted that the plaintiff's present solicitors must be estopped from applying to transfer the action to the High Court.

My decision

12 In my view, it is plain from a perusal of the Court of Appeal's decision in *Keppel Singmarine Dockyard*, which is a decision *on the very facts of the case before me*, that the plaintiff's application should be allowed.

13 Although the views of the Court of Appeal in *Keppel Singmarine Dockyard* (regarding the transfer of proceedings from the District Court to the High Court after entry of interlocutory judgment) (see [31]-[39]) could arguably be said to be *obiter* (as the question before the Court of Appeal was that posed in the O 14 r 12 application, *ie*, whether deduction for contributory negligence was to be made from the District Court limit or from actual damages assessed), the Court of Appeal, in no uncertain terms, stated that (at [32]):

... the specific holding in *Ricky Charles* that an action commenced in the District Court may not be transferred to the High Court where interlocutory judgment has been entered in the former court *should not be followed as it proceeded on the wrong assumptions*.

Indeed, at the start of its judgment in *Keppel Singmarine Dockyard*, the Court of Appeal stated that it would "reappraise" whether the courts ought to "persevere in adhering" to the decision in *Ricky Charles* given the "practical difficulties" that it had engendered (at [6]):

As an aside, it bears mention that counsel for the respondent clarified that the reason why the above O 14 r 12 application had been filed was that the assessment of damages could no longer be transferred to the High Court in view of the Court of Appeal's decision in *Ricky Charles s/o Gabriel Thanabalan v Chua Boon Yeow* [2003] 1 SLR 511 ("*Ricky Charles*"). In that case, this court held that an assessment of damages could not be transferred to the High Court after interlocutory judgment had been entered in the District Court. *Given the practical difficulties that this particular decision has engendered, we have decided to reappraise, in these grounds of decision, whether or not the courts ought to persevere in adhering to it.* [emphasis added]

14 The earlier Court of Appeal in *Ricky Charles*, comprising different judges, took the position that once interlocutory judgment had been obtained in the District Court, it was not possible to transfer the proceedings to the High Court for mainly two reasons: (1) it was not within the spirit of s 38 of the Subordinate Courts Act (Cap 321, 1999 Rev Ed) (the equivalent of the present s 54B of the SCA) to do so; and (2) the plaintiff must be taken to have affirmed his claim within the jurisdiction of the District Court. The Court of Appeal stated (at [16]):

Unfortunately, an interlocutory judgment had already been obtained from the District Court. In our opinion, s 38 gives the High Court the discretion to transfer an entire action, *ie* the claim, encompassing both the question of liability and quantum to the High Court. We did not think that it is within the spirit of the section, which requires the matter to be "*one which should be tried in the High Court*", to permit a transfer of a case where interlocutory judgment had already been obtained in the District Court, leaving only the quantum to be assessed, and what was sought to be transferred to the High Court was merely the assessment of damages. This would be to truncate a single proceeding and blur the distinction between the two jurisdictions. By obtaining an interlocutory judgment in the District Court, the appellant had affirmed his claim within the jurisdiction of that court. [original emphasis in italics]

15 In respect of the second point on the "affirmation of jurisdiction", the Court of Appeal in *Keppel Singmarine Dockyard* pointed out that the entering of an interlocutory judgment is *not* a legal affirmation of a lower court's jurisdiction over the plaintiff's claim for the *entire* duration of the proceedings and that such "affirmation of jurisdiction" approach fails to acknowledge adequately the fact that litigation is a dynamic process in which the parties' claims and/or defences are constantly monitored and fine-tuned. The Court of Appeal said (at [32]):

