

What cases are to be heard by the Appellate Division and Why:
Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd
[2021] 2 SLR 440

I. Executive Summary

On 2 January 2021, certain statutory amendments came into effect: specifically, the Supreme Court of Judicature (Amendment) Act 2019 (Act 40 of 2019) (“**SCJ(A)**”) which amended the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (“**SCJA**”), and the Rules of Court (Amendment No. 5) Rules 2020 (“**ROC(A)**”) which amended the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“**ROC**”). These amendments had a significant impact on the court appellate system. For clarity, the pre-2 January versions of the legislation will be referred to as the “**former SCJA**” and “**former ROC**”, while the post-2 January versions will be referred to as the “**amended SCJA**” and “**amended ROC**”.

The changes established the new Appellate Division of the High Court (“**AD**”), akin to an intermediate appellate court. The High Court (“**HC**”) was newly named the General Division of the High Court (“**Gen Div**”). Certain civil appeals from the Gen Div would now be heard by the AD, in contrast to the previous situation where *all* legally eligible appeals from the HC would be heard by the Court of Appeal (“**CA**”). This restructuring was meant to alleviate the growing caseload of the CA (from a *quantitative* perspective), whilst simultaneously permitting the CA to focus its resources on matters which would benefit from its expertise as the apex court of the land (from a *qualitative* perspective).

In the vast majority of cases, once an appeal has been heard by the AD, the AD will serve as the final appellate court. However, there is provision for a tightly confined and highly limited avenue of appeal to the CA. The *first* is where leave to appeal against a decision of the AD is sought and granted by the CA (under section 47 of the amended SCJA). The *second* is where an appeal is transferred from the AD to the CA (under section 29D(1)(a) of the amended SCJA).

The case of *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd* [2021] 2 SLR 440 (“*Noor Azlin*”) is the first contested application to transfer an appeal from the AD to the CA. It lays out the principles governing the allocation of appeals between the CA and the AD, and when it would be more appropriate for the CA to hear an appeal than the AD, such that an appeal ought to be transferred from the AD to the CA (and vice versa).

II. Background Facts

On 31 October 2007, Ms Noor Azlin bte Abdul Rahman (“**Ms Azlin**”) visited the Accident and Emergency Department of the respondent, Changi General Hospital Pte Ltd (“**CGH**”) complaining of lower chest pain and shortness of breath. Ms Azlin subsequently visited CGH three more times between the years 2007 to 2011. On all four occasions, X-rays and other medical procedures revealed an opacity in Ms Azlin’s lungs.

However, it was only on 16 February 2012 that a biopsy on Ms Azlin’s lungs was conducted. The biopsy revealed a malignant growth of abnormal tissues in Ms Azlin’s lungs.

III. Procedural History

On 20 January 2015, Ms Azlin commenced legal proceedings (the “**Original Suit**”)¹ against CGH (amongst other parties), alleging negligence by its medical professionals in failing to detect her lung cancer at an earlier stage and in following up on Ms Azlin’s condition). She lost her claim in the HC, but appealed to the CA.

¹ *Noor Azlin bte Abdul Rahman v Changi General Hospital Pte Ltd and others* [2019] 3 SLR 1063.

On appeal in 2018 (the “**Original Appeal**”),² Ms Azlin successfully proved before the CA that CGH’s negligence had caused a delay in diagnosing her lung cancer, which more likely than not caused her to suffer from “nodal metastasis” and all the consequences that may have followed. The CA also found that CGH had breached its duty of care to Ms Azlin by failing to ensure proper follow-up checks on her case. It further found serious inadequacies in CGH’s patient management system. The case was sent back to the HC, to assess and quantify the loss and damage to Ms Azlin (the “**Damages Hearing**”).

Following Ms Azlin’s passing on 1 April 2019 from her lung cancer, her older brother Mr Azmi bin Abdul Rahman (together with Ms Azlin, the “**Rahmans**”) continued her action in his capacity as executor of her Estate.³ On 19 January 2021, the Rahmans were awarded a sum of \$326,620.61.⁴ Dissatisfied with the sum, the Rahmans contested the sum awarded and filed a notice of appeal on 18 February 2021 (the “**Damages Appeal**”).⁵

However, a further complication arose with the SCJ(A)A and ROC(A) coming into force on 2 January 2021. As such, the new court procedural rules applied, and by default the Damages Appeal would have to be heard by the AD.

