



AMIN HALIM BIN CASAN

Appellant/Plaintiff

AND

MASA'IN BINTI AWANG HAJI TUAH
NORMILLA SDN BHD

1st Respondent/Defendant
2nd Respondent/Defendant

(Court of Appeal of Brunei Darussalam)
(Civil Appeal No. 7 of 2024)

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

Date of Judgment: 8 October 2025

Headnote: Civil Procedure-Costs: (i) Trial-Order 22A, r. 9 (3) of Rules of Supreme Court, Cap. 5 not applicable-only offer to settle proceedings was from 2nd R. for BND 85,000; judgment for A. for BND 124,529.92, with interest and costs, more favourable than terms of offer; 1st/2nd Rs to pay A.'s costs on standard basis, to be taxed, if not agreed, subject to determination of 2nd R.'s claim for discount of costs- relevance of J.'s contested finding of A.'s contributory negligence/rejection of some heads of claim; Directions: parties to file submissions in 7 days.

(ii) Court of Appeal- A's appeal dismissed; A. to pay 1st/2nd Rs' costs on standard basis, to be taxed if not agreed.

Ms Subrina Tan Yii Chun (M/S Fortis Law) for Appellant/Plaintiff.

Ms Veronica K. Rajakanu (M/S. V.K. Rajakanu & Associates) for 2nd Respondent/Defendant.
1st Respondent/2nd Defendant unrepresented and filed no submissions.

Cases cited:

Colliers International Singapore Pte. Ltd. v Senkee Logistics Pte. Ltd. [2007] SDHC 18

Dennis Matthew Harte v Tan Hun Hoe & Anor [2001] SDHC 19

Goh Kok Liang v GYP Properties Ltd and Anor [2020] SGHC 53

CCM Industrial Pte, Ltd, v Uniquetech Pte Ltd. [2008] SGHC 216

NTUC Foodfare Co-operative Ltd. V SIA Engineering Co Ltd and Yap Tee Chuan

Lunn J.A.

1. In our Judgment, dated 14 July 2025, we dismissed the Appellant/Plaintiff's appeal against various findings of the judge and, having received brief oral submissions from the parties as to costs, in which it was intimated that issues arose under Order 22A of the Rules of the Supreme Court, Cap. 5, we ordered the parties to file written submissions. The Appellant was ordered to file its' submissions 7 days after delivery of the Judgment and the Respondents 7 days thereafter.

2. In his Judgment, dated 30 May 2024, Muhammed Faisal bin PDJLD Kol (B) DSP Hj Kefli KC determined that the 1st and 2nd Defendants/Respondents were liable for losses and damages suffered by the Appellant in the sum of BND 124,529.92, together with interest and costs, to be taxed if not agreed.

The submissions of the parties

3. The Appellant and the 2nd Respondent filed lengthy written submissions as to costs. Given that the submissions were filed sequentially, we do not have the benefit of submissions from the Appellant in response to all those filed by the 2nd Respondent. The 2nd Respondent's primary contention, which was engaged directly in the submissions of the Appellant, was that there were two offers to the Appellant to settle the proceedings. First, the 2nd Respondent's offer, dated 7 April 2023, for BND 85,000.00. Secondly, the offer for BND 100,000.00, dated 10 April 2023, from Rudi Lee, Annie Kon & Associates, the Insurers of the 1st Respondent. In total those were offers to settle the proceedings for BND 185,000.00. That was greater than the judgment obtained by the Appellant of BND 124,529.92, with interest and costs. The 2nd Respondent contended that, pursuant to Order 22A of the Rules of the Supreme Court, whilst the Appellant was entitled to his costs on the standard basis up and until 7 April 2023, the 2nd Respondent was entitled to indemnity costs thereafter. For his part, the Appellant submitted that there was no offer to settle the proceedings for BND 100,000.00. The only offer was that of the 2nd Respondent for BND 85,000.00. Clearly, that offer was less than the judgment sum obtained by the Appellant. In consequence, Order 22A was not engaged and, as a successful party at trial, the Appellant was entitled to an order for costs of the trial.

4.. It is clear from the correspondence between the parties, contained in the Appellant's Bundle of Relevant Documents ("*ABRD*") that the 2nd Respondent had raised that issue with the Appellant following Judgment, which contention had been endorsed by the 1st Respondent but rejected by the Appellant.¹ On the other hand, it does not appear that the other multiple issues raised by the 2nd Respondent in its' submissions had been canvassed earlier with the other parties.

Costs in the Court of Appeal

5. The Appellant and the 2nd Respondent are agreed that, the Appellant's appeal having been dismissed, the Appellant is to pay the Respondents' costs of the appeal, to be taxed if not agreed.

