

TAN SUI SENG

Appellant/Plaintiff

AND

STANDARD CHARTERED BANK  
FOO SUAN POO  
LAI KOU YU

1<sup>st</sup> Respondent/Defendant  
2<sup>nd</sup> Respondent/Defendant  
3<sup>rd</sup> Respondent/Defendant

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(Court of Appeal of Brunei Darussalam)  
(Civil Appeal No. 18 of 2024)

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Steven Chong, C.J., Lunn and Sir Peter Gross JJAs

**Date of Judgment: 28 October, 2025.**

**Date of Judgment: 19 November, 2025**

*Civil Procedure: Appeal dismissed. Following automatic discontinuance of action, pursuant to O. 21, r. 2 (6), Appellant's application for leave for reinstatement, pursuant to O. 21, r. 2 (10) refused by Registrar; appeal dismissed by Judge. Three-limb test for reinstatement applied: test stipulated in Singapore in Moguntia-Est, adopted in Brunei Darussalam and explained in Maxwell, approved by Court of Appeal in Hafiz.*

Appellant/Plaintiff In Person.

Ms Evelyn Lee Xin Yin (M/S YC Lee and Lee) for 1<sup>st</sup> Respondent/Defendant.

Ms Nuratikah Binti Awang Haji Omar (M/S Omar & Khan Advocates & Solicitors) for 2<sup>nd</sup> and 3<sup>rd</sup> Respondents/Defendants.

**Cases cited:**

*Malayan Banking Berhad v Maxwell Co. Sdn. Bhd.* (Civil Suit No. 107 of 2005)

*Moguntia-Est Epices SA v Sea Hawk Freight* [2003] 4 SLR 429

*Suparni v Metrobina and Partners Sdn. Bhd, & Others.*(Civil Suit 23 of 2018-unreported, 25 October 2022,)

*Ak Muhd Abdul Hafiz Pg. Zainal v Awg Lufti bin Haji Awang Lamat & Anor.* (Civil Appeal No. 17 of 2024-unreported, 2 September 2025).

**Lunn, J.A.:**

1. The Appellant appeals against the dismissal by Haji Abdullah Soefri bin POKSM Haji Abidin, JC, dated 18 November 2024, of his appeal against the Ruling of Registrar Syaffina Binti Shahif, dated 5 April 2023, dismissing the Appellant's application, pursuant to Order 21, Rule (2) 10 of the Rules of the Supreme Court ("RSC"), to have his action in HCCS 78 of 2012 reinstated, following the determination of Registrar Syaffina Binti Shahif, dated 28 September 2022, that, pursuant to Order 21, Rule (2) 6 of the RSC, the action had been automatically discontinued.

*Background*

2. The Appellant commenced these proceedings against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents by filing a Writ and Statement of Claim on 4 October 2012. Various steps were taken in the action

until a Pre-Trial Conference was held on 28 April 2018. Thereafter, there was no step in the action until 9 February 2022 when the Appellant's then solicitors, Messrs Mohd Shazale Salleh, filed a Summons in Chambers to apply to discharge themselves. On 9 April 2022, a pre-trial conference was conducted at which the Appellant, who was unrepresented, asked for trial dates to be fixed.

### *Discontinuance*

3. On 11 June 2022, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed an application to have the Appellant's claim dismissed, pursuant to O.21, r. 2 (6) of the RSC. On 12 September 2022, the 1<sup>st</sup> Respondent filed a similar application, asking that the Appellant's claim be dismissed, it being deemed discontinued, and/or alternatively for want of prosecution and/or that it be struck out as an abuse of the process of the Court. On 13 September 2022, the Registrar held a hearing to consider the applications, at which the Appellant participated. The matter was adjourned to 28 September 2022.

### *Registrar's Rulings*

#### *(i) Automatic discontinuance*

3. On 28 September 2022, Registrar Syaffina Shahif declined to conduct a hearing of the application to dismiss the Appellant's claim, stating that the action had been discontinued automatically, pursuant to O. 21, r. 2 (6) of the RSC. The 1<sup>st</sup> Respondent and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents asked for an order for costs on an indemnity basis. The Appellant opposed the application.

