

Cases

CIVIL PROCEDURE

AD v AE [2004] 2 SLR 505

Court of Appeal — Civil Appeal No 118 of 2003

Chao Hick Tin JA and Tan Lee Meng J
26 March; 7 April 2004

Civil Procedure — Appeals — Notice — Whether extension of time to serve Notice of Appeal should be granted — Whether discretionary powers to extend time should be exercised differently where substantive appeal involved the custody of a child

Nicholas Cheong (Lim Soo Peng & Co) for the appellant;

David Rasif (David Rasif & Partners) for the respondent.

The case raised the issue whether, in the instance that the subject matter of the proposed appeal is the issue of the custody of a child, it warranted a more flexible regime governing the granting of such an extension of time.

The husband in the case had petitioned for divorce upon realising that his wife was in an adulterous relationship. All ancillary matters had been resolved except for the issue of custody of their three children. The wife was given custody of the two older daughters with no access to the husband after DNA tests proved that the daughters were not the biological children of the husband. The judge, however, handed over custody of the son to the husband after noting the fact that the father and son had a close bond and also at the request of the son that he be with the father. The mother was allowed weekend access. These orders of the district judge were made on 26 May 2003.

On 11 June 2003, the wife issued a Notice of Appeal against the orders of the district judge granting custody of the son to her husband. However, the Notice of Appeal was not served on the husband's solicitors until 6 August 2003,

some 49 days. The husband's solicitors immediately objected and the wife took out an application to court for an extension of time to serve the Notice of Appeal. Under O 55 r 1(4) of the Rules of Court (Cap 322) the wife's Notice of Appeal should have been served on the husband within seven days of it being issued.

The judge who heard the application for an extension of time to serve the Notice of Appeal, despite finding the reason of failure to serve to be a 'poor excuse' (the lapse had been caused by the clerk of the solicitors acting for the wife), granted the request as the appeal concerned the welfare of a child. The husband appealed against this decision.

Held, allowing the appeal:

An application to extend time to serve a Notice of Appeal within time was no different in nature from that to extend time to file a Notice of Appeal out of time. An appeal would only come into being where the notice had been both filed and served.

When determining whether to grant an extension of time, four factors should be taken into consideration: (i) the length of the delay; (ii) the reason for the delay; (iii) the chances of the appeal succeeding if the time for appealing was extended; and (iv) the degree of prejudice to the would-be respondent if the application was granted.

The Court of Appeal found the delay of 49 days to be a very substantial delay and the delay being due to inadvertence was not taken to be a sufficient reason. The Court also stated that the Rules of Court do not differentiate, based on the nature of the proceedings. The fact that the matter involved the custody of a child should not be reason for the court to exercise its discretion differently. The Court further added that as the matter was a custody proceedings, it was pertinent that the matter in dispute should be resolved in the quickest possible time as uncertainty would not be in the

interest of the child. A more liberal rule to extend time to enable a parent to file or serve a Notice of Appeal out of time against a custody order would not only undermine the timelines set by the Rules of Court but would also be incompatible with the child's welfare as it would be unsettling.

CIVIL PROCEDURE

Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette) [2004] 2 SLR 392

Court of Appeal — Civil Appeal No 97 of 2003

Chao Hick Tin JA and Choo Han Teck J
27 February; 26 March 2004

Civil Procedure — Appeal— Registrar's appeal from assessment of damages to judge in chambers — Whether judge in chambers has discretion to allow further evidence — Whether *Ladd v Marshall* principles were applicable

Michael Hwang SC (instructed) and Ernest Wee (Michael Hwang), Siva Murugaiyan and Parveen Kaur Nagpal (Sant Singh Partnership) for the appellant; Quentin Loh SC and Anthony Wee (Rajah & Tann) for the respondent.

The appellant, Ann Masters Lassiter ('AML'), was the widow of Henry Adolphus Lassiter ('Lassiter'), a US citizen who had died here in Singapore in a motor accident. The respondent ('Lam') was the driver of the vehicle that collided with Lassiter. Upon his death, AML commenced an action for a dependency claim along with a claim for loss of inheritance against Lam. The claim was made on behalf of her and her four children. By agreement a consent judgment was entered into, apportioning liability for the accident between Lassiter and Lam in the ratio of 55 and 45 respectively. It is worth noting that assessment was split into two tranches.