Costs in the High Court

2nd Respondent's submissions

Offer to Settle for BND 185,000.00: 7 April 2023- Order 22A, Rules 9 (3) and 9(4)

6. Ms. Rajakanu, for the 2nd Respondent, submitted that an offer to settle the proceedings prior to the commencement of trial, and therefore prior to the "*disposal*" of the claim by the Judgment, was relevant to the determination of the appropriate orders to be made for costs. It was asserted that,²

"...the 2nd Respondent made the Offer to Settle on 7th April 2023 for BND 185,000.00, which remained open ('OTS'), Order 22A, Rules 9 (3) of the Rules of the Supreme Court".

7. Having regard to that OTS, the 2nd Respondent submitted that, taking into account interest and legal costs, "*...the judgment sum is less favourable than the OTS.*"³ In those circumstances, the 2nd Respondent contended that, pursuant to Order 22A, Rules 9 (3) and 9(4), whilst the

¹ ARBD, pages 74-79, 85 and 92-95.

² R's Submissions, paragraph 3.

³ R's Submissions, paragraph 9.

Appellant was entitled to costs on the standard basis up and until 7 April 2023, nevertheless the 2nd Respondent was entitled to costs on an indemnity basis from 7 April 2023.

8. Although no mention was made of Order 22A in the 2nd Respondent's solicitors' letter, dated 7 April 2023, offering to settle the proceedings, in a letter to the Appellant's solicitors, dated 9 April 2023, having referred to its letter, dated 7 April 2023, the 2nd Respondent's solicitors stated that, "...the without prejudice offer of BND 85,000.00 was made pursuant to Order 22A of the Rules of the Supreme Court."⁴

Appellant's legal costs: estimated

9. Of the Appellant's legal costs as at 7 April 2023, the 2nd Respondent asserted that they were, "...estimated at between BND 20,000.00 to BND 25,000.00."⁵ No analysis of or justification for the estimate was provided.

Appellant's stipulation of its legal costs

(i) 2 March 2023/ 5 April 2023-\$30,000

10. The 2nd Respondent invited the Court to note that in its' Calderbank Offer to the 2nd Respondent to settle the Appellant's claim, dated 2 March 2023, the Appellant had stipulated the sum of B\$185,000.00, stating that it was "(inclusive of interest-to-date and legal costs)". The offer was made, "...without prejudice to the Plaintiff maintaining and proceeding with his claim against the 1st Defendant".⁶ In a letter to the 2nd Respondent's solicitors, dated 5 April 2023, making a "FINAL CALDERBANK OFFER" of B\$250,000.00, the statement that the offer was inclusive of interest-to-date and legal costs was repeated, but also a "breakdown" of the offer was described by the Appellant's solicitors, including "Legal costs ... B\$30,000.00."⁷

(ii) 10 December 2019-\$45,000

11. By contrast, in the first Calderbank Offer made separately to the 1st and 2nd Respondents, dated 10 December 2019, the Appellant had made a 'global Calderbank offer' for a full and final settlement of the Appellant's claims on payment of \$809,373.46, including what was described as, "...discounted legal costs to date" of \$45,000."⁸The 2nd Respondent invited the Court to note that "no justification" for the stipulated amount of legal costs, at what was described as, "such an early stage", was provided.⁹

Offer of payment by the 1st Respondent's Insurers-National Insurance Company

12. Of the Appellant's submission that the 2nd Respondent's offer to the Appellant, dated 7 April 2023, was for BND 85,000.00 only, it was contended that:¹⁰

"The Appellant had already secured BND 100,000.00 from the 1st Respondent's insurer, i.e., National Insurance Company ("NIC")."

⁴ ABRD, page 44.

⁵ R's Submissions, paragraph 7.

⁶ ABRD, pages 25-26.

⁷ ABRD, pages 33-34, at paragraph 3.

⁸ ABRD, pages 13-24 at page 19.

⁹ R's Submissions, paragraph 6(ii).

¹⁰ R's Submissions, paragraph 15.

