THE RULES OF COURT 2021: PERSPECTIVES FROM THE BENCH (THE APPELLATE DIVISION OF THE HIGH COURT)

The Rules of Court 2021 introduced significant changes to the Supreme Court's procedural framework. Since its introduction, procedural missteps have been observed in cases heard by the appellate courts. This article highlights common errors to help interested readers navigate the rules effectively and avoid undesirable outcomes.

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I. Introduction

1 The Rules of Court 2021 ("ROC 2021") came into operation on 1 April 2022. The ROC 2021 represents a paradigm shift in the philosophical underpinnings of the procedural framework for original and appellate proceedings in the Supreme Court. The architecture of the rules is animated by the desire to achieve key objectives on access to justice as seen through the lens of fairness, costs, efficiency, expedition and proportionality. This is neatly encapsulated in the Ideals.[1]

2 However, change of such proportions inevitably brings with it a measure of uncertainty which only the passage of time and experience will address. Mistakes and misunderstandings as to the operation of the new rules do result. In the two and a half years since the introduction of the ROC 2021, various cases have come before the Appellate Division of the High Court ("Appellate Division") and the Court of Appeal, where procedural missteps have occurred. It is critical that these mistakes are ironed out quickly as if repeated, wastage of costs and even dismissal of appeals may result, a wholly avoidable and unfortunate outcome. This article aims to draw attention to some of the common procedural mistakes in the hope that parties will better understand the potential pitfalls and better navigate the rules appropriately.

1 Rules of Court 2021 O 3 r 1.

II. Different tracks for filing appeals under ROC 2021

3 A feature of the ROC 2021 is that appeals may be filed in one of two tracks depending on the nature of the matter that is appealed against. Order 18 governs appeals from applications in actions, Registrar's decisions (including a decision on an assessment of damages or the taking of accounts) and decisions from a hearing on the merits of originating applications by a district judge or magistrate. Order 19 relates to appeals from judgments, orders *after trial* and under the Medical Registration Act.

4 There have been occasions when parties have chosen the wrong track to file their appeal. This may result in unintended consequences for the appeal as the rules under O 18 and O 19 are different. For example, the timelines for O 18 appeals are generally shorter than the timelines for O 19 appeals. If an appeal that should be filed under O 18 is mistakenly filed under O 19, parties may work under the mistaken belief that they have more time than they actually have. This may cause them to miss the relevant timelines and result in adverse consequences. They may have to file an application for an extension of time to comply with the proper procedure and may even have to run the risk of the appeal being dismissed on procedural grounds. It is thus important for parties to have a proper understanding of which track applies to their appeal.

5 Filing an appeal in the wrong track is not necessarily fatal. If that were to happen, parties may apply for the rules in the correct track to apply. The appellate court has the power to order the rules from the relevant track to apply to the appeal instead. Order 18 r 32 and O 19 r 29 allow for this as the case may be. For instance, O 18 r 32(1) provides that the appellate court, if it deems appropriate, may order that O 18 or any part of it does not apply to an appeal before it, and that O 19 (or any part of it) is to apply instead. Order 18 r 32(3) further specifies that the appellate court can make such a direction on its own motion. Order 19 r 29 similarly empowers the appellate court to make the same order as regards an appeal incorrectly filed under O 19.

III. Understanding when permission to appeal is required

6 Failure to understand when permission to appeal ("PTA") under the Fifth Schedule of the Supreme Court of Judicature Act 1969[2] ("SCJA") is required is a frequent error.

2 2020 Rev Ed.

7 If permission is required and not obtained, the consequence is fatal to the prospective appeal. This is because the appellate court has no jurisdiction to hear the appeal where permission is required but has not been obtained. In *PricewaterhouseCoopers LLP v Celestial Nutrifoods Ltd*,[3] the Court of Appeal made this clear reiterating the well-established principle that the appellate court, "being a creature of statute, is only seised of the jurisdiction conferred upon it by the statute which creates it or by such other statute which may confer upon it additional jurisdiction". Therefore, where the SCJA "requires an appellant to obtain [PTA] and such permission is not obtained, the appellate court will not be seised with jurisdiction to hear the appeal".[4]

8 The SCJA is the first port of call for parties to ascertain whether PTA is required to bring an appeal to the Court of Appeal or the Appellate Division. Sections 29 and 29A of the SCJA respectively provide for when matters decided by the General Division of the High Court (the "General Division") are non-appealable or appealable only with permission. This must be read with the Fourth Schedule or Fifth Schedule of the SCJA respectively. Parties must therefore have a comprehensive understanding of the SCJA to recognise when PTA is required. However, this has not always been the case.