4. By a '*Ruling on Costs*', dated 20 October 2022, the Registrar ordered the Appellant to pay the costs of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on an indemnity basis, up and until the date of discontinuance.

#### *(ii) Reinstatement*

5. By a Summons in Chambers, filed on 3 December 2022, the Appellant sought reinstatement of the action, pursuant to O. 21, r. 2 (10) of the RSC.

6. In a Ruling, delivered on 5 April 2023, Registrar Syaffina Shaif dismissed the Appellant's application for leave to reinstate the action. The Registrar said that she had regard to the Judgment in *Malayan Banking Berhad v Maxwell Co. Sdn. Bhd*<sup>1</sup>, which applied the guidelines set out in *Moguntia-Est Epices SA v Sea Hawk Freight*<sup>2</sup> in considering an application for reinstatement. Of the first limb of the test, she said that she was satisfied that, up and until 2016, the Appellant had moved the case on and conducted it with reasonable efficiency.<sup>3</sup> However, after the pre-trial conference on 4 April 2016, at which the Appellant had indicated that he wished the matter to be set down for trial, the Appellant failed to file the requisite documents and notifications to achieve that objective. In particular, the Registrar noted that the Appellant, "...did not file any supplementary list of documents to include the report that the plaintiff repeatedly brought up."<sup>4</sup>

<sup>1</sup> *Malayan Banking Berhad v Maxwell Co. Sdn. Bhd.* (Civil Suit No. 107 of 2005).

<sup>2</sup> *Moguntia-Est Epices SA v Sea Hawk Freight* [2003] 4 SLR 429.

<sup>3</sup> Registrar's Ruling, paragraphs 4 and 5.

<sup>4</sup> Registrar's Ruling, paragraph 8.

7. The Registrar rejected the Appellant's contention that negotiations with the Respondents for settlement explained and accounted for the passage of time. She said that she believed there were no longer any negotiations with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents between 2016 up and until 2020. In any event, citing a statement of Ramesh Kanan JC in *Maxwell*<sup>5</sup>, she said that, "...settlement discussions would generally not, in of themselves, constitute a good excuse for allowing the claim to remain dormant." The Appellant could have set the matter down for trial or in the alternative applied for a stay in the proceedings. She rejected the Appellant's contrary assertions.

#### *Trigger date*

8. Noting that a pre-trial conference had been conducted on 28 April 2018, the Registrar determined the 'trigger date' to be that date. It followed that the 'guillotine date' was 27 April 2019.<sup>6</sup>

9. In the result, the Registrar said that she was not satisfied that the Appellant was innocent of any failure to conduct the case with expedition prior to the trigger date. The Appellant failed to satisfy the first limb of the test.<sup>7</sup> Of the issue raised by the second limb of the test, namely whether the Appellant's failure to take any step in the action since the trigger date was excusable or should be forgiven, the Registrar noted that the Appellant had not contacted his own counsel for three years. She dismissed the Appellant's suggestion that the inaction was explained by the Covid-19 pandemic. The action was deemed to be discontinued in 2019, prior to the advent of the Covid-19 pandemic in 2020. Accordingly, she found there was neglect by the Appellant in conducting the case, concluding, "I thus do not find the plaintiff's failure in taking a step in the proceedings excusable."<sup>8</sup>

#### *Judge's Ruling*

10. In his Ruling, Haji Abdullah Soefri, JC noted that O. 21, r. 2 (10) provides that:

*"Where an action, cause or matter has been discontinued pursuant to paragraph (5) or (6), the Court may, on application, reinstate the action, cause or matter and allow it to proceed on such terms as it thinks just."*

11. At the outset, the Judge summarised the Appellant's case, as set out in his Affidavit in Support, in which he asserted that he was:<sup>9</sup>