... the "affirmation of jurisdiction" approach taken by the Court of Appeal [*Ricky Charles*] (at [16]) plainly extends only to the limit of the claim *then* being sought, which limit is premised purely on an existing expectation *at that point in time* by the plaintiff's counsel as to the quantum potentially recoverable. The entering of an interlocutory judgment is not a legal affirmation of a lower court's jurisdiction over the plaintiff's claim for the *entire duration* of the proceedings, in the course of which the plaintiff may amend his claim *vis-à-vis, inter alia*, the quantum claimed. With due respect, the decision in *Ricky Charles* places far too much emphasis on decisions made at a particular point in time in the proceedings – and often at an early stage – by the plaintiff's counsel. The "affirmation of jurisdiction" approach fails to adequately acknowledge that litigation is a dynamic process in which the parties' claims (and/or defences) are constantly monitored and fine-tuned by counsel. Why should a decision as to the amount of a plaintiff's claim made at a specific juncture in an action be treated as irrevocable if, indeed, there is subsequently a change in circumstances that constitutes a "sufficient reason" justifying a transfer of the proceedings to the High Court?...

[original emphasis in italics]

16 In respect of the first point concerning the spirit of the legislation in question, the Court of

Appeal observed (at [33]) that subsequent to the decision in *Ricky Charles*, several statutory amendments in relation to the jurisdiction to transfer proceedings between courts were effected to give courts greater flexibility to allow transfers in appropriate cases pursuant to a report, *Transfers of Civil Proceedings between Courts* (May 2004) ("the Report"), by the Law Reform Committee ("the Committee") of the Singapore Academy of Law. The court noted at [34] that:

Although Ricky Charles was not dealt with substantively in the Report, we note that the Committee was of the opinion (at p 6) that it was one of five cases which "highlighted certain shortcomings in the prevailing transfer regime". We are satisfied that, as a matter of policy, the specific holding in Ricky Charles as set out at [32] above need no longer be observed if a sufficient reason for transferring an action from the District Court to the High Court can be shown and where there is indeed no irretrievable prejudice caused to the defendant by a transfer of the proceedings even though interlocutory judgment has already been entered in the District Court. [emphasis added]

The Explanatory Statement to the Subordinate Courts (Amendment) Bill 2005 (Bill No 16 of 2005) ("the 2005 Bill") stated that the objectives of the amendments were as follows:

This Bill seeks to amend the Subordinate Courts Act (Cap 321) to reform the law relating to transfers in civil proceedings. The Bill implements the recommendations of the *Law Reform Committee of the Singapore Academy of Law*...

The basic objective is to provide for greater flexibility to the courts to transfer proceedings between themselves so that cases may be dealt with as efficiently as possible. *This Bill also seeks to remove anomalies and resolve certain shortcomings highlighted in recent decisions of the Singapore Supreme Court*, so that transfers of civil proceedings between courts will be less complex and more flexible.

[emphasis added]

17 The Court of Appeal in *Keppel Singmarine Dockyard* also took the opportunity to address the question of prejudice to a defendant if the assessment of damages is transferred to the High Court after parties have consented to interlocutory judgment being entered in the District Court. In dismissing the application for a transfer, both the High Court and Court of Appeal in *Ricky Charles* suggested that the defendant could be prejudiced by the transfer given that the parties consented to interlocutory judgment in the District Court on the apparent basis that the claim would be circumscribed by the jurisdictional limit of the District Court (see *Keppel Singmarine Dockyard* at [31] and *Ricky Charles s/o Gabriel Thanabalan v Chua Boon Yeow* [2002] 3 SLR 307 at [24]). The Court of Appeal in *Keppel Singmarine Dockyard* was of the view that a defendant cannot complain of being prejudiced just because the law permits the plaintiff to have his claim assessed to its full extent in the proper court (at [32]). If a genuine mistake has been made by the plaintiff as to the quantum of his claim or if there has been a material change in circumstances after the action is commenced, it is only right that a transfer of the proceedings from the District Court to the High Court be permitted so that the plaintiff receives the full amount which he is entitled to legitimately so long as no real prejudice would be caused to the defendant (at [32] and [39]). The Court of Appeal said (at [39]):

... "prejudice" to the defendant from a transfer of proceedings from a District Court to the High Court cannot possibly consist of the fact that the damages awarded would exceed \$250,000 if the transfer were allowed. In our view, some form of irreversible change of position or deviation from a prior express agreement on damages must be shown in order to demonstrate that the transfer of proceedings would cause the defendant real prejudice that cannot be compensated by

costs.