9 For instance, in *Ollech David v Horizon Capital Fund*,[5] an issue arose over whether PTA was required for an appeal against the General Division's dismissal of an application to adduce further evidence in support of a Registrar's Appeal. The Appellate Division determined that pursuant to para 3(*l*) of the Fifth Schedule, the General Division's "dismissal of the application to adduce further evidence was an order made at an interlocutory application that did not come within the exceptions listed in paras 3(*l*)(i)–3(*l*)(x) and it did not finally dispose of the rights of the parties". Therefore, the appellant required permission to appeal against the General Division's dismissal of the application.[6] As the appellant had not sought and obtained PTA the General Division's dismissal of the application, the Appellate Division held that it did not have the jurisdiction to consider the merits of the prospective appeal.[7]

3 [2015] 3 SLR 665 at [25], citing *Blenwel Agencies Pte Ltd v Tan Lee King* [2008] 2 SLR(R) 529 at [23].

4 See *PT OKI & Paper Mills v Sunrise Industries (India) Ltd* [2023] SGHC(A) 38 at [35], citing *Grassland Express & Tours Pte Ltd v M Priyatharsini* [2022] SGHC(A) 28 at [27].

5 [2024] 1 SLR 287.

6 *Ollech David v Horizon Capital Fund* [2024] 1 SLR 287 at [32].

7 *Ollech David v Horizon Capital Fund* [2024] 1 SLR 287 at [38].

10 Similarly, in *PT OKI & Paper Mills v Sunrise Industries (India) Ltd*,[8] one of the questions was whether the Appellate Division should allow the respondents' cross-appeal concerning the General Division's decision dismissing the respondent's application to amend its pleadings.[9] The Appellate Division held that the effect of para 3(*h*) of the Fifth Schedule was clear. Save in the situations prescribed in paras 3(*h*)(i) and 3(*h*)(ii), PTA was required to appeal a decision of the General Division refusing permission to amend a pleading.[10] As the respondent did not obtain PTA, the Appellate Division was not seised with jurisdiction to hear this part of the cross-appeal.[11]

11 It is important to note that the SCJA is not exhaustive on the situations that require PTA. Section 29A(1)(*a*) of the SCJA provides that PTA is required in a case where it is expressly provided by *any written law* that an appeal may be brought only with permission, or that no appeal may be brought except with permission.

12 In *Rodeo Power Pte Ltd v Tong Seak Kan*,[12] the General Division had decided on four interpleader summonses in relation to competing claims for shares in various companies. The value of all the shares seized was less than $250,000, hence, the preliminary issue was whether PTA was required to appeal to the Appellate Division. The Appellate Division observed that s 29A(1)(*b*) of the SCJA read with para 2(2)(*a*) of the Fifth Schedule provided that PTA was not required "if the claims were required under any written law to be decided by the General Division in the exercise of its original jurisdiction".[13] The Appellate Division further observed that s 29(2) of the State Courts Act[14] (the "State Courts Act") provided that the General Division "may order any interpleader proceedings, in which the amount in dispute or value of the subject-matter does not exceed the District Court limit, to be transferred to a District Court".[15] The Appellate Division thus concluded that s 29(2) of the State Courts Act made it clear that the four interpleader summonses were not necessarily required by law to be decided by the General Division. Therefore, para 2(2)(*a*) of the Fifth Schedule to the SCJA did not apply and PTA was required.[16]

8 [2023] SGHC(A) 38.
9 *PT OKI & Paper Mills v Sunrise Industries (India) Ltd* [2023] SGHC(A) 38 at [18].
10 *PT OKI & Paper Mills v Sunrise Industries (India) Ltd* [2023] SGHC(A) 38 at [34].
11 *PT OKI & Paper Mills v Sunrise Industries (India) Ltd* [2023] SGHC(A) 38 at [38].
12 [2022] SGHC(A) 16.
13 *Rodeo Power Pte Ltd v Tong Seak Kan* [2022] SGHC(A) 16 at [6].
14 Cap 321, 2007 Rev Ed.
15 *Rodeo Power Pte Ltd v Tong Seak Kan* [2022] SGHC(A) 16 at [7].
16 *Rodeo Power Pte Ltd v Tong Seak Kan* [2022] SGHC(A) 16 at [8].