*"...a victim of transactions to transfer \$352,456.68 by using forged signatures of the Applicant. There were a total of 24 such transactions from the joint name account with Standard Chartered bank to the Defendants' personal accounts... the Defendants forged his signature to transfer that amount as stated..."*

12. Of the test to be applied to the application for reinstatement of the action, the judge said that it was the "three-pronged" test articulated in the Judgment in *Moguntia-Est Epices SA v Sea Hawk Freight*,<sup>10</sup> which approach had been endorsed in the Judgment in the High Court in *Malayan Banking Berhad v Maxwell Co. Sdn. Bhd.*, namely<sup>11</sup>:

<sup>5</sup> *Malayan Banking Berhad v Maxwell Co. Sdn. Bhd.*, at paragraph 45.

<sup>6</sup> Registrar's Ruling, paragraph 3

<sup>7</sup> Registrar's Ruling, paragraph 9.

<sup>8</sup> Registrar's Ruling, paragraph 10.

<sup>9</sup> Judge's Ruling, paragraph 1.

<sup>10</sup> Judge's Ruling, page 5.

<sup>11</sup> *Malayan Banking Berhad v Maxwell Co. Sdn. Bhd.*, at paragraphs 13 and 40.

*“(i) Has the Plaintiff satisfied the Court that he is innocent of any significant failure to conduct the case with expedition prior to the trigger date having regard to the particular features of the case? If he has not, then reinstatement should be refused;*

*(ii) Has he satisfied the Court that in all the circumstances his failure to take any step in the action since the trigger date (and this would include his failure to apply for an extension of time) is excusable, i.e., should be forgiven? If he has not, then again reinstatement should be refused;*

*(iii) Has the Plaintiff satisfied the Court that the balance of justice indicates that the action should be reinstated? If not, once against reinstatement should be refused.”*

13. In applying the test, the Judge noted that the Registrar had identified the ‘trigger date’, namely the last step taken in the action as it appears on the Court record, as being 28 April 2018, at which date there have been a pre-trial conference, in consequence the ‘guillotine date’ was 27 April 2019.

14. The Judge said that, having indicated at a pre-trial conference on 4 April 2016 that the matter would be set down for trial and having requested trial dates from the Court, the Appellant, “...failed to file any necessary document notifications as required by the Rules of the Supreme Court to set down the action for trial despite the fact that the Plaintiff was represented by numerous counsels.”<sup>12</sup>

15. Of the Appellant’s contention that negotiations had continued between the parties throughout, the Judge referred to the statement of Kanan Ramesh JC in his Judgment in *Maxwell*, to which the Registrar had referred in her Ruling, namely:

*“In my view, settlement discussions would generally not, in and of themselves, constitute a good excuse for allowing the claim to remain dormant. These discussions do not preclude the claimant from simultaneously taking further steps in the proceedings, particularly where it is clear that no settlement is forthcoming...”*

16. In that context, the judge found that, “...no simultaneous steps were taken, which is the filing of the necessary documents or notification as required by the rules of the Supreme Court to set down the action for trial.”

17. In the result, addressing both the first and second limbs he concluded:

*“I am not satisfied that the Applicant is innocent of any failure to conduct the case with expedition prior to the trigger date and also the Applicant’s failure to take any steps for almost 4 years after the trigger date is not excusable.”*

18. Finally, the Judge said that he was satisfied that the Registrar’s decision was correct and that there was no basis to interfere with the exercise of the Registrar’s discretion. Accordingly, he dismissed the Appellant’s application with costs, determining that the Registrar’s Order, that the Appellant was to pay the Respondents indemnity costs, was to remain.<sup>13</sup>

#### *Appellant’s submissions*

19. In the Petition of Appeal, the Appellant addressed the ‘Grounds of reinstatement’. First, settlement negotiations with the Respondents had caused the delay. He referred to correspondence in 2015, in which those representing the 1<sup>st</sup> Respondent had asked for the fixing of a pre-trial conference/mediation. In a letter, dated 1 March 2016, he had written to the Court

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<sup>12</sup> Judge’s Ruling, page 6.