On 12 March 2021, the Rahmans filed the present Originating Summons (the “**Current Originating Summons**”), for their case to be transferred from the AD to the CA. They argued that since proceedings had commenced in 2015, this predated the enactment of the amended SCJA and amended ROC and the Damages Appeal could only be heard by the CA. Even if the AD was the correct court to hear the Damages Appeal, they contended that a transfer should be ordered under section 29D(1)(a) of the amended SCJA on the statutorily prescribed grounds under Order 56A rule 12(3) of the amended ROC.

IV. Issues on Appeal

There were two issues before the CA. The court had to determine whether the amended SCJA and amended ROC applied, such that the case would, by default, be heard by the AD. Assuming the new rules did apply, the CA had to then consider whether the case was suited to be heard before the AD or if it should be transferred to the CA.

A. Statutory scheme governing the allocation of appeals

The CA first clarified the statutory scheme governing the allocation of appeals between the CA and the AD. The AD was meant to share in the CA’s caseload by hearing appeals against civil decisions of the Gen Div. Notably, the AD does not have any appellate criminal jurisdiction.

To ensure efficiency and flexibility in allocation of appeals between the AD and CA, there was a default allocation of appeals, based on which version of the SCJA applied to the appeal (the “**temporal dimension**”) and the subject matter of the appeal (the “**subject matter dimension**”).

i. The temporal dimension

Under the temporal dimension, the amended SCJA would apply to all civil appeals filed against a Gen Div decision made on or after 2 January 2021. Thus, the AD would hear all of such appeals.

² *Noor Azlin bte Abdul Rahman v Changi General Hospital Pte Ltd and others* [2019] 1 SLR 834.

³ The Estate of a deceased individual refers to all property which belongs and/or is deemed to belong to the deceased at the date of his/her death. An Executor is the personal representative responsible for carrying out the wishes of the deceased in managing the affairs of their Estate.

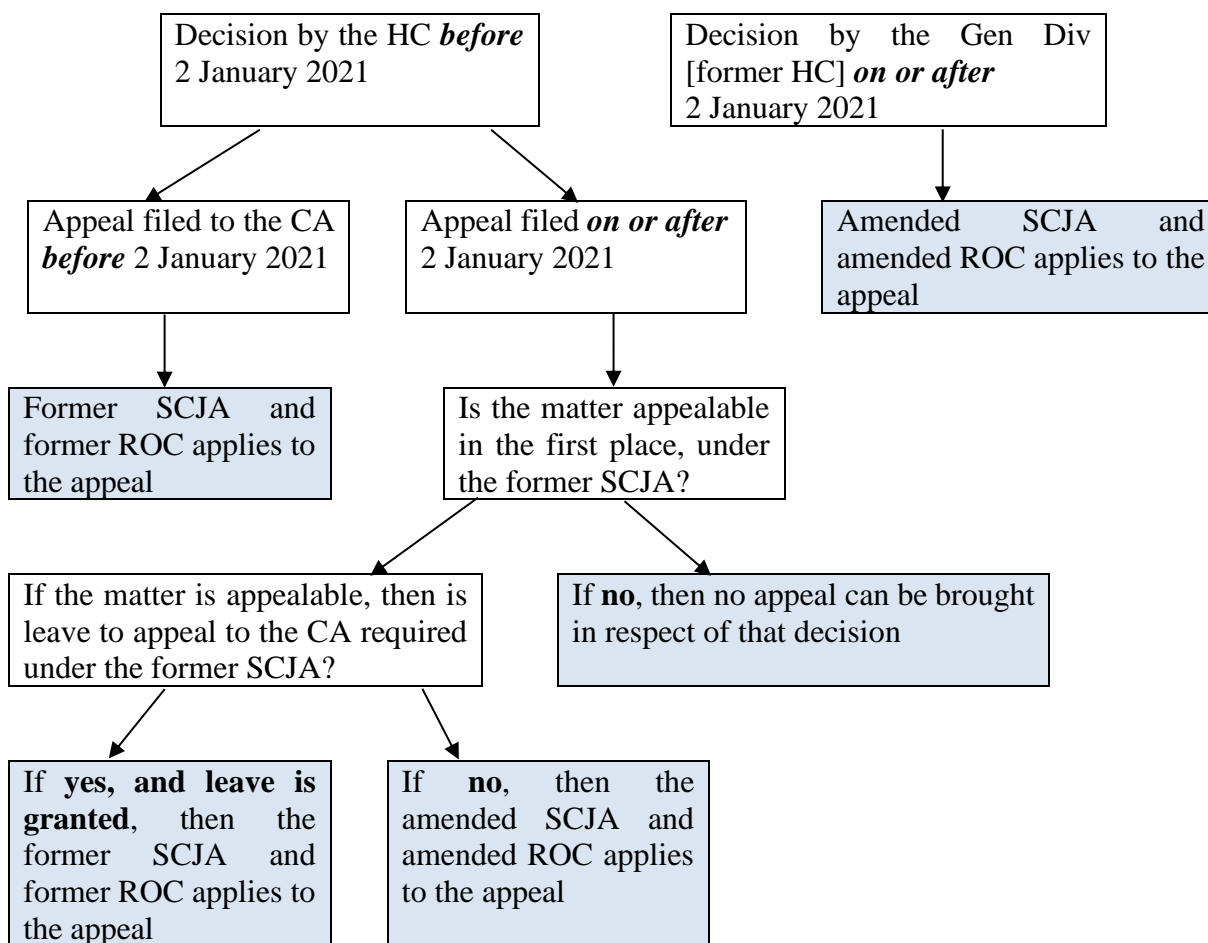
⁴ *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd and others* [2021] SGHC 10.