13 In *Leow Peng Yam v Kang Jia Dian Aryall*,[17] a SMRT Corp Ltd bus driven by the appellant collided with the respondent. The respondent commenced proceedings against the appellant in the General Division which was then transferred to the District Court. The appellant accepted that he had been negligent, and the sole issue was whether the respondent's claim was time-barred. The District Court held that the respondent's claim was not time-barred, and the General Division dismissed the appellant's appeal. The appellant subsequently filed an appeal to the Appellate Division. The parties failed to address the issue of whether PTA was required. The Appellate Division held that the Supreme Court of Judicature (Transfer of Specified Proceedings to District Court) (Amendment) Order 2020 applied. Paragraph 5(1) of this Order allowed for an appeal to the General Division. Paragraphs 5(2) and 5(2A) read with s 29C of the SCJA made it clear that permission from the Appellate Division was required before a further appeal could be brought against a decision of the General Division, regardless of the amount in dispute or the value of the subject matter. Since the appeal from the District Court was heard by the General Division, permission was required before an appeal could be brought against such a decision of the General Division. PTA was therefore needed for the appeal to be brought to the Appellate Division.[18]

14 The issues have not only centred around omitting to apply for PTA when it is required. Two examples will be cited. First, PTA has been sought when it is not necessary. In *Da Hui Shipping (Pte) Ltd v An Rong Shipping Pte Ltd*,[19] the respondent and the appellant were joint and several borrowers from a bank under a loan agreement. The appellant applied for and obtained permission to commence and continue a suit against the respondent pursuant to s 133(1) of the Insolvency, Restructuring and Dissolution Act 2018[20] ("IRDA"), as the respondent was in liquidation. The appellant was unsuccessful in its suit and brought an application for PTA against the General Division's decision. The Appellate Division surveyed the relevant case law and held that once permission had been obtained under s 133(1) of the IRDA to commence or proceed with an action against a company that had been wound up, that permission would remain effective until the final determination of the action or proceeding including any appeal therefrom. Thus, the appellant did not require PTA as the permission previously granted under s 133(1) of the IRDA applied to any appeals that may arise from the determination of the suit.[21]

17 [2022] 2 SLR 725.
18 *Leow Peng Yam v Kang Jia Dian Aryall* [2022] 2 SLR 725 at [17]–[30].
19 [2024] 1 SLR 233.
20 2020 Rev Ed.
21 *Da Hui Shipping (Pte) Ltd v An Rong Shipping Pte Ltd* [2024] 1 SLR 233 at [6]–[13].

15 Second, and surprisingly, it has been argued that the provisions in the ROC 2021 on PTA could override provisions in the SCJA on PTA.[22] This is a fundamental misunderstanding of the interaction between primary and subsidiary legislation. The SCJA, as primary legislation, has primacy over the ROC 2021, which is subsidiary legislation. The ROC 2021 cannot override the SCJA. Further, the argument demonstrates a misunderstanding of the purpose of the rules in the ROC 2021 that concern PTA. As will be explained in greater detail in paras 17–22 below, those are the procedural rules for PTA (*eg*, requisite timelines). They do not provide for when PTA is required which is governed by primary legislation, principally the SCJA.

16 If parties are unsure of whether PTA is required, the correct approach, as set out by the Court of Appeal in *The Chem Orchid*,[23] would be to seek a declaration from the court that PTA is not required, or alternatively, seek PTA as a matter of prudence. It should be emphasised that the guidance in *The Chem Orchid* should be followed only if there is genuine uncertainty. It should not be taken "as a licence for litigants to rush to court for such rulings as a matter of course". Ultimately, solicitors have the responsibility of advising their clients on whether PTA is required, based on the relevant governing principles.[24]

IV. Difficulties with computing timelines and other requirements for bringing appeal or application for PTA

17 Computing timelines and complying with other requirements for bringing an appeal or an application for PTA is another common issue. The ROC 2021 provides the relevant timelines for bringing an appeal. Order 18 r 27 and O 19 r 25 are the relevant provisions as regards appeals to the Appellate Division and the Court of Appeal. The corresponding provisions for applications for PTA to the Appellate Division and the Court of Appeal are O 18 r 29 and O 19 r 26.

18 To ensure that there is no error in computing the relevant timelines, the parties should bear in mind these provisions. If filed out of time, an application for an extension of time will be needed. As there is uncertainty as to whether such an extension application may be allowed, it is wise to exercise prudence beforehand. In *Newspaper Seng Logistics Pte Ltd v Chiap Seng Productions Pte Ltd*[25] ("*Newspaper Seng*"), the applicant

22 See, *eg*, *Ollech David v Horizon Capital Fund* [2024] 1 SLR 287 at [34]–[38] and *PT OKI & Paper Mills v Sunrise Industries (India) Ltd* [2023] SGHC(A) 38 at [32].
23 [2016] 2 SLR 50 at [57].
24 *The Xin Chang Shu* [2016] 3 SLR 1195 at [9].
25 [2023] SGHC(A) 5.

filed its appeal against a decision of the General Division out of time because its solicitors had mistakenly assumed "that the time for filing and service of a notice of appeal was one month after the date of the decision". In fact, under O 19 r 25(1) of the ROC 2021, the time for bringing an appeal was 28 days.[26] As a result of this mistake, the applicant's notice of appeal was rejected and required an application for an extension of time to be filed.