13. In that context, it was asserted that the 2nd Respondent's offer of BND 85,000.00 was the "*...balance amount which the 2nd Respondent calculated the Appellant was legally entitled to.*"¹¹

14. It was contended, as evidenced by correspondence with the 1st Respondent's former solicitors, Rudi Lee, Annie Kon & Associates, that "*...the Appellant was aware from as early as 6th January 2020, that the 1st Respondent's insurer would cover up to BND 100,000.00.*"¹²

15. In the Appellant's letter to the 2nd Respondent's solicitors, dated 5 April 2023, having set out what was described as a "*Final Calderbank Offer*" in the amount of BND 250,000.00, the Appellant was advised:¹³

"6. ...we are currently seeking confirmation from the 1st Defendant's insurers ('NIC') whether they are agreeable to pay the limits of the indemnity (i.e. the sum of B\$100,000.00) in the event that there is a court order/judgment/consent order obliging the 1st Defendant to jointly and severally pay under HCCS No. 24 of 2019. If NIC confirm and agree to the pay the Plaintiff, then your client shall only be paying for the balance of the said offer after taking into account the amount paid by NIC."

16. The 2nd Respondent submitted that the letter in reply to the Appellant's solicitors from Rudi Lee, Annie Kon & Associates, the former solicitors of the 1st Respondent, now acting only on behalf of the Insurer, dated 10 April 2023,¹⁴ "*...may be construed as an Order 22A offer.*" [Italics added.]¹⁵

17. In their letter, dated 5 April 2023 the Appellant's solicitors had asked Rudi Lee, Annie Kon & Associate:¹⁶

"...kindly please confirm that National Insurance will make payment up to B\$100,000.00 to the Plaintiff, on production of a court order/judgment/consent order obliging the 1st Defendant jointly and or severally pay to the Plaintiff for the action under HCCS No. 24 of 2019".

18. In their reply, dated 10 April 2023, Rudi Lee, Annie Kon & Associates stated:¹⁷

"Kindly be informed that our client has reserved payment up to BND 100,000.00 for the above matter and will only release the said amount subject upon production of Court Order/Judgment/Consent Order."

19. Of that reply, it was contended that:¹⁸

"...the terms were crystal clear. RL/NIC did not stipulate that the offer of BND 100,000.000 was only available if the Appellant proved its claim at BND 100,000.00 or above. They only wanted production of an order or consent order which the Appellant could have easily obtained if they settled"

¹¹ R's Submissions, paragraph 15.

¹² R's Submissions, paragraph 16.

¹³ ABRD, pages 33-34, at paragraph 6,

¹⁴ ABRD, page 45.

¹⁵ R's Submissions, paragraph 22.

¹⁶ ABRD, page 37.

¹⁷ ABRD, page 45,

¹⁸ R's Submissions, paragraph 19.

Appellant's Submissions

20. For the Appellant, Ms. Sabrina Tan took issue with the 2nd Respondent's assertion that there had been a valid OTS for \$185,000. The 2nd Respondent's OTS, dated 7 April 2023, was for \$85,000 only. The letter to the Appellant's solicitors from Rudi Lee, Annie Kon & Associates, dated 10 April 2023, was not a valid offer nor did it constitute an Order 22A offer.¹⁹

21. Secondly, given the provisions of Order 22A, Rule 10, the 2nd Respondent's offer was a 'non-conforming O22A offer'.²⁰ The costs consequences prescribed by Order 22A, Rule 9 (3) did not apply to an offer to settle, unless one or other of the two provisions of Rule 10 (b) applied, namely that the offer was made to settle:

- (i) the claim against all the defendants and to pay costs of any defendant who did not join in making the offer; or
- (ii) the offer was made by all the defendants to settle the claim against all the defendants and that the offer made them jointly and severally liable to the plaintiff for the whole of the offer.

OTS: "without any admission to liability"

22. Thirdly, given that the 2nd Respondent's OTS, dated 7 April 2023, was described to be, "*without any admission to liability*", it did not conform to the requirements of the Order 22A rules. In support of that submission, the Appellant referred to the commentary in the 2016 Edition of Singapore Civil Procedure, 22A/1/5, "*An offer also cannot be qualified as a non-admission of liability nor as an ex gratia lump-sum. See Colliers International Singapore Pte. Ltd. v Senkee Logistics Pte. Ltd. [2007] SDHC 18 at [119]*".²¹

Appellant's judgment: more favourable than an OTS of \$185,000

23. In the alternative, it was submitted that if, contrary to the Appellant's arguments, the Court was to find that there was an OTS in the sum of \$185,000 and that the rigours of Order 22A, Rule 9 as to indemnity costs applied, notwithstanding the provisions of Order 22A, Rule 10, the offer was, "*unclear, uncertain and ambiguous*", given that there was no stipulation as to the element of costs. The issue was whether the Appellant had obtained a judgment more favourable than the OTS.²² That required the amount of the Appellant's legal costs, at the date of the OTS, to be considered and taken into account. That calculation was necessary because the 2nd Respondent's OTS of 7 April 2023 of BND \$85,000 stated simply that it was, "*inclusive of interest and cost*", making no separate stipulation of legal costs. Similarly, if the letter to the Appellant from Rudi Lee, Annie Kon & Associates was construed to be an Order 22A offer of BND \$100,000, it made no stipulation as to the element of legal costs contain therein.