⁵ *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd* [2021] 2 SLR 440.

However, where the Gen Div decision was made *before* 2 January 2021, whether the amended SCJA applied depended on the date that the appeal against the Gen Div decision was filed. If the appeal was filed to the CA *before* 2 January 2021, the former SCJA applied and the CA would hear the appeal. If the appeal was filed *on or after* 2 January 2021, the inquiry turns on whether leave to appeal is required to file an appeal to the CA pursuant to the former SCJA.

Where leave to appeal is not required, the amended SCJA and amended ROC would apply to any appeal that is filed *after* 2 January 2021 and any applications filed therein. Where leave to appeal is required, the two tier framework for leave to appeal under the former SCJA and former ROC would apply to any decision. If leave to appeal is indeed granted by the Gen Div (or the HC prior to 2 January 2021) or the CA, the appeal is to proceed to the CA and the former SCJA and former ROC will apply. Finally, for matters which were not appealable in the first place, no appeal would be allowed.

In summary, the allocation of an appeal based on the temporal dimension is as follows:



ii. *The subject matter dimension*

The subject matter dimension refers to the categories of civil appeals that are “reserved” to the CA by default under the amended SCJA. It is important to note that this dimension would be relevant only for the appeals governed by the amended SCJA and amended ROC.

The “reserved” categories of civil appeals to be heard by the CA is found in the Sixth Schedule of the amended SCJA, or other applicable written law. This includes cases relating to constitutional or administrative law, contempt of court, or appeals against decisions of the Singapore International

Commercial Court. Such appeals have been allocated to the CA as, among other reasons, they are likely to have substantial consequences for individuals or society, or involve novel questions of law. If an appeal does not come within an area of law reserved to the CA, it will be heard by the AD.

In short, there are three considerations to be made when allocating appeals between the CA and AD.

First, the applicable version of the SCJA should be ascertained based on the temporal dimension of the case, i.e. whether the appeal is against a decision of the HC made before 2 January 2021 or a decision of the Gen Div made on or after 2 January 2021, and whether the appeal against the decision of the HC/Gen Div was filed *before* 2 January 2021. If the appeal was filed *before* that date, the former SCJA applied and the appeal will be heard by the CA. If it was filed on or after that date, and leave to appeal is not required under the former SCJA, then the amended SCJA applied and the case might be heard by the AD.

Second, to determine if the AD would hear the case, the subject matter would be considered. If the appeal fell within the prescribed grounds in the Sixth Schedule of the amended SCJA or if any other written law provides that the appeal is to be heard by the CA, the appeal would be heard by the CA. Otherwise, the appeal would be heard by the AD.

Third, even if an appeal was to be heard by the AD, a transfer of the appeal to the CA may be effected pursuant to sections 29D and 29E of the amended SCJA.

The CA also noted that the AD is ultimately not the apex court, and some of its decisions are subject to “a tightly confined and highly limited avenue of appeal” under section 47 of the amended SCJA, i.e. when leave is granted by the CA on the basis that the appeal will “raise a point of law of public importance”. Nonetheless, as the AD is meant to share in the workload of the CA, the AD will generally serve as the final appellate court in the vast majority of cases.