19 Such mistakes would result in wasted costs[27] and litigation risks. By themselves, they do not afford a basis for an extension of time to appeal.[28] In *Pearson Judith Rosemary v Chen Chien Wen Edwin*,[29] the applicant wished to appeal against an ancillary matters order made in divorce proceedings. However, her solicitors misinterpreted the timelines stipulated in the Rules of Court in force at that time resulting in the notice of appeal being rejected as it was filed out of time. Her application for extension of time was dismissed, notwithstanding that it was clear her solicitors had made a *bona fide* mistake in computing time to appeal. In this regard, in *Lee Hsien Loong v Singapore Democratic Party*,[30] the Court of Appeal cautioned that a mere assertion "that there has been an oversight is obviously insufficient and, indeed, could lead to an abuse of process".

20 In *Newspaper Seng*, the Appellate Division made it clear that "there must be some extenuating circumstances or explanation offered to mitigate or excuse the oversight" for an extension to be granted. "The alleged difficulties that [the applicant's] solicitors faced in navigating the relatively new regime of the ROC 2021" was noted[31] and an extension of time was granted. However, it was highlighted that "the delay was very short and there was urgency exercised by [the applicant] in seeking to rectify the mistake". The respondent's solicitors "had received notice of the filing of appeal by email on the same date of the attempted filing, although this too was a day after the expiry of the relevant period".[32] Importantly, the Appellate Division indicated that by the time its judgment was released, "the ROC 2021 would have been in force for

26 *Newspaper Seng Logistics Pte Ltd v Chiap Seng Productions Pte Ltd* [2023] SGHC(A) 5 at [4] and [7].
27 *Newspaper Seng Logistics Pte Ltd v Chiap Seng Productions Pte Ltd* [2023] SGHC(A) 5 at [27]–[28].
28 *Pearson Judith Rosemary v Chen Chien Wen Edwin* [1991] 2 SLR(R) 260 at [20].
29 [1991] 2 SLR(R) 260.
30 [2008] 1 SLR(R) 757 at [22].
31 *Newspaper Seng Logistics Pte Ltd v Chiap Seng Productions Pte Ltd* [2023] SGHC(A) 5 at [8].
32 *Newspaper Seng Logistics Pte Ltd v Chiap Seng Productions Pte Ltd* [2023] SGHC(A) 5 at [26].

about ten months, and the reason of the lack of familiarity with the new procedural framework in itself should no longer draw sympathy from the court",[33] suggesting that unfamiliarity with the ROC 2021 would no longer be seen as pertinent.

21 It is also important to comply with the other requirements for bringing an appeal or an application for PTA. A failure to comply could lead to a rejection of the filing, by which time, the timelines for appeal might have expired. This may result in the filing being rejected eventually. For instance, in *Pradeepto Kumar Biswas v Sabyasachi Mukherjee*,[34] the applicants filed their application for PTA a decision of the General Division on the last permissible date for doing so. However, they had omitted to include the required cover page on their submissions at the time of the filing as required by the Supreme Court Practice Directions, resulting in the application being rejected the next day. The applicants attempted to re-file their application, but they were out of time. They filed an application for extension of time four days later. The Appellate Division dismissed the application, primarily on the basis that there was no prospect of success.[35] It also observed that while errors were made by the applicants' firm which resulted in the rejection of their filing of the initial application for PTA, such procedural mistakes, even if *bona fide*, were insufficient to justify the grant of an extension of time.[36]

22 Parties should thus pay close attention to the relevant provisions of the ROC 2021 to avoid being placed in a position where they have to pay unnecessary costs[37] or have their filing rejected.

V. Difficulties with understanding when time for bringing appeals or applications for PTA start to run

23 Relatedly, a common difficulty that parties have is in understanding when the time for filing of an appeal or an application for PTA starts to run. This is governed by O 18 r 3 and O 19 r 4 of the ROC 2021, as is applicable. It should be noted that these rules were amended in February 2024 to make clear when time starts to run specifically as to when the court below is deemed to have heard and determined the issue of costs. The latest iteration of O 19 r 4 of the

33 *Newspaper Seng Logistics Pte Ltd v Chiap Seng Productions Pte Ltd* [2023] SGHC(A) 5 at [26].
34 [2024] 1 SLR 143.
35 *Pradeepto Kumar Biswas v Sabyasachi Mukherjee* [2024] 1 SLR 143 at [42].
36 *Pradeepto Kumar Biswas v Sabyasachi Mukherjee* [2024] 1 SLR 143 at [21]–[23].
37 *Newspaper Seng Logistics Pte Ltd v Chiap Seng Productions Pte Ltd* [2023] SGHC(A) 5 at [27]–[28].