24. The Appellant contended that its' legal costs at that date "*...far exceeded the sum of \$24,287.14.*"²³ The latter amount was the difference between an OTS of \$185,000 and the judgment sum of BND 124,529.92, with interest, calculated as at 7 April 2023 to be a total of \$160,712.86. Given that the trial of the action began on 10 April 2023, it followed that, "*...much preparation for trial had been done and substantial costs had already been incurred.*"²⁴

¹⁹ A's Submissions, paragraphs 3 and 4.

²⁰ A's Submissions, paragraphs 17-19.

²¹ A's Submissions, paragraph 20 (vi).

²² A's Submissions, paragraph 20.

²³ A's Submissions, paragraph 24 (iii).

²⁴ A's Submissions, paragraph 24 (v).

25. In the result, the Appellant invited the Court to conclude that the Appellant had obtained a judgment, “...more favourable than the offers made by the Respondents/Defendants and costs consequences of O. 22A is not applicable at all in this case.”²⁵

Late offer

26. Finally, it was submitted that having regard to the ‘lateness’ of the OTS, three days before the commencement of the trial, it was reasonable for the Appellant not to have accepted the offer, so that the Appellant ought not be penalised in costs. The Appellant had been put in a, “difficult and embarrassing position”, at a time at which the Appellant was preparing for trial. [Dennis Matthew Harte v Tan Hun Hoe & Anor [2001] SDHC 19.]²⁶

The 2nd Respondent’s further Submissions

Offer to Settle: “without any admission to liability”

27. Of the Appellant’s contention that the inclusion of a statement in the OTS of 7 April 2023 that it was made, “without any admission to liability”, rendered the offer non-compliant with Order 22A, Ms. Rajakanu pointed out that, in Singapore, a specific Form for making an Order 22A Offer, Form 33, had been stipulated, whereas there was no such form in Brunei.²⁷ Form 33 did not prohibit such a qualification in an Offer to Settle. It stated simply that,

“The (identify party) offers to settle this proceeding (or the following claims in this proceeding) on the following terms: (set out terms in a consecutively numbered paragraphs).”

28. Further, the statements made by the judge in *Colliers International (Singapore)* had not been followed in the subsequent case in the High Court in Singapore in *Goh Kok Liang v GYP Properties Ltd and Anor* [2020] SGHC 53. In that case, having been referred to the judgment in *Colliers International (Singapore)*, Chua Lee Ming, J. Said that he did not agree, “...that an OTS under O 22A cannot be made without an admission of liability... there is nothing in Form 33 that prohibits such a qualification.”²⁸ The 2nd Respondent’s offer, dated 7 April 2023, was, “...valid and conforms to the Order 22A rules.”²⁹

Relevant factors: judgment more favourable than OTS

29. Ms. Rajakanu submitted that, if the Court accepted the stipulation that the Appellant’s legal costs were BND 30,000.00, as described in the letter to the 2nd Respondent, dated 5 April 2023, it followed that the judgment sum obtained by the Appellant, including interest and costs, was a total of BND 190,690.91. That amount was only BND 5,690.91 more than the OTS of BND 185,000.00 and was to be regarded as ‘de minimis’ in excess of the OTS. In determining whether the judgment sum was more favourable than the OTS regard was to be had to the fact that, if accepted, the Appellant would have enjoyed the benefit at or around the time of the OTS and not later only at the time of judgment. (See the judgment of Chan Sek Keong CJ in *CCM Industrial Pte, Ltd, v Uniquetech Pte Ltd.* [2008] SGHC 216 at paragraph 40). Ms. Rajakanu submitted that, having regard to those factors, the judgment obtained by the Appellant was not more favourable than the 2nd Respondent’s OTS.³⁰

²⁵ A’s Submissions, paragraph 25.

²⁶ A’s Submissions, paragraphs 20(v), 21 (iii) and 26.

²⁷ R’s Submissions, paragraph 21.

²⁸ R’s Submissions, paragraph 33.

²⁹ R’s Submissions, paragraph 35.

³⁰ R’s Submissions, paragraph 46.