18 For all the above reasons, the Court of Appeal in *Keppel Singmarine Dockyard* concluded that *Ricky Charles* should no longer be followed as it proceeded on wrong assumptions. The Court of Appeal also noted that the position in respect of the transfer of proceedings ought to be symmetrical both before and after interlocutory judgment has been entered (at [32] and [39]).

19 In my view, the defendant's continued reliance on the specific holding in *Ricky Charles* that an action commenced in the District Court cannot be transferred to the High Court after interlocutory judgment has been entered is wholly unwarranted. Contrary to what the defendant contended, the fact that interlocutory judgment has been entered below is now no bar to a transfer of proceedings. I also find no merit in the defendant's submissions that the plaintiff should be estopped from seeking a transfer of proceedings after having taken out the O 14 r 12 application. As noted by the Court of Appeal in *Keppel Singmarine Dockyard* (at [31]), the O 14 r 12 application was taken out because of the parties' common belief at the material time that it was too late to transfer the District Court proceedings after consent interlocutory judgment has been entered (given the decision in *Ricky Charles*):

As noted earlier (at [6] above), counsel for the respondent informed us that the O 14 r 12 application in respect of the preliminary issue had been filed because of the parties' common belief that the action could no longer be transferred to the High Court since interlocutory judgment had already been entered in the District Court.

In these circumstances, I do not think it is fair that the plaintiff be estopped from making the present application.

20 The plaintiff's former solicitors have declined to file an affidavit in the present proceedings to explain why the action was commenced in the District Court although they had quantified the plaintiff's damages as being well over \$250,000 (see [4] above). The defendant submitted that the duty was on the plaintiff's former solicitors to properly advise the plaintiff on the jurisdictional limit of the District Court and it would be unfair to seek a transfer now. The suggestion, it seems, is that the plaintiff should look to his former solicitors for redress instead of taking up this application. Even if a consent interlocutory judgment is entered as a result of a genuine mistake, such a mistake would not prevent the plaintiff from transferring its action to the High Court as made plain by the Court of Appeal in *Keppel Singmarine Dockyard* (at [32] and [39]). It is also noteworthy that the Senior Minister of State for law, Assoc Prof Ho Peng Kee, in his speech at the second reading of the 2005 Bill, stated that a "plaintiff might have *inadvertently* filed his claim in the wrong court" [emphasis added] as an example of when a transfer to the High Court would be appropriate (see *Singapore Parliamentary Debates*, Official Report (15 August 2005) vol 80 at col 1238; referred to by the Court of Appeal in *Keppel Singmarine Dockyard* at [37]). Even if the plaintiff has a cause of action against his former solicitors in negligence, this would be cold comfort to him if he is now barred from transferring his action to the High Court and stand to recover only a maximum of \$250,000 in damages, with the balance to be recovered in yet another set of litigation.

21 Section 54B(1) of the SCA provides three grounds for the transfer of proceedings from the Subordinate Courts to the High Court:

54B. —(1) Where it appears to the High Court, on the application of a party to any civil proceedings pending in a subordinate court, that the proceedings, *by reason of its involving some important question of law, or being a test case, or for any other sufficient reason, should be tried in the High Court*, it may order the proceedings to be transferred to the High Court.

[emphasis added]

In the present case (as mentioned), the plaintiff is relying on the third ground, *ie*, “any other sufficient reason”. The plaintiff contended that the fact that his damages will in all likelihood exceed \$250,000 is by itself a “sufficient reason” for the purposes of s 54B(1).

22 As such, to determine whether the application should be allowed, two questions remain to be answered, *viz*, whether the plaintiff in the present case has shown “sufficient reason” for the transfer of his proceedings and, if so, whether any real prejudice would be caused to the defendant.