ROC 2021 is reproduced for ease of analysis (although it should be noted that there are some differences with O 18 r 3):

> **When time for appeal starts to run (O. 19, r. 4)**
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> **4.**—(1) Subject to any written law and paragraphs (1A) and (2), unless the Court otherwise orders, the time for the filing of an appeal or for the filing of an application for permission to appeal does not start to run until after the lower Court has heard and determined all matters in the trial, including costs.
>
> (1A) Where the lower Court does not hear and determine the issue of costs within 30 days after the lower Court has heard and determined all other matters in the trial, the time for the filing of an appeal or for the filing of an application for permission to appeal starts to run after the expiry of the 30-day period, even if the lower Court has directed that submissions on costs be made.
>
> (2) For the purposes of this Rule —
>
> (*a*) the lower Court is deemed to have heard and determined the issue of costs when it has —
>
> (i) decided on the parties' entitlement to costs, even if the amount of costs or disbursements has not been determined;
>
> (ii) ordered that costs be assessed;
>
> (iii) ordered that costs be reserved; or
>
> (iv) decided that there is to be no order as to costs or that each party is to bear its own costs; and
>
> (*b*) in the case of a bifurcated trial, where the lower Court has heard and determined a distinct bifurcated portion of the trial (including the issue of costs), the time for the filing of an appeal or for the filing of an application for permission to appeal in respect of the bifurcated portion so determined starts to run from the date of that determination.

24 Time to appeal or apply for PTA starts to run "after the lower Court has heard and determined all matters in the trial, including costs". Cases before the Appellate Division have revealed that there has been some difficulty in interpreting when the lower court "has heard and determined all matters in the trial, including costs". This has led to some errors in relation to the computation of time. This issue of whether the General Division has determined costs when it has ordered costs to be fixed or assessed for the purpose of triggering the time for filing an appeal was considered in *Chan Pik Sun v Wan Hoe Keet*[38] ("*Chan Pik Sun*"). *Chan Pik Sun* was decided prior to the changes effected in February 2024. In *Chan Pik Sun*, the judge had dismissed all of the applicant's claims on 14 April

38 [2023] SGHC(A) 36.

2023 (the "Main Decision"). The judge awarded to the respondents "costs to be assessed, if not agreed. Unless the parties agree on costs, they shall put in their costs submissions … within three weeks".[39] The applicant filed an appeal against the Main Decision and the costs order on 11 May 2023. The respondents objected on the basis that the appeal was prematurely brought because the time for filing an appeal had not yet begun to run. This was on the basis that parties had not agreed, and the judge had not determined the quantum of costs. Parties eventually proceeded on the basis that time for the appeal ran from 14 April 2023.[40] Subsequently, the judge determined the quantum of costs on 11 September 2023 (the "Costs Decision"). Thereafter, the applicant filed an application for PTA on 25 September 2023, in relation to the Costs Decision.[41]

25 The Appellate Division held that although the judge directed costs "to be assessed", this had to be read in conjunction with the second sentence on his order on costs where he directed "that parties file their costs submissions without mentioning a bill of costs". The Appellate Division held that the second sentence qualified the first and meant that although the judge referred to an assessment of the costs, he was not doing so "in the technical sense but had used it to mean that he would evaluate or 'fix' the costs himself". It was for this reason that the judge had directed parties to file costs submissions without requiring the submission of a bill of costs. The Appellate Division further noted that the judge had eventually made his decision on the quantum of costs without a bill of costs being tendered. Taken together, this showed that there had been no determination on the issue of costs on 14 April 2023 when the judge directed costs "to be assessed".[42] As a result, time to file the appeal ran from the date of the Costs Decision and not from 14 April 2023. Therefore, the appeal against the Main Decision was filed prematurely.[43]

26 Despite the amendments effected in February 2024, a similar issue arose in *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd*[44] ("*Marchmont*"). This case concerned a dispute between "Marchmont" and the "Defendants" in relation to a tenancy agreement and a deed of guarantee. Marchmont claimed against the Defendants various reliefs for an alleged breach of the tenancy agreement. On 2 May 2024, the General Division allowed some of Marchmont's claims and granted reliefs which included *inter alia* "costs on an indemnity basis" and "[i]f parties are unable to agree on costs, they are to provide their submissions on costs

39 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [3].
40 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [4]–[6].
41 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [7]–[8].
42 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [13].
43 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [14].
44 [2024] 1 SLR 1221.

within 10 days of this Judgment" (the "2 May Judgment").[45] As parties were unable to agree on costs, they filed their costs submissions on 13 May 2024, which was followed by an oral hearing before the judge on 23 May 2024, where certain costs orders were made against the Defendants. This included a reduction in costs payable by them due to their partial success in the main suit (the "23 May Judgment").[46] On 29 May 2024, the Defendants appealed against the 2 May Judgment and the 23 May Judgment "on liability and costs respectively". Marchmont filed its own appeal thereafter on 20 June 2024 in respect of certain aspects of the 2 May Judgment and the 23 May Judgment. The Defendants applied to strike out Marchmont's appeal, arguing that it was filed out of time.[47]