<sup>13</sup> Judge’s Ruling, page 6.

asking for the adjournment of a pre-trial conference on the following day because he was in the process of negotiations for settlement with the 1<sup>st</sup> Respondent. Negotiations continued until 2022.

20. Further, he invited the Court to note that on numerous occasions he had asked the Court to fix a date for trial. By contrast, the Respondents had repeatedly asked for the fixing of pre-trial conferences/mediation.

21. At the hearing, the Court granted the Appellant's application to have his wife, Mdm. Tan act as a McKenzie friend to advance his submissions.

*Requests for trial dates*

22. Mdm. Tan complained that, having asked at the pre-trial conference on 9 April 2022 for trial dates to be fixed, and having informed the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents of that fact in a letter dated 17 June 2022, they not having been present at the hearing, the Appellant was preparing for trial. On 8 September 2022, the Appellant filed an amended Statement of Claim. That was a reference to a letter to the Court, in which amongst many other things the Appellant asked to amend the Statement of Claim.<sup>14</sup> So, the Appellant was taken aback to be summoned to a hearing on 13 September 2022 to be informed that applications had been filed, pursuant to Order 21, r. 2 (6), for an order that the action had been discontinued or deemed to be discontinued.

*Pursuit of the case*

23. Of the period 2016 to 2018, the Appellant said that the case was not dormant. The Appellant was active in trying to obtain the Forensic Laboratory report, as was evidenced by correspondence. The correspondence to which Mdm. Tan referred was a series of emails in and between June and August 2017 between Eversheds Harry Elias LLP<sup>15</sup>:

(i) and a forensic handwriting expert, about the comparison of disputed signatures found on documents dated between July 2008 and December 2008 and Control signatures of the Appellant; first, beginning on 21 June 2017, in which reference was made to earlier correspondence in 2015, and continuing to 11 August 2017 under the Subject: '*Enquiry on Handwriting Expert Analysis*' and on 12 and 14 August 2017 under the Subject: '*Preliminary assessment of case (forensic memo)*';

(ii) and Mdm. Tan, in undated email to Mdm. Tan, in which it was stated that Eversheds had spoken to the forensic expert that morning and stating that the discussions were to take place that afternoon with Shazale, enclosing the email from the forensic handwriting expert to Eversheds;

(iii) and to Shazale, one of which was dated 17 August 2017 and, having referred to a conversation between them that morning, described the issues discussed under the heading 'Forensic Examination of Disputed Signature'. Reference was made to a preliminary opinion, in which the Appellant's signature was described as, "...quite simple and much variation can be seen", so that the expert might conclude, that, "...the disputed signatures are mere variations of Mr. Tan's signature as opposed to forged signatures."

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<sup>14</sup> ROA, Appendix-Amended Statement of Claim. If a

<sup>15</sup> ROA, Appendix A 4.

24. Finally, in an email to Mdm. Tan, dated 1 January 2018, Mohd. Shazale Salleh advised her of a number of matters including the current rate of charges of the Department of Scientific Services.

*22 January 2018*

25. Mdm. Tan said that at a pre-trial conference held on 22 January 2018, the Forensic Laboratory Report was provided to the Court. The Notes of Proceedings state that, having said that the Appellant now had possession of the Forensic Laboratory Report, Mr. Shazale said that a copy had been made for those representing the 1<sup>st</sup> Respondent and asked for an adjournment, indicating that he was still reviewing the Report.

*Forgery*

26. The Appellant reiterated the assertions made in the Petition of Appeal that the allegations were of serious criminal offences and justice required the matter to go to trial.

