

IN THE INTERMEDIATE COURT OF BRUNEI DARUSSALAM

HOLDEN AT BANDAR SERI BEGAWAN

ICCS/117/2020

Between

Md Ishak Hasim Miah

...

Plaintiff

And

Rosnani Binti Jaman

[sued as the sole proprietor trading under the name and style of

Syarikat Perusahaan Zaiba & Adik-Adik]

...

1st Defendant

Arafat Alam Joy Sdn Bhd

...

2nd Defendant

Sivli Sdn Bhd

...

3rd Defendant

Ruling on 3rd Defendant's Appeal to Judge in Chambers

Dated 11th June 2026

Hazarena bte POKSJ DP Hj Hurairah

4th August 2026

Civil Procedure — Rules of the Supreme Court — Order 21 rule 2(6) — Automatic discontinuance — Default judgment — Interlocutory judgment — Assessment of damages — Multiple defendants — Continuing proceedings — Step or proceeding in the action — Construction of Rules — Order 37 rule 3 — Whether procedural steps taken against remaining defendant constitute "any step or proceeding in the action" — Interaction between Order 21 rule 2(6) and Order 37 rule 3 — Extension of time under Order 21 rule 2(8).

Cases Cited:

- *Tan Kim Seng v Ibrahim Victor Adam* [2003] SGCA 49

- *Woon Tek Seng and another v V Jayaraman a/l V A Vellasamy* [2008] SGHC 38
- *Suparni v Metrobina & partners Sdn Bhd and 2 Others* (Civil Appeal COACV 14/2024)
- *Ak Muhd Abd Hafiz bin Pengiran Zainal v Awang Lutfi bin Haji Awang Lamat & Another* (Civil Appeal COACV 17/2024)
- *Evans v Bartlam* [1937] AC 473

Summary of Facts

1. This appeal arises from the Senior Registrar's decision dated 11 June 2026 finding that the Plaintiff's claim against the 3rd Defendant had been automatically discontinued pursuant to Order 21 rule 2(6) of the Rules of the Supreme Court. The Plaintiff has appealed against that decision to the Judge in Chambers.
2. The Plaintiff commenced this action in negligence against three defendants arising out of the same incident. The 1st Defendant entered an appearance and filed a defence, thereby contesting liability. The 2nd and 3rd Defendants failed to enter appearances and judgments in default were subsequently entered against them on 27th July 2021 (3rd defendant) and 18th October 2021 (2nd defendant). However, the Plaintiff did not proceed immediately with an assessment of damages against either defaulting defendant because the proceedings against the 1st Defendant continued towards trial. Instead, the Plaintiff filed a List of Documents (12th October 2022) and the matter was set down for trial so that the remaining issues could be determined together.
3. The 3rd Defendant thereafter applied for a declaration that the Plaintiff's claim against it had been deemed discontinued under Order 21 rule 2(6), contending that no step had been taken against the 3rd Defendant for more than one year after judgment in default had been entered. The Senior Registrar accepted that argument and held that the Plaintiff's claim against the 3rd Defendant had become dormant because no steps had been taken towards assessing damages. It is that decision which is now challenged in this appeal.

Plaintiff's Arguments

4. The Plaintiff submits that the Senior Registrar erred in law by interpreting Order 21 rule 2(6) as requiring procedural steps to be taken separately against each defendant. The Plaintiff argues that the rule is directed at inactivity in the action as a whole rather than inactivity in respect of an individual defendant. Since the proceedings against the 1st Defendant remained active throughout the relevant period, there was never any complete inactivity in the action capable of triggering automatic discontinuance.
5. The Plaintiff further submits that there was only one action before the Court because the proceedings were commenced under a single writ and a single suit number. It is argued that the Rules contemplate discontinuance of an entire action rather than the discontinuance of only part of an action against one defendant. Had the Rules intended to permit partial discontinuance, they would have expressly

provided for it, as they have done elsewhere in Order 21. The Plaintiff therefore contends that the Registrar wrongly treated the claim against the 3rd Defendant as if it were a separate proceeding.