27 The issue before the Appellate Division was whether "the 2 May Judgment had already decided that Marchmont was entitled to costs of the first tranche", as that would be determinative of whether Marchmont's appeal against the 2 May Judgment was filed out of time.[48] The Appellate Division concluded that the judge only decided costs in the 23 May Judgment. Thus, Marchmont's appeal, which was filed on 20 June 2024, was not filed out of time. The Appellate Division determined that the observations by the judge in the 2 May Judgment (see para 26 above) should be properly understood as a conclusion that costs would be assessed on an indemnity basis in the event it was decided that Marchmont would be awarded costs. The judge only subsequently rendered his decision on 23 May that Marchmont was entitled to costs. Materially, in the 23 May Judgment, the judge went to consider the merits of the Defendants' costs submissions, whether to deny Marchmont all or most of its costs, or whether to order Marchmont to pay some costs of the Defendants. The judge did not bar the Defendants from making such submissions on the basis that Marchmont's entitlement to costs had already been determined under the 2 May Judgment.[49] The Appellate Division also observed that the manner in which Marchmont and the Defendants had interpreted the 2 May Judgment up till the 23 May Judgment was consistent with the ultimate finding that the judge had not yet decided that Marchmont was entitled to costs in the 2 May Judgment.[50]

28 Wrongly calculating time to bring an appeal or an application for PTA can have a trickle-down effect on costs or whether further

45 *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] 1 SLR 1221 at [6].
46 *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] 1 SLR 1221 at [7].
47 *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] 1 SLR 1221 at [1] and [8]–[10].
48 *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] 1 SLR 1221 at [10]–[17].
49 *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] 1 SLR 1221 at [31].
50 *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] 1 SLR 1221 at [18]–[27].

applications need to be brought. In *Chan Pik Sun*,[51] the Appellate Division observed that if the applicant had not filed an appeal against the Main Decision prematurely, he would have to file only a single appeal for both the Main Decision and the Costs Decision, assuming this was done within the timeframe stipulated in O 19 r 25(1)(*a*) read with O 19 r 4(1) of the ROC 2021. A single appeal was permissible in those circumstances notwithstanding that the Costs Decision related solely to the quantum of costs and was independent of the outcome of the appeal against the Main Decision.[52] In such a case, no PTA would have been required to appeal the Costs Decision. However, as a single appeal was not brought due to the appeal being prematurely brought against the Main Decision only, PTA was required to separately appeal against the Costs Decision.[53]

29 In *Marchmont*, the Appellate Division provided some guidance on this issue. First, solicitors should be aware of when time to appeal begins to run. If there are different views, or where disagreement arises, clarification should be sought from the General Division at the earliest opportunity. Second, when determining a claim, the General Division should consider how the issue of costs should be addressed. Consideration should therefore be given to whether it is appropriate to make an order on costs without requiring detailed costs submissions when determining a claim. If the General Division is prepared to hear parties' submissions on costs subsequently, there would be no reason or necessity to make any costs orders before doing so. Making costs orders in parts "may unnecessarily tie the court's hands and/or give rise to confusion and unnecessary arguments". Third, the courts should be alive to the possibility of unwittingly starting a countdown of the time to appeal, when that is not its intention when the final order as to the parties' entitlement to costs is made.[54]

VI. Understanding the importance of filing a cross-appeal if necessary

30 Whether a cross-appeal is necessary is a question parties should keep in mind. Generally, when one party, "A", appeals against the decision of the lower court, and the other party, "B", is of the view that it should have achieved a better result as well, B should consider whether to file a cross-appeal. In the absence of a cross-appeal, the appellate court

51 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [15]–[16].
52 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [15], citing *The Luna* [2021] 2 SLR 1054 at [103].
53 *Chan Pik Sun v Wan Hoe Keet* [2023] SGHC(A) 36 at [16], citing *The Luna* [2021] 2 SLR 1054 at [104(b)].
54 *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd* [2024] 1 SLR 1221 at [39]–[43].

would not be able to consider B's position even if it was of the view that it was meritorious.