As applied to the Current Originating Summons

As applied to this case, the CA noted that even though the Original Suit began in the HC in 2015 and the subsequent Damages Hearing concluded in 2020, the Damages Appeal was filed against a decision of the Gen Div released on 19 January 2021, i.e. *after* 2 January 2021. Thus, under the temporal dimension, the amended SCJA and amended ROC would apply. Further, under the subject matter dimension, the appeal did not fall under any of the prescribed categories in the Sixth Schedule. The CA thus held that the Rahmans were correct in filing their appeal to the AD, as a default position.

The next question was whether the Damages Appeal should be transferred from the AD to the CA.

B. Statutory scheme governing the transfer of proceedings

Notwithstanding the default allocation of appeals, the CA stressed that section 29D and section 29E (collectively, the “**transfer provisions**”) of the amended SCJA allowed for appeals to be transferred from the AD to the CA and vice versa.

The purpose of the transfer provisions was to inject flexibility into the allocation of appeals and ensure that the CA’s resources are focused on matters that necessitate a decision from the apex court. The CA stressed three points. *First*, the power to transfer an appeal from the AD to the CA lies solely with the CA. *Second*, this power is exercisable at the CA’s own discretion. *Third*, this power is exercisable in three situations: (a) on the CA’s own motion; (b) on a reference by the AD; or (c) on an application by any party to the appeal before the AD. The CA noted that the Current Originating Summons fell into category (c).

When faced with an application to transfer an appeal from the AD to the CA under section 29D of

the amended SCJA, the CA must have regard to the matters prescribed under Order 56A rule 12 of the amended ROC. The overarching inquiry is whether the CA is the “more appropriate” court to hear an appeal that has been made to the AD. In so deciding, the CA may consider the seven grounds listed under Order 56A rule 12(3) of the amended ROC: (a) whether the proceedings relate to a matter of national or public importance; (b) whether the appeal will raise a point of law of public importance; (c) the complexity and novelty of the issues in the appeal; (d) whether there is a decision of the CA in relation to a point of law raised in the appeal which may be material to the outcome of the appeal; (e) whether there are conflicting judicial decisions; (f) the significance of the results of the proceedings; or (g) any other relevant matter. Notably, these grounds for transfer are considered non-exhaustive. The CA then considered the general principles applicable to each of the grounds that the Rahmans relied on in support of their transfer application.

Under Order 56A rule 12(3)(a), the CA may have regard to whether the proceedings relate to a matter of national or public importance. This ground applied to both issues of fact and law which were of national or public importance. Further, these matters of “national” and “public importance” referred to matters with “weighty ramifications” that went beyond the parties to the dispute, and that had the potential to impact Singapore on a macro-level.

Regarding Order 56A rule 12(3)(b), which provides that the CA may have regard to whether the appeal will raise a point of law of public importance, the CA noted that this ground was unique amongst all the grounds listed in Order 56A rule 12(3): it was entirely replicated in section 47(2) of the amended SCJA as a precondition for the grant of leave to appeal against a decision of the AD. The CA held that the purpose of Order 56A rule 12(3)(b) was to ensure that questions of law of public importance received early clarification and guidance from the CA.

This provision (b) is narrower in scope than provision (a). The specific words “the appeal will raise” meant that the point of law of public importance must be a live issue in the appeal itself, i.e. one which directly arises for the court’s determination and which has a substantial bearing on the outcome of the appeal. Further, the explicit reference to a “point of law” indicated that provision (b) covered only legal issues; i.e. it will not be engaged if the appeal relates to factual points (even of public importance). Finally, whether the point of law is one of “public importance” would depend on the facts and circumstances of the case. Nonetheless, the point must have weighty ramifications that go beyond the parties to the dispute, such that it will be more appropriate for the CA than the AD to deal with the appeal given its powers and stature as the apex court. Examples include appeals that engage new questions of law of general application or involve conflicting decisions of the CA or the AD which need to be resolved to bring certainty to significant areas of law.

The CA stressed that the words “a point of law of public importance” must also be read in the context of the written law as a whole and interpreted narrowly. The identical wording of Order 56A rule 12(3)(b) and section 47(2) of the amended SCJA in the context of an application for leave to appeal against a decision of the AD suggests that similar principles may apply regarding the interpretation of these two provisions. In determining what constitutes “a point of law of public importance”, the CA referred to Order 57 rule 2A(3) of the amended ROC, which stated that some relevant matters which may go toward fulfilling this ground include: (a) whether a decision of the CA is required to resolve the point of law; and/or (b) whether the interests of the administration of justice either generally or in the particular case on appeal require the consideration by the CA of the point of law.