*1<sup>st</sup> Respondent's submissions*

27. Ms. Evelyn Lee, for the 1<sup>st</sup> Respondent, invited the Court to dismiss the appeal with costs.

28. Ms. Evelyn Lee submitted that the approach to be taken in consideration of an application for reinstatement of an action was the “three-pronged” test articulated in the Judgment of the High Court of Singapore in *Moguntia-Est Epices SA v Sea Hawk Freight*, adopted and explained in Brunei in *Malayan Banking Berhad v Maxwell Co. Sdn. Bhd., Suparni v Metrobina & Other<sup>16</sup>s* and *Ak Muhd Abdul Hafiz Pg. Zainal v Awg Lufti bin Haji Awang Lamat & Anor.<sup>17</sup>*

*Trigger date*

29. It was submitted that the last step or proceeding in the action that appears from the records maintained by the Court relevant to determination of the trigger date, was 22 January 2018. That was the date of the hearing of a Summons in Chambers application. That was the trigger date. The next step taken in the proceedings was on 9 February 2022, on which date Messrs Mohd Shazale Salleh, the erstwhile solicitor of the Appellant, had filed a Summons in Chambers seeking to be discharged from representing the Appellant.

30. Nevertheless, the 1<sup>st</sup> Respondent acknowledged that there was a pre-trial conference on 28 April 2018. On the latter date, although the Appellant had indicated that he intended to file a Forensic Report issued by the Department of Scientific Services, no such report or any other documentation was filed.

*Negotiations for settlement*

31. Of the suggestion that delay and inaction in the progress of the proceedings was the consequence of the fact of ongoing negotiations for a settlement between the parties, the Court was invited to note that at the pre-trial conference on 4 April 2016, following a period when negotiations for settlement had taken place, the Appellant had asked for the matter to be set down for trial. Clearly, there were no longer any ongoing negotiations.

32. In its Affidavit in Opposition, the 1<sup>st</sup> Respondent had affirmed that, after April 2016, it was not involved in settlement negotiations with the Appellant. In any event, “...*settlement discussions would generally not, in and of themselves, constitute a good excuse for allowing the claim to remain dormant. These discussions do not preclude the claimant from*

<sup>16</sup> *Suparni v Metrobina and Partners Sdn. Bhd., & Others*. (Civil Suit 23 of 2018-unreported, 25 October 2022.)

<sup>17</sup> *Ak Muhd Abdul Hafiz Pg. Zainal v Awg Lufti bin Haji Awang Lamat & Anor.* (Civil Appeal No. 17 of 2024-unreported, 2 September 2025).

*simultaneously taking further steps in the proceedings, particularly where it is clear that no settlement is forthcoming.”<sup>18</sup>*

*Covid-19 pandemic*

33. In citing the consequences of the Covid-19 pandemic as an explanation for the failure to progress the action, the Appellant was “*clutching at straws*”. The trigger date was in 2018 and the guillotine date in 2019. The onset of the Covid-19 pandemic did not affect Brunei Darussalam until March 2020. The consequences of the Covid-19 pandemic were irrelevant to these considerations.

*Appellant’s legal representation*

34. The 1<sup>st</sup> Respondent submitted that the fact that during the proceedings the Appellant had been represented by no less than four firms of solicitors had caused extensive delay in the conduct of the action, as the Appellant requested adjournments to seek further legal representation. Further, there were periods when the Appellant was unrepresented.

*Reinstatement: the test*

*First limb*

35. In considering the application of the first limb of the test, namely whether the Appellant was innocent of any significant failure to conduct the case with expedition prior to the trigger date, the 1<sup>st</sup> Respondent submitted that it was to be remembered that the Writ been filed against the Respondent on 4 October 2012.

36. After the pre-trial conference on 4 April 2016 there was inactivity on behalf of the Appellant, even before the trigger date on 22 January 2018. The Appellant had failed to request that the action be set down for trial or filed a notification of setting down pursuant to the Rules of the Supreme Court. More particularly, after the pre-trial conference on 28 April 2018 the Appellant had taken no step in the action for almost 4 years. On 9 February 2022, the Appellant’s erstwhile solicitors had filed an application to be discharged.

37. The Appellant’s failure to take any steps in the proceedings was inexcusable. On any basis, the Appellant had failed to satisfy the first limb of the test. There was a sufficient basis to dismiss the appeal.