31 In *Alvin Nicholas Nathan v Raffles Assets (Singapore) Pte Ltd*,[55] the appellant had leased office premises from the respondent. The respondent subsequently gave short notice to the appellant that it wanted to terminate the lease. Consequently, the appellant had to thus move into interim premises before moving into permanent premises. The appellant obtained interlocutory judgment against the respondent for breach of contract and had his damages assessed by the General Division. The appellant appealed against the General Division's assessment of damages to the Court of Appeal. The Court of Appeal dismissed the appeal and held that the appellant was not entitled to claim both expectation and reliance losses as that would lead to over-compensation. This meant that the appellant should not have been awarded the costs wasted on renovating the premises as well as the costs associated with relocation to and renting of the new premises.[56] Although the Court of Appeal concluded that the appellant had received more damages than he should have had as a result of the lower court's error, the Court of Appeal declined to intervene in the lower court's award of damages because no cross-appeal was brought by the respondent.[57]

32 Likewise, in *Chong Kim Beng v Lim Ka Poh*,[58] the appellant, a welder employed by the first and second respondents, was deployed to work for the third respondent. While working for the third respondent, the appellant's right hand was injured by the blades of a blower fan. The appellant succeeded in his claim in the District Court and was awarded damages with the liability apportioned 15% to the first and second respondents and 75% to the third respondent severally. The appellant appealed seeking an order that the respondents' liability be joint. There was no cross-appeal by the first and second respondents, and the third respondent sought leave to be excused from the appeal. In dismissing the appeal, the General Division observed that there was no basis for the district judge to conclude that the first and second respondents' "failure to supervise [the appellant's] work was a proximate cause of the injury".[59] Notwithstanding that this view might have exonerated the first and

55 [2016] 2 SLR 1056.
56 *Alvin Nicholas Nathan v Raffles Assets (Singapore) Pte Ltd* [2016] 2 SLR 1056 at [23]–[29].
57 *Alvin Nicholas Nathan v Raffles Assets (Singapore) Pte Ltd* [2016] 2 SLR 1056 at [14] and [30].
58 [2015] 3 SLR 652.
59 *Chong Kim Beng v Lim Ka Poh* [2015] 3 SLR 652 at [54].

second respondents "from any liability whatsoever", their decision not to file a cross-appeal meant that the issue could not be considered.[60]

33 The failure to file a cross-appeal would usually preclude parties from challenging the decision of the lower court, unless certain exceptions apply (see paras 34–35 below). In *Noor Azlin bte Abdul Rahman v Changi General Hospital Pte Ltd*,[61] the respondent had breached its duty of care in diagnosing the first appellant's lung cancer late, by which time the cancer had progressed too far for medical intervention to be beneficial. After the first appellant passed away, the second appellant, the executor of the first appellant's estate, was added as a party to continue the action. The second appellant appealed the damages assessed by the General Division and costs to the Court of Appeal. While the respondent did not file a cross-appeal, it nonetheless submitted that the lower court had been overly generous in the award of damages and costs. In allowing the appeal in part and increasing the damages awarded to the appellants, the Court of Appeal observed that as the respondent had not filed a cross-appeal, the respondent was "precluded from submitting for a reduction of the Judge's award [below]".[62] In other words, it was impermissible for the respondent to seek a reduction of the damages that was awarded because it did not file a cross-appeal.

34 This situation should be distinguished from that where the respondent seeks to affirm the decision below on grounds that were not accepted. In *L Capital Jones Ltd v Maniach Pte Ltd*[63] ("*L Capital Jones*"), the Court of Appeal departed from its earlier decision in *Lim Eng Hock Peter v Lin Jian Wei*.[64] The Court of Appeal held that O 57 r 9A(5) of the Rules of Court[65] ("ROC 2014") should be interpreted broadly to allow "successful respondents to mount a case to affirm the judge's ultimate decision by raising other arguments which did not find favour with the court below, without needing to file a cross-appeal". Order 19 r 18(2)(*d*) of the ROC 2021 is substantially similar to O 57 r 9A(5) of the ROC 2014.

35 Therefore, on the basis of O 19 r 18(2)(*d*)(ii) as interpreted in *L Capital Jones*, a cross-appeal is not necessary if all a respondent seeks to do is to affirm the lower court's decision on grounds that were not accepted below. In a similar vein, the respondent is also permitted to submit on how the lower court's decision should be varied in the event

60 *Chong Kim Beng v Lim Ka Poh* [2015] 3 SLR 652 at [56].
61 [2022] 1 SLR 689.
62 *Noor Azlin bte Abdul Rahman v Changi General Hospital Pte Ltd* [2022] 1 SLR 689 at [44].
63 [2017] 1 SLR 312 at [65].
64 [2010] 4 SLR 331.
65 2014 Rev Ed.

an appellant is wholly or partially successful on an appeal, even if no cross-appeal is filed: see O 19 r 18(2)(*d*)(i).