23 The words “sufficient reason” in s 54B(1) have been given a broad meaning. In *Cheong Ghim Fah v Murugian s/o Rangasamy (No 2)* [2004] 3 SLR 193, it was held that this term has no fixed meaning and would embrace matters that are out of the ordinary (at [10]):

Without attempting an exhaustive definition of the term “sufficient reason”, in the context of s 39 of the SCA [the then equivalent of s 54B], it can be said to embrace matters that are out of the ordinary. All said and done, this term is an etymological chameleon that has no fixed or settled meaning; satisfying this requirement is coloured and evaluated entirely by its statutory context and the relevant factual matrix. The term has overlapping but not consistently identical meanings in ss 37, 38 and 39 of the SCA.

This definition of “sufficient reason” was recently endorsed by the Court of Appeal in *Keppel Singmarine Dockyard* (at [37]). The Court of Appeal in *Keppel Singmarine Dockyard* also reiterated that the *possibility* of a plaintiff’s damages exceeding the jurisdiction of the District Court would in the ordinary course of things be “sufficient reason” for a transfer of proceedings to the High Court (at [38]):

In a similar vein, this court in *Ricky Charles* ([6] *supra*) opined at [15] that the *possibility* of the plaintiff’s damages exceeding the jurisdictional limit of the District Court would ordinarily be regarded as a “sufficient reason” for a transfer of proceedings under s 38 of the 1999 Act. As this view is in line with the practice in other common law jurisdictions and is moreover consistent with what was stated in Parliament when the Subordinate Courts (Amendment) Bill 2005 was introduced (see [33] and [37] above), we could not agree more.

24 It must be noted that the plaintiff in the present case has suffered serious injuries to his right arm. He has suffered a right arm amputation and the right arm was subsequently reattached albeit with severely diminished functional capacity. Prior to the accident, the plaintiff was earning a salary of about \$3,000 per month. The plaintiff’s present solicitors have submitted that \$80,000 should be awarded for the amputation alone given that the courts have previously awarded around \$65,000 for amputation below elbow and/or wrist per arm (see *Ong Tean Hoe v Hong Kong Industrial Co Pte Ltd* [2001] SGHC 303 and *Ng Kim Cheng v Nagai Nitto Singapore Pte Ltd & Anor* [1991] SLR 517) and have also quantified the plaintiff’s loss of future earnings at \$504,000 (using a multiplier of 14 years given that the plaintiff is presently 43 years old) and special damages at \$189,200. Given the severity of the injuries suffered by the plaintiff, there is a real possibility that the plaintiff’s damages will exceed \$250,000. I am therefore of the opinion that the plaintiff has shown “sufficient reason” for the transfer of the proceedings for the purposes of s 54B(1) of the SCA.

25 Turning to the question of real prejudice, the only prejudice put forward by the defendant is that it will be deprived of the benefit of the consent interlocutory judgment below in respect of the plaintiff’s admission of 30% liability (see [10] above). Given that the consent interlocutory judgment has not been set aside, the defendant would remain liable for only 70% of the damages assessed

after proceedings are transferred to the High Court. As such, I do not see how the defendant will be deprived of “the plaintiff’s admission of 30% liability”. However, if by this the defendant means that it will potentially have to pay a larger amount of damages if the proceedings are transferred to the High Court, this cannot constitute real prejudice, as already pointed out by the Court of Appeal in *Keppel Singmarine Dockyard* (see [17] above). In the present case, there is also no evidence that the parties have entered into any *express* agreement on damages or that the plaintiff’s action is to be tried and dealt with in its *entirety* in the District Court. I am thus of the view that no real prejudice would be caused to the defendant if the transfer is allowed.

Conclusion

26 For the above reasons, I allow the plaintiff’s application. Costs of this application are to be costs in the cause, as sought in prayer 3 of OS 556.

[\[note: 1\]](#) Defendant’s Skeletal Submissions at para 12(f).

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