*Second limb*

38. Of the issue of whether the failure of the Appellant to take any steps in the proceedings after the trigger date was excusable, it was submitted that there was no merit in the Appellant’s suggestion that delay was attributable to the consequences of the Covid-19 pandemic. The action had been automatically discontinued by the guillotine date, namely 27 April 2019. The advent of the pandemic was in March 2020. The Appellant had taken no steps in the proceedings in that period. There were no negotiations for settlement with the 1<sup>st</sup> Respondent after April 2016. Such negotiations for settlement as the Appellant might have had with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not prevent the Appellant from taking steps in the proceedings to progress the action. The Appellant did nothing. He did not file with the Registrar a request that the action be set down for trial, as required by Order 34, r. 3 of the RSC.

*Third limb*

39. Of the consideration that the ‘balance of justice’ indicated that the action should be reinstated, the Court was reminded that the alleged unauthorised transactions took place in late 2008 and that the Writ and Statement of Claim had been filed in October 2012. Such delay

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<sup>18</sup>*Malayan Banking Berhad v Maxwell Co. Sdn. Bhd*, at paragraph 45.

before trial would cause serious prejudice to the 1st Respondent at trial. There would be difficulty in locating witnesses. In any event, such witnesses would have difficulty in recalling matters after such a long passage of time.

*Submissions of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents*

40. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents invited the Court to dismiss the appeal.

*Negotiations*

41. In their submissions, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents submitted the Appellant's reliance on alleged negotiations for settlement between the parties was misplaced. Even if there were such negotiations, they did not amount to a step in the proceedings, which was required to be both formal and significant in the court process. Moreover, in the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents Joint Affidavit in Opposition, the Appellant's assertions in his Affidavit in Support, that there were such negotiations, were denied.

*Failure of the Court to fix a trial date*

42. The Appellant's contention that delay in the proceedings was caused by the failure of the Court to fix a trial date ignored the Appellant's duty to take all necessary steps to the action to permit that to be done.<sup>19</sup> The Appellant had not taken no steps, in particular he had not filed a Notice of Setting Down for Trial.

*The first limb*

43. In their submissions, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents addressed what was asserted to be the first limb of the test, as identified in the Judgment of Woolley JC in *Suparni v Metrobina and Partners Sdn. Bhd, & Othrs.*, asserted to be the conduct of the Appellant in the period of time, between the trigger date and the guillotine date. It was submitted that the 'trigger date' was 28 April 2018. The 'guillotine date' was 27 April 2019. The Appellant's inaction in that period was a significant and culpable failure to expedite the claim. It demonstrated inexcusable neglect. On that basis alone, the appeal was to be dismissed.

*Second limb*

44. It was submitted that the Appellant's contention that his conduct was excusable on the basis of the Court had failed to fix dates for the trial and that the parties were engaged in negotiations for settlement was of no substance. As this Court pointed out in *Hafiz*<sup>20</sup>, "...while it is incumbent on the Court to fix trial dates, it remains the duty of the parties to do what can be done to make progress with the litigation in accordance with the Rules of Court." The Appellant had failed to file a Notice of Setting Down for Trial, as required by Order 34 of the RSC. The Appellant had failed to provide any convincing explanation which could excuse his default.

*Third limb*

45. Of a consideration of the 'balance of justice', it was submitted that regard was to be had to the prolonged and unexplained delay. That had caused prejudice to the Respondents, who had to endure uncertainty for long after the time at which matters ought to have concluded.

*A consideration of the submissions*

46. Clearly, the Chronology of events in the progress of this action is a lamentable illustration of delay. The events the subject of the Statement of Claim occurred in 2008. The writ was filed

<sup>19</sup> *Ak Muhd Abdul Hafiz Pg. Zainal v Awg Lufti bin Haji Awang Lamat & Anor.*, at paragraph 16 (4).