36 For completeness, it should be noted that there have been some exceptional cases where the decision of the lower court has been adjusted notwithstanding that no cross-appeal has been brought. In *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP*,[66] the appellant was a finance company that provided financing for the purchase of vehicles. The first and second respondents sold vehicles on a consignment basis. The third respondent was in the business of providing land transport for passengers. The first respondent had placed his vehicle with the second respondent on a consignment basis for the purpose of sale. The appellant had provided financing to the first respondent to purchase the vehicle under a hire purchase agreement (the "Hire Purchase Agreement"). The second respondent sold the vehicle on behalf of the first respondent to the third respondent. The loan due to the appellant under the Hire Purchase Agreement was paid in full by the third respondent, but the appellant appropriated a part of the payment towards settling debts owed to the appellant by another company that was related to the first respondent. The appellant thus refused to lodge a form to confirm that the loan had been discharged, until the shortfall was paid. This effectively prevented the transfer of the vehicle to the third respondent in the Land Transport Authority's records and the third respondent from using the vehicle. The district judge found, *inter alia*, that the third respondent could have taken certain steps to mitigate its loss, but failed to do so and limited its recovery accordingly.[67] On appeal to the General Division, the appellant sought a further reduction of the recovery on the basis the third respondent breached its duty to mitigate. On the other hand, the third respondent sought an increase on the basis it had discharged its duty to mitigate.[68] At the hearing, the appellant objected to the third respondent's submission for an upward adjustment in the quantum of damages on the basis that no cross-appeal had been brought.[69]

37 The judge was of the view that in the exercise of its appellate jurisdiction, the General Division had the jurisdiction to adjust the quantum in the third respondent's favour, notwithstanding the absence of a cross-appeal. This was on the basis of s 22 read with ss 37(5) and 37(6) of the Supreme Court of Judicature Act[70] as well as O 55D rr 11(2)

66 [2024] 5 SLR 1318.
67 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2024] 5 SLR 1318 at [165]–[167].
68 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2024] 5 SLR 1318 at [170]–[173].
69 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2024] 5 SLR 1318 at [184].
70 2007 Rev Ed.

and 11(3) of the ROC 2014.[71] The quantum of damages awarded to the third respondent was revised upwards.[72]

38 The Appellate Division has recently relied on substantially similar provisions in the SCJA in *Mustaq Ahmad v Ayaz Ahmed*[73] in the context of exercising its powers for the benefit of a party which had not appealed on a specific point. The Appellate Division observed that pursuant to s 41(7) of the SCJA, it "may exercise its powers in relation to any part of the decision appealed against (even if that part has not been appealed), and in favour of any party to the decision appealed against (even if that party has not appealed)".[74] Although the Appellate Division noted that exercising this power "would go against the general principle that a party dissatisfied with a decision of the court should lodge his own notice of appeal", this was just "a consideration which goes towards whether the court should exercise this power, rather than to whether the court can exercise it at all".[75] The Appellate Division was satisfied that the case was an exceptional one because of the relief that was allowed which warranted the exercise of the power allowing the relief to be granted.[76]

39 It is important to note that the cases cited where a failure to cross-appeal was not fatal to a respondent (see paras 36–38 above) represent the exception rather than the norm. Ordinarily, a failure to cross-appeal would mean that the respondent was precluded from challenging the decision of the lower court. Parties would therefore do well to carefully consider if a cross-appeal is necessary.

VII. Understanding when further arguments can be made

40 Finally, it appears that it is becoming more common for parties to write in after an appeal has been heard in the Appellate Division or the Court of Appeal to request further arguments, in situations where a decision has been rendered or otherwise. Parties should note that where a decision has been rendered, the request is impermissible, and where it has not, the request should only be sparingly made and with good reason. Parties who are appealing against a decision of the General Division to either the Appellate Division or the Court of Appeal, do not have a right to further arguments after the appeal hearing: see O 18 r 38 and O 19 r 34 of the ROC 2021. The provisions, which are similar, provide that "there

71 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2024] 5 SLR 1318 at [185]–[189].
72 *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2024] 5 SLR 1318 at [230].
73 [2024] 1 SLR 1016.
74 *Mustaq Ahmad v Ayaz Ahmed* [2024] 1 SLR 1016 at [408].
75 *Mustaq Ahmad v Ayaz Ahmed* [2024] 1 SLR 1016 at [409].
76 *Mustaq Ahmad v Ayaz Ahmed* [2024] 1 SLR 1016 at [412].

are to be no further arguments from the parties after the appellate Court has heard the appeal and reserved its decision or after the appellate Court has given its decision in the appeal", unless "the appellate Court otherwise directs". This being the case, the onus would fall on the applicant to justify (with good reasons) why there should be a deferring of the finality of the appeal process.[77] Any justification should also include the reasons why the further arguments sought were not raised at in the appeal.

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77 *British Steamship Protection and Indemnity Association Ltd v Thresh, Charles* [2024] 2 SLR 317 at [85].