Late offer

30. Ms. Rajakanu invited the Court to reject the Appellant’s submission that the Appellant was embarrassed by the late stage at which the 2nd Respondent had made the OTS on 7 April 2023, given that the trial was fixed to commence on 10 April 2023. The Appellant had not made its much reduced offer to settle the proceedings against the 2nd Respondent for BND 185,000.00 until 2 March 2023. On and between 3 and 7 April 2023 the 2nd Respondent had made four offers to the Appellant. They had been considered and rejected in sequence by the Appellant, as being “*too low*”. No complaint was made that, given the “*lateness*” of the offers, the Appellant was unable to consider them.³¹

Discount: Appellant’s contributory negligence and rejection of some of Appellant’s claims

31. Ms. Rajakanu submitted that, having regard to Order 59, Rule 3(2), the Court had power to make an order other than that costs were to follow the event, if satisfied that some other order should be made as to the whole or any part of the costs. She suggested that, having regard to the finding of the Judge of the contested issue of the Appellant’s contributory negligence and his rejection of several heads of the Appellant’s claims, the Court ought to order, “...*a 40% discount on the Appellant’s cost in the High Court or that each party bears their own cost.*”³²

A consideration of the submissions

Offers to settle claims in the proceedings

32. The Appellant had made a series of time-limited Calderbank Offers:

- 10 December 2019, a ‘global Calderbank offer’ to the 1st and 2nd Defendants, by separate letters with identical texts, of B\$809,373.46, “*inclusive of the general and special damages, interest and legal costs*”, until 24 December 2019;³³
- 2 March 2023, a Calderbank offer “(inclusive of interest-to-date legal cost)” to the 2nd Defendant of B\$185,000.00 until 4:00 p.m. on 9 March 2023; the offer was made, “...*without prejudice to the Plaintiff maintaining and proceeding with his claim against the 1st Defendant*”;³⁴
- 4 April 2023-a renewal of the offer to the 2nd Defendant of 2 March 2023 until 12:00 p.m. on 5 April 2023, again stated to be without prejudice to the Appellant maintaining and proceeding with his claim against the 1st Respondent; together with a rejection of the 2nd Respondent’s offer of BND \$55,000, dated 3 April 2023 and repeated on 4 April 2023;³⁵
- 5 April 2023, a ‘FINAL CALDERBANK OFFER’, “(inclusive of interest-to-date and legal costs)” of B\$250,000 until 2:00 p.m. on 6 April 2023; together with a rejection of the 2nd Defendant’s offer of B\$65,000.00; in a second letter dated 5 April 2023, the Appellant rejected the 2nd Respondent’s offer of B\$75,000 .00;³⁶
- 7 April 2023, the 2nd Respondent was advised that the Appellant maintained its’ offer of 5 April 2023 until 5:00 p.m. 7 April 2023; together with a rejection of the 2nd Respondent’s offer, dated 7 April 2023, of B\$85,000 .00.³⁷

³¹ R’s Submissions, paragraphs 61.

³² R’s Submissions, paragraphs 74-75.

³³ ABRD, pages 1-24.

³⁴ ABRD, pages 25-26.

³⁵ ABRD, page 29-30.

³⁶ ABRD, pages 33-34 and 36.

³⁷ ABRD, pages 41-42.

33. For its' part, the 2nd Respondent made a series of offers in letters to the Appellant in settlement of the Appellant's claim against the 2nd Respondent, each stated to be "*inclusive of interest and cost*" and "*without any admission to (any) liability*":³⁸

- 3 April 2023, BND 55,000.00, in "*full and final settlement*" of the Appellant's claim against the 2nd Respondent, requesting a response by noon on 4 April 2023;
- 4 April 2023 BND 65,000.00, requesting a response by noon on 5 April 2023;
- 5 April 2023 for BND 75,000.00; requesting a response by noon on 6 April 2023; and
- 7 April 2023 for BND 85,000.00, requesting a response by "*close of office today*".

34. In the 2nd Respondent's letter to the Appellant, dated 4 April 2023, the 2nd Respondent explained that the basis of its' offer, including "*That your client is securing the sum of BND 100 K from the 1st Defendant.*"³⁹

35. In its letter in reply to the 2nd Respondent, dated 5 April 2023, having stated that the Appellant rejected the 2nd Respondent's offer of BND \$65,000.00, the Appellant addressed the assertion that the Appellant, "*... is securing the sum of BND 100 K from the 1st Defendant*", and advised, as noted earlier, that:⁴⁰

"6. ...we are currently seeking confirmation from the 1st Defendant's insurers ('NIC') whether they are agreeable to pay the limit of the indemnity (i.e. B \$100,000 .00) in the event that there is a court order/judgment/consent order obliging the 1st Defendant to jointly and severally pay under HCCS No. 24 of 2019. If NIC confirm and agree to the pay the Plaintiff, then your client shall only be paying for the balance of the said offer after taking into account the amount paid by NIC."