Lassiter, at the time of death, was in the

business of real property. This business of his was run through two firms. Both the businesses and Lassiter had come under Chapter 11 Bankruptcy in the US. However, AML failed to inform Lam of this and suppressed the information during discovery. AML then provided expert witnesses who painted a rosy picture of the business. It was only much later that it was discovered that Lassiter and his business had come under Chapter 11. Upon Lam's discovery of this fact, AML's witnesses had to file further affidavits to modify their original evidence. AML sought to admit into evidence a second supplementary affidavit ('2S-AEIC') of Mr Baker, a friend of Lassiter's, during the second tranche of the hearing. The assistant registrar ('AR') refused to allow the second supplementary affidavit.

At the conclusion of the hearing, the AR made his awards, but rejected the appellant's claim for loss of inheritance, it not being a claim permitted under a dependency claim. In the alternative, he held that the loss of inheritance claim had not been proven.

AML appealed to the judge in chambers against the award. Lam appealed as well. At the hearing before the judge in chambers, AML filed a summons for further directions to have 2S-AEIC admitted into evidence along with a third supplementary affidavit of Mr Baker ('3S-AEIC') and a fourth supplementary affidavit ('4S-AEIC') of an expert witness, Dr Seaman.

The judge in chambers deferred the two substantive appeals and dealt with the summons for further directions. The judge affirmed the AR's decision to refuse the admission of 2S-AEIC. She also went on to say that it was procedurally wrong for AML to seek admission of 2S-AEIC by way of a summons for further direction when it should have been by way of an appeal. She also refused to have 3S-AEIC and 4S-AEIC admitted as evidence.

The judge's refusal to allow the admission of 2S-AEIC, 3S-AEIC and 4S-AEIC

became the subject matter of the present appeal. Admission of 4S-AEIC was later no longer pursued.

Much of the case before the Court of Appeal centred around whether *Ladd v Marshall* [1954] 1 WLR 1489 applied to an appeal from the AR to the judge in chambers in relation to an award made by the AR after an assessment. It should be made clear that with regard to 2S-AEIC what was in issue was whether the judge in chambers exercised her discretion correctly in affirming the AR's decision. In relation to 3S-AEIC, the issue was whether the judge in chambers was correct to refuse to admit fresh evidence and whether *Ladd v Marshall* conditions were applicable to an appeal from an assessment award.

Held, dismissing the appeal:

A registrar's appeal was different from that of an appeal from the judge in chambers to the Court of Appeal, hence, a registrar's appeal should not be treated in the same way. A judge in chambers when hearing a registrar's appeal would be exercising confirmatory and not appellate jurisdiction. Not all the conditions in *Ladd v Marshall* shall apply to the present case as there are no express provisions as in an appeal to the Court of Appeal that the judge in chambers should not receive further evidence unless there were 'special grounds' for doing so. However, reasonable conditions should be set for the exercise of the judge in chambers' discretion to admit fresh evidence. It would not have been appropriate to impose the first condition under the *Ladd v Marshall* test, but there still had to be sufficiently strong reasons why the fresh evidence was not adduced before the registrar. The second and third conditions under the *Ladd v Marshall* test still remained relevant as those were reasonable.

As for 2S-AEIC, the AR was justified in refusing to admit it as the affidavit contained matters that should already have been explained mainly due to the

numerous contradictions in the various documents regarding Lassiter's financial position. As such, there was nothing wrong with the judge in chambers' affirmation of the AR's decision.

With regards to 3S-AEIC, there was nothing erroneous in the judge in chambers' decision to refuse to allow it being introduced as evidence as there was no merit to the reason for its being late.

Finally, as the AR had refused to admit 2S-AEIC, AML should have stated this in her Notice of Appeal as one of the grounds for appeal instead of trying to introduce it into evidence by way of summons for further directions. As for 3S-AEIC, AML should have proceeded by way of summons in chambers pursuant to O 32 r 1 of the Rules of Court (Cap 322).

Vimala Chandrarajan

Legislation

Employment (Recommendations for Annual Wage Adjustment) Notification 2004 (S362/2004)

The government has accepted the recommendations of the National Wages Council ('NWC') for wage adjustments for the period commencing on 1 July 2004 and ending on 30 June 2005 (both dates inclusive).