<sup>20</sup> *Ak Muhd Abdul Hafiz Pg. Zainal v Awg Lufti bin Haji Awang Lamat & Anor.* (Civil Appeal No. 17 of 2024-unreported, 2 September 2025) at page 6, paragraph 16 (4).

in 2012. On 28 September 2022, the Registrar determined that the action had been automatically discontinued, pursuant to O. 21, r. 2 (6) of the RSC in April 2019. Now, in the Autumn of 2025, this Court is seized of the Appellant's appeal against the dismissal of his applications to reinstate the action by the Registrar on 5 April 2023 and by the Judge on 13 November 2024. The issue is: was the Appellant culpable of inaction and delay?

### *The test*

47. The test to be applied in determining whether to allow an application for reinstatement of an action is the 'three limbed' test articulated in the Judgment of the High Court in Singapore in *Moguntia*, adopted, followed and explained in Brunei, which test was applied by both the Registrar and the Judge. In the Judgment of this Court in *Hafiz*, the Judgement of Kannan Ramesh JC in *Maxwell* was described as seminal.<sup>21</sup> In that Judgment, after a detailed analysis of the authorities, he determined the three limbed test articulated by Prakash J in *Moguntia* should be followed in Brunei. The first limb of the test modified the test, articulated by the Court of Appeal of England and Wales in *Bannister v SGB plc & Others*,<sup>22</sup> namely one that required consideration of the period between the trigger date and the guillotine date. Rather, the period to be considered in the first limb was the period prior to the trigger date.

48. The determinations made by the Registrar and the Judge, that the Appellant had failed to satisfy the first and second limbs of the test adopted by Kannan Ramesh JC in *Maxwell* were made in the exercise of their discretion in respect of the reinstatement of the action pursuant to O. 21, r. 2 (10). This court is slow to interfere with such a decision and will do so only on the well-established grounds.

49. As this Court explained in *Hafiz*<sup>23</sup> the three limbs of the test, "...must be satisfied sequentially (i.e., cumulatively), the onus being on the applicant for reinstatement to do so."

### *First limb*

#### *The trigger date*

50. Both the Registrar and the Judge determined that the trigger date was 28 April 2018, a pre-trial conference. Although the 1<sup>st</sup> Respondent acknowledged that such a pre-trial conference took place, in its written submissions it was submitted that the trigger date was 18 January 2018, the date on which there was a Hearing in Chambers. No reason was advanced in support of the submission. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents submitted that the trigger date was 28 April 2018. We are satisfied that the trigger date was 28 April 2018, and the Registrar and Judge were correct to so determine. It follows that the issue posed by the first limb of the test, namely whether the Appellant is innocent of any significant failure to conduct the case with expedition prior to the trigger date, is concerned with the period prior to 28 April 2018.

#### *4 April 2016: pre-trial conference*

51. As both the Registrar and the Judge found, although at a pre-trial conference on 4 April 2016 the Appellant had asked that the matter be set down for trial, the Appellant failed to file any documents or notifications as required by the RSC.<sup>24</sup> The Appellant took no steps in the action.

### *Negotiations*

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<sup>21</sup> Ibid, paragraph 10.

<sup>22</sup> *Bannister v SGB plc & Others*, [1998] 1 WLR 1123.

<sup>23</sup> Ibid, paragraph 16 (6).

<sup>24</sup> Registrar's Ruling, paragraph 6. Judge's Ruling, page 6.

52. The Registrar rejected the Appellant's contention that there were negotiations to settle the action after the Appellant had asked for the matter to be set down for trial at a pre-trial conference, dated 4 April 2016. Specifically, the Registrar found that there were no longer any negotiations between the Appellant and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents between 2016 until 2020.<sup>25</sup> In an omnibus finding, the Judge said that he was satisfied that the decision of the Registrar was correct.<sup>26</sup>

53. In any event, as noted earlier, settlement discussions generally do not constitute a good reason for allowing an action to lie dormant, given that the fact of such discussions does not prevent a party from simultaneously taking further steps in the proceedings. Further, the Appellant's reliance on the consequences of the Covid -19 pandemic is wholly misplaced. The Covid-19 pandemic did not affect Brunei until March 2020, whereas the trigger date was 28 April 2018.