36. In a letter to the 2nd Respondent, dated 7 April 2023 the Appellant responded to the 2nd Respondent's complaints that the offer to settle for BND \$250,000 .00, dated 5 April 2023, was an increase over the original settlement offer of BND 185,000.00 by referring to and quoting verbatim paragraph 6 of its' letter, dated 5 April 2023, quoted above, and asserted:⁴¹

"3. Therefore if NIC agrees to pay their policy limit of B\$100,000.00 then your client will only have to pay the sum of B\$150,000 (i.e. B\$250,000 (the said offer) less B\$100,000) which is less the offer of B\$185,000.00 initially offered. We trust that it is now understood that the said offer is less than the initial amount offered."

10 April 2023: Rudi Lee, Annie Kon & Associates

37. In a letter to the Appellant's solicitors, dated 10 April 2023, Rudi Lee, Annie Kon & Associates responded to the Appellant's solicitors' enquiry, dated 5 April 2023 as to the position taken by National Insurance. The initial enquiry, dated 5 April 2023, was made by the Appellant on the basis that:⁴²

"Our records show that you represented National Insurance for the above-mentioned matter up until your discharge and that your firm applied for a discharge as the Plaintiff's claim exceeded the sum of B\$100,000.00 which is the maximum limit of National Insurance indemnity to the Defendant."

38. As noted earlier, the Appellant's solicitors had sought confirmation that:⁴³

³⁸ ABRD, pages 27, 31-32, 35 and 40.

³⁹ ABRD, pages 31-32 at paragraph 3 (vii).

⁴⁰ ABRD, pages 33-34 at paragraph 6.

⁴¹ ABRD, pages 41-42 at paragraph 3.

⁴² ABRD. Pages 37 at paragraph 2.

⁴³ ABRD, page 37 at paragraph 4.

“National Insurance will make payment up to \$100,000.00 to the Plaintiff upon production of a court order/judgment/consent order obliging the 1st Defendant jointly and or severally pay to the plaintiff for the action under HCCS No, 24 of 2019.”

39. In their response, Rudi Lee, Annie Kon & Associates stated simply: ⁴⁴

“...our client has reserved payment up to BND 100,000.00 for the above matter and will only release the said amount subject upon production of Court Order/Judgment/Consent Order.”

Clearly, having regard to the events described subsequently, the reference to, “*our client*” was to National Insurance.

Rudi Lee, Annie Kon & Associate’s representation of 1st Respondent

(i) 27 May 2019-Statement of Defence

40. On 27 May 2019, a Statement of Defence on behalf of the 1st Respondent had been filed with the Court by Rudi Lee, Annie Kon & Associates. Whilst it was admitted that the Appellant was employed by the 1st Respondent, it was denied that the 1st Respondent was culpable of any negligence towards him.⁴⁵

(ii) 17 February 2020-Discharge from representing 1st Defendant

41. On their application, Rudi Lee, Annie Kon & Associates had been discharged from being the solicitors of the 1st Defendant by the Order of Senior Registrar Zelda Skinner, dated 17 February 2020, a copy of which filed Order was provided to the Appellant’s solicitors by Rudi Lee, Annie Kon & Associates in their letter, dated 17 February 2020.⁴⁶

42. The filed copy of the Affidavit in Support of the application by Shamila Subrananiam, an advocate and solicitor of the firm, together with a filed copy of the Summons for Withdrawal was provided to the Appellant’s solicitors by Rudi Lee, Annie Kon & Associates in their letter, dated 6 January 2020, in advance of the hearing of the Summons on 13 January 2020.⁴⁷ The Affidavit stated that, “*Our firm represent ‘National Insurance Company Berhad’ in this matter*”, with whom the Appellant held a Workmen Compensation Policy the Common Law Limit of which was BND 100,000.00.⁴⁸ It was noted that on 10 December 2019, the firm had received an “*assessment of damages*” from the solicitors representing the Appellant which was, “*...above 100,000.00 BND, above the common law limit.*”⁴⁹

43. In fact, as noted earlier, the Appellant’s solicitors’ letter, dated 10 December 2019, made a claim for the Appellant against the 1st and 2nd Respondents of BND 806,373.46.

44. In those circumstances, it was asserted that it was the view of National Insurance that, “*...we are unable to negotiated (sic) settlement within the common law limit*” and that Rudi Lee, Annie Kon & Associates had been instructed to make the application to be discharged from representing the 1st Respondent.