The following are highlights of some of the recommendations.

Wage restructuring

The NWC strongly urges companies that have embarked or are embarking on wage restructuring to keep up the momentum. Companies that have yet to start their wage

restructuring are urged to do so without further delay, using the recommendations of the Tripartite Taskforce on Wage Restructuring as a guide.

Companies should focus their wage restructuring in the following key areas recommended by the Tripartite Taskforce:

- (a) Expedite the building up of the Monthly Variable Component ('MVC'). While more companies in the unionised sector have adopted the MVC (from 39% in 2002 to 44% in 2003), the implementation is still not widespread, especially among non-unionised firms where the take-up rate is only at 4.4%.
- (b) Adopt the flexible and performance-based wage system to reward employees based on the value of their jobs rather than seniority in service. Companies should quickly move away from seniority-based wage system and bring the average salary maximum-minimum ratio to 1.5 times or less as soon as possible.
- (c) Draw up clear and robust Key Performance Indicators ('KPIs') to link reward to company and individual performance. In this regard, the NWC notes that 95% of unionised companies shared information with their employees in 2003. However, the percentage was substantially lower among non-unionised companies (56%). The NWC urges companies to share relevant information on company performance and business prospects with employees and their representatives so as to motivate employees to perform and excel.

Wage guidelines for 2004–2005

As the economy is recovering, the NWC recommends that companies should reward employees with a moderate wage increase if it is sustainable and would not erode their cost-competitiveness. The wage increase should continue to lag behind productivity growth. The implementation of any wage increase

should, as far as possible, be in accordance with the recommendations of the Tripartite Taskforce on Wage Restructuring, so as to accelerate the implementation of the flexible and performance-based wage system.

Specifically, the NWC recommends the following:

- (a) Companies that are recovering and are profitable should reward employees with moderate wage increases. The increase should be in the form of MVC. To expedite the building up of the MVC in companies where the MVC target has not yet been reached, the same percentage could be set aside from employees' basic wages. Putting in place the MVC would enable companies to better ride out volatile business cycles and weather unexpected economic changes.
- (b) Companies that have yet to recover from the business downturn could consider granting a one-off payment to reward and motivate employees, if they have difficulty granting any built-in wage increase.
- (c) Companies that have done very well ought to, in addition to the granting of moderate wage increases, reward their employees with an additional bonus in line with company performance.

Portable Medical Benefits Scheme ('PMBS')

The NWC reiterates its call for companies to introduce portability into medical benefits either in the form of the Portable Medical Benefits Scheme or the Transferable Medical Insurance Scheme ('TMIS') recommended by the Economic Review Committee ('ERC'). This is to help address the re-employment difficulties confronting older employees without weighing down on companies' medical costs, and also to better meet the medical needs of employees who are experiencing more frequent job changes and shorter employment tenure. In addition, PMBS helps to meet the medical needs of employees after their retirement.

Application of NWC's recommendations

The NWC recommendations are applicable to all employees — management, executives and rank-and-file employees, unionised and non-unionised companies and in both the public and private sectors.

These recommendations shall apply for the period 1 July 2004 to 30 June 2005 (both dates inclusive).

Income Tax (Singapore — Lithuania) (Avoidance of Double Taxation Agreement) Order 2004 (S375/2004)

An Agreement between the Government of the Republic of Singapore and the Government of the Republic of Lithuania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income came into force on 28 June 2004. The provisions of the Agreement will have effect on income derived on or after 1 January 2005.

The Agreement provides for the exemption or reduction of tax in the country of source on various types of income derived by residents of the other country, including the exemption from tax in the country of source of profits derived from the operations of ships or aircraft in international traffic.

To eliminate double taxation, Lithuania will allow tax paid in Singapore as a credit against Lithuania tax on income arising in Singapore. Singapore will do likewise. In the case of dividends received from Lithuania, the Lithuania tax on that portion of the profits out of which the dividends are paid also qualifies for tax credit in Singapore if the Singapore company owns at least 10% of the share capital of the Lithuanian company.

With the coming into force of this Agreement, Singapore has in force double taxation agreements with 48 countries.

Elizabeth Wong
Allen & Gledhill