54. The Registrar was correct to say that the Appellant had failed to file with the Court a List of Documents in which the Forensic Laboratory Report was listed. As Mdm. Tan noted in her oral submissions to this Court, apparently it was in the possession of the Appellant at the time of and referred to in the pre-trial conference dated 22 January 2018. The fact that there was email communications between solicitors acting for the Appellant and a forensic expert in and between June and August 2017 evidenced, but no more, that, after a hiatus from 2015, the Appellant had resumed a consideration of obtaining a Forensic Report on disputed handwriting. More importantly, apparently having secured a copy of the Forensic Report, no step was taken in the proceedings.

55. Clearly, the Registrar and the Judge were correct to determine that the Appellant had failed to satisfy the first limb of the test. On that basis alone, this appeal is to be dismissed. However, both the Registrar and Judge went on to consider the second limb of the test.

#### *Second limb*

56. The pre-trial conference fixed by the Court for 28 April 2018 was the last formal step in the proceedings until 9 February 2022, when the Appellant's erstwhile solicitors filed a Summons in Chambers to be discharged from representing the Appellant.

#### *28 April 2018: pre-trial conference*

57. At the pre-trial conference on 28 April 2018, the Appellant had asked that the matter be set down for trial and, the parties having given their estimates as to the number of witnesses they intended to call, indicating that no expert evidence would be led, the Senior Registrar indicated that she would, "*forward this case for trial*". Again the Appellant failed to file any documents or notifications as required by the RSC.<sup>27</sup> The Appellant took no steps in the action.

58. Having referred to the fact of the pre-trial conference held on 28 April 2018, the Registrar found that the Appellant had failed, "*to take appropriate steps in accordance to the procedure set out in the rules of Supreme Court.*" Clearly, after the trigger date of 28 April 2018, the ongoing failure of the Appellant to file a Supplementary List of Documents including the Forensic Laboratory Report evidenced his continued failure to take any steps in the action. Further, the Registrar found that no steps had been taken in the action by the Appellant, for a period of four years. Having dismissed the Appellant's contention as to the relevance of Covid-19 pandemic to the issue of delay, on the basis that automatic discontinuance had occurred prior to the advent of Covid in Brunei, the Registrar said that she did not find the Appellant's failures

<sup>25</sup> Registrar's Ruling, paragraph 7.

<sup>26</sup> Judge's Ruling, page 6.

<sup>27</sup> Registrar's Ruling, paragraph 6. Judge's Ruling, page 6.

to take a step in those proceedings to be “excusable”.<sup>28</sup> In his Ruling, the Judge reiterated that finding, “*the applicant’s failure to take any steps for almost 4 years after the trigger date is not excusable.*”<sup>29</sup>

59. Again, clearly the Registrar and Judge were correct in their determination that the Appellant failed to satisfy the second limb of the test.

*Third Limb*

60. Neither the Registrar nor the Judge addressed the third limb of the test. Given our conclusions in respect of the first and second limbs, it is unnecessary to express any view on the third limb and we do not do so, save to observe that, not only the age of the proceedings but also the very lengthy period of time since the alleged conduct occurred, presented very significant hurdles in the way of the Appellant. In weighing the concerns of the Appellant as to the seriousness of the alleged offences, it is to be noted this determination is no bar to criminal proceedings.

*Conclusion*

61. For the reasons that we have given, we dismiss the Appellant’s appeal.

*Costs*

62. The Appellant is to pay the costs of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, to be taxed if not agreed.



**DATO SERI PADUKA STEVEN CHONG, C.J.**



**MICHAEL LUNN, J.A.**



**SIR PETER GROSS, J.A.**

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<sup>28</sup> Registrar’s Ruling, paragraph 10.

<sup>29</sup> Judge’s Ruling, page 6. The