45. Exhibited to the Affidavit was a letter to the 1st Respondent, dated 11 December 2019, advising the 1st Respondent of the common law limit of BND 100,000.00, of the receipt of the assessment of damages in excess of that limit, and stating that the 1st Respondent would have

⁴⁴ ABRD, page 44 at paragraph 2.

⁴⁵ ROA, pages 676-679.

⁴⁶ ROA, pages 277-279.

⁴⁷ ROA, pages 638-646.

⁴⁸ ROA, pages 638-646.

⁴⁹ ABRD, pages 38-39 at paragraph 5.

to bear the excess. The 1st Respondent was informed that the firm was, “...filing the application to discharge ourselves from acting for you” and advised, “...to engage another legal firm to act for you in this matter.”⁵⁰

1st Respondent’s participation in the proceedings

46. Following the discharge of Rudi Lee, Annie Kon & Associates from representing the 1st Respondent, the latter was unrepresented, but participated in person in the proceedings by attendance at hearings, including at the trial itself.

Order 22A: Offer to settle

47. Order 22A of the Rules of the Supreme Court’s makes provision for offers to settle proceedings between the parties. O. 22A, r.1 provides that:

“A party in any proceedings may serve on any other party an offer to settle any one or more of the claims in the proceedings on the terms specified in the offer to settle.”

48. In contrast to the similar provisions and ancillary forms provided by the Rules of the Supreme Court in Singapore, in Brunei no form is stipulated to be used for the making of such an offer.

Acceptance

49. Order 22A, r .3(4) provides that,:

“Where an offer does not specify a time, for acceptance, it may be accepted at any time before the Court disposes of the matter in respect of which it is made.”

50. Although the 2nd Respondent’s offer to the Appellant, dated 7 April 2023, of BND85,000.00 sought a response before “close of office” that day, it did not stipulate any expiry of the time for acceptance.

51. We are satisfied that the fact that the 2nd Respondent’s offer, dated 7 April 2023, was stated to be “without any admission to liability”, does not prevent the offer being considered as one that fell within O. 22A, r.1. There is nothing in that rule that qualifies the basis on which an offer to settle proceedings may be made or its’ terms. Accordingly, there is no reason why an offer to settle proceedings cannot be made without an admission of liability.

52. Similarly, we are satisfied that the fact that the 2nd Respondent made a series of offers to the Appellant to settle the proceedings on and between 3 to 7 April 2023, shortly before the trial fixed to commence on 10 April 2023, did not embarrass or compromise the Appellant. That much is made abundantly clear by the contemporaneous exchange of correspondence between the parties, in which no such complaint was made by the Appellant.

Conclusion

53. Accordingly, pursuant to O.22A, r.3(4), the 2nd Respondent’s offer to the Appellant, dated 7 April 2023, for BND 85,000.00 was a valid offer available for acceptance at any time before the disposal of the matter by the Court by the Judgment, dated 30 May 2024.

Costs: judgment no more favourable than the offer to settle

54. O. 22A, r. 9 provides that:

“(3) where an offer to settle made by a defendant-

⁵⁰ ROA, page 646.

(a) is not withdrawn and has not expired before the disposal of the claim in respect of which the offer to settle is made; and

(b) is not accepted by the plaintiff, and the plaintiff obtains judgment no more favourable the terms of the offer to settle,

the plaintiff is entitled to costs on the standard basis to the date the offer was served and the defendant is to entitled costs on the indemnity basis from that date, unless the Court orders otherwise.

(4) (a) Any interest awarded in respect of the period before service of the offer to settle is to be considered by the Court in determining whether the plaintiff's judgement is more favourable than the terms of the offer to settle.

(b) Any interest awarded in respect of the period after service of the offer to settle is not to be considered by the court in determining whether the plaintiff's judgment is more favourable than the terms of the offer to settle."

55. O 22A, r. 10 provides that:

"Where there are 2 or more defendants, the plaintiff may offer to settle with any defendant and any defendant may offer to settle with the plaintiff, but where the defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of the claim and rights of contribution or indemnity may exist between the defendants, costs consequences prescribed by rule 9 do not apply to an offer to settle unless-

...

(b) in the case of an offer made to the plaintiff-

(i) the offer is an offer to settle the plaintiff's claim against all the defendants, and to pay the costs of any defendant who does not join in making the offer; or

(ii) the offer is made by all the defendants and is an offer to settle the claim against all the defendants, and, by the terms of the offer, they are made jointly and severally liable to the plaintiff for the whole of the offer."