Under Order 56A rule 12(3)(c), the CA may have regard to the complexity and novelty of the issues in the appeal. As with provision (b), the issues raised must arise directly for the court’s determination and have a substantial bearing on the outcome of the case. The issues raised must also be *both* complex and novel. Whether this threshold is met is for the court to determine, based on the facts and circumstances of the case.

Noting that Order 56A rules 12(3)(d) and (e) were not raised in the present Current Originating Summons, the CA nonetheless made some non-binding observations concerning them. Under Order 56A rule 12(3)(d), the CA may have regard to whether there is a decision of the CA in relation to a point of law raised in the appeal which may be material to the outcome of the appeal. Under Order 56A rule 12(3)(e), the CA may have regard to whether there exist conflicting judicial decisions. The difference between the two grounds is that Order 56A rule 12(3)(d) requires the prior decision of the CA to have a substantial bearing on the outcome of the case. It cannot be a merely hypothetical or merely theoretical question which is peripheral or irrelevant to the appeal. Although similar considerations apply to Order 56A rule 12(3)(e), the provision places no restrictions on the nature of the conflicting judicial decision and which court had made the decision. However, the CA noted that leave to appeal would seldom be granted solely on this ground, where the conflict pertains only to decisions of the Gen Div. This is because the AD, due to its position of precedence above the Gen Div, is well placed to resolve conflicting decisions of the Gen Div.

Order 56A rule 12(3)(f) provides that in determining whether it is more appropriate for the CA to hear an appeal that has been made to the AD, the CA may have regard to the “significance of the results of the proceedings”. Here, the focus is on the *outcome* of the proceedings, as compared to the other grounds which focus on issues in the appeal or the proceedings as a whole. As there are no stipulations as to who or to what the outcome matters, this suggests that this ground may be satisfied even where the determination of the appeal will only affect the parties concerned if the results are of substantial and critical consequence to them. However, when the significance of the outcome is confined to the parties alone, a high and exceptional degree of personal consequence would have to be demonstrated for the matter to even be considered as potentially coming within this ground.

Finally, under Order 56A rule 12(3)(g), the CA may consider hearing an appeal that has been made to the AD based on “any other relevant matter”, i.e. a catch-all category for reasons that do not fall within any of the other six grounds. The CA declined to lay down hard and fast rules for this ground, but stated that courts hearing a transfer application based on this provision would be vigilant in scrutinising the veracity of reasons put forth in support of a transfer of an appeal, to prevent any abuse.

As the seven grounds under Order 56A rule 12(3) of the amended ROC were distinct, the CA noted that they should, as a matter of good practice, be argued separately by counsel, even if the overall argument comprised a combination of two or more of these matters.

As applied to the Current Originating Summons

The CA held that the combination of factors making up the Current Originating Summons generated a unique and exceptional situation which made it more appropriate for the CA to hear the appeal than the AD, and therefore granted the Rahmans’ application for a transfer of proceedings.

Based on the principles set out above, with regard to the Current Originating Summons the CA held that Order 56A rule 12(3)(g) was the only applicable ground warranting a transfer of the appeal. Some evidence as to the quantum of damages to be awarded to Ms Azlin was already before the CA during the Original Appeal, and the CA had also made certain observations pertaining to Ms Azlin’s damages in the Original Appeal. The prior issue of CGH’s substantive liability to Ms Azlin had also been previously considered by the CA. Thus, these “rare and peculiar” circumstances in Ms Azlin’s case meant that the CA was already familiar with the background to the Damages Appeal and in a better position than the AD to hear the appeal. The litigation proceedings in respect of the Original Suit had been protracted and deeply acrimonious. It would be far more efficient for the same court (already familiar with the subject matter of the proceedings) to deal with both the Damages Appeal and the

pending issues of costs in the Original Appeal.

The CA rejected the Rahmans' arguments to transfer the case on the other grounds under Order 56A rule 12(3). The principles in relation to an award of punitive and/or aggravated damages were a settled issue of law. Thus, Order 56A rule 12(3)(b) would not apply. A novel fact scenario did not elevate the Damages Appeal to the level of "national importance" or "public importance" required under Order 56A rule 12(3)(a). The CA also rejected arguments that the case be transferred pursuant to Order 56A rule 12(3)(c) and (f). With regards to provision (c), the issues raised in respect of the quantification of damages for pain and suffering did not raise "novel" issues. Consequently, the Rahmans' arguments on the significance of the results of the proceedings under provision (f), which were premised entirely on the novelty of the issue, fell away.

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