The issues

56. The first issue is whether the provisions of Order 22A, Rule 9 are applicable. The offer, dated 7 April 2023, made by the 2nd Respondent to the Appellant stated on its face that it was for BND 85,000.00 only. The 2nd Respondent did not make, "... *the Offer to Settle on 7th April 2023 for BND 185,000.00.*" There is no dispute that the judgment obtained by the Appellant against the 1st and 2nd Respondents, together with interest only as at that date, was a total of BND 160,712.86. For purposes of determining whether the judgment obtained by the Appellant was "*not more favourable*" than the OTS, it was necessary to calculate and add to the sum of BND 160,712.86 the appropriate element of the Appellant's costs. Clearly, in monetary terms the 2nd Respondent offer alone was very substantially less than the judgment obtained by the Appellant.

Separate offer to settle the proceedings for BND \$100,000

57. Crucial to the 2nd Respondent's primary submission, is the contention that there was in existence an additional separate offer to settle the proceedings for BND \$100,000, so that in combination the two offers to settle the proceedings were for a total of BND 185,000.00. The existence of that offer was said to be inferred from the letter to the Appellant, dated 10 April 2023, of Rudi Lee, Annie Kon & Associates, which, "...*may be construed as an Order 22A*

*offer.*⁵¹ Of course, that was the first day of the trial, at which the 1st Respondent appeared, but was unrepresented. The 1st Respondent's liability to the Appellant for losses and damages was very much an issue at trial. At that date, Rudi Lee, Annie Kon & Associates did not represent the 1st Respondent and had not done so for over three years.

58. It is clear that the response of Rudi Lee, Annie Kon & Associates, dated 10 April 2023, was not an offer to the Appellant to settle the proceedings on behalf of the 1st Respondent. It was not an offer made by "*a defendant*" to the proceedings. It was not an offer made by an Insurer of a defendant in the proceedings. Rather, it was no more than a confirmation that, as the 1st Respondent's Insurer, National Insurance had available funds, up to a limit of BND \$100,000.00. which had been "*reserved*", if required to meet an order of the Court against the 1st Respondent. Release of the funds was contingent upon an order of the Court: such funds would only be released, "*...upon production of Court Order/Judgment/Consent Order*". Obviously, that was a reference to an order of the Court, arising from a finding/acceptance by the Court that the 1st Respondent was liable to the Appellant for damages and losses, up to a limit of BND \$100,000.00. There was no offer to consent to the making of that order.

59. On its face, the Rudi Lee, Annie Kon & Associates' letter, dated 10 April 2023, was copied to "*client*", namely National Insurance. It was not even copied to the 1st Respondent.

Conclusion

60. Clearly, in those circumstances the judgment obtained by the Appellant, BND 124, 529.92, by itself and even without the addition of interest and costs, was substantially more favourable than the OTS of the Respondent of BND85,000 .00. The total judgment with interest, calculated as at 7 April 2023, is BND160,712.86. Having regard to the '*favourability requirement*', the calculation of costs is immaterial. The provisions of O. 22A, r. 9 (3) and 9 (4) do not apply.

61. We are satisfied that as the successful party at trial, the Appellant is entitled to an order of the costs of the trial.

Discount of costs

62. As noted earlier, the 2nd Respondent submitted that the Court ought to order a 40% discount in the costs to be awarded to the Appellant, in support of which submission reference was made to the judgment of the Court of Appeal in Singapore in *NTUC Foodfare Co-operative Ltd. V SIA Engineering Co Ltd and Yap Tee Chuan*, in which a discounted costs order was made. As pointed out earlier, the written submissions made by the Appellant and 2nd Respondent were filed sequentially. The issue of such a discount of costs was raised and canvassed only in the 2nd Respondent's submissions. In consequence, we do not have any submissions on that issue from the Appellant. It does not appear from the documents in the ABRD that the issue was canvassed in correspondence between the parties after Judgment was handed down. In those circumstances, it would not be appropriate for this Court to deal with the matter now. Rather, we direct the parties to file with the Court within seven days from this Judgement such submissions as they wish to file on the issue of a discount of the Appellant's costs, limited to 1,500 words.

Conclusion

63. Subject to the resolution of that issue, we order that the 1st and 2nd Respondents pay the Appellant's costs at trial on the standard basis, to be taxed if not agreed, and that the Appellant

⁵¹ R's Submissions, paragraph 22.

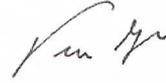
pay the 1st and 2nd Respondent's costs of the appeal on the standard basis, to be taxed if not agreed.



STEVEN CHONG, C.J.



MICHAEL LUNN, J.A.



SIR PETER GROSS, J.A.