6. The Plaintiff also argues that the Registrar placed undue reliance upon ***Tan Kim Seng v Ibrahim Victor Adam***. That case concerned a single defendant against whom interlocutory judgment had already been entered, leaving assessment of damages as the only remaining step before final judgment. In contrast, the present case involves three defendants, and the litigation against the 1st Defendant continued actively throughout. Accordingly, the Plaintiff submits that the action itself never became dormant and that ***Tan Kim Seng*** is distinguishable on its facts.
7. The Plaintiff also relies on Order 37 rule 3 of the Rules of the Supreme Court. It is submitted that where default judgment has been entered against one defendant, but the action continues against others, the Rules expressly contemplate that damages will ordinarily be assessed at the trial unless the Court Orders otherwise. In those circumstances, the Plaintiff argues that it was entirely proper not to proceed immediately with an assessment of damages against the 3rd Defendant, as the Rules envisage that assessment would occur together with the trial against the remaining defendant.
8. The Plaintiff further submits that the claim is founded upon joint and several liability arising from the same alleged tortious conduct. Proceeding immediately to assess damages against the 3rd Defendant while liability remained contested by the 1st Defendant would have resulted in duplicate hearings, repeated evidence, increased costs and potentially inconsistent findings on damages. It is therefore said that postponing the assessment until trial promoted both efficiency and consistency.
9. Finally, the Plaintiff argues that Order 21 rule 2(8), which allows the Court to extend time before automatic discontinuance occurs, was never applied because Order 21 rule 2(6) had not been triggered in the first place. Consequently, there was no obligation upon the Plaintiff to seek an extension of time.

3rd Defendant's Arguments

10. The 3rd Defendant submits that the Registrar correctly interpreted and applied Order 21 rule 2(6). It argues that a judgment in default with damages to be assessed is not a final judgment because further procedural steps remain necessary before an enforceable judgment can be obtained. Accordingly, the one-year period under Order 21 rule 2(6) continues to run following the entry of default judgment.
11. The 3rd Defendant submits that, once judgment in default had been entered against it, the only remaining step in the Plaintiff's claim against the 3rd Defendant was an assessment of damages. No such step was taken within one year. Instead, all subsequent procedural activity related exclusively to the Plaintiff's continuing dispute with the 1st Defendant. Those steps did not advance the Plaintiff's claim against the 3rd Defendant towards final judgment and therefore could not prevent automatic discontinuance.
12. The 3rd Defendant further argues that proceedings against the 1st Defendant were legally separate for the purposes of Order 21 rule 2(6). Although all claims appeared within the same writ, the Plaintiff's causes of action against each defendant remained distinct. Consequently, procedural steps

directed solely at one defendant could not preserve a claim against another defendant that had otherwise become dormant.

13. The 3rd Defendant also contends that the Plaintiff could have protected its position by applying under Order 21 rule 2(8) for an extension of time before the expiry of the one-year period. Since no such application was made, the Plaintiff cannot now avoid the consequences of automatic discontinuance.
14. Finally, the 3rd Defendant submits that the purpose of Order 21 rule 2(6) is to ensure that litigation proceeds expeditiously and that plaintiffs continue to pursue claims diligently. Allowing a plaintiff to leave assessment proceedings outstanding indefinitely after obtaining default judgment would undermine the purpose of the Rule and the efficient administration of justice.

Case Law Relied Upon

15. The Plaintiff relies upon ***Evans v Bartlam [1937] AC 473*** for the proposition that an appeal to the Judge in Chambers is a rehearing and that the Judge exercises an unfettered discretion rather than merely reviewing the Registrar's exercise of discretion. The Plaintiff also relies upon the definitions of "action" and "discontinuance" contained in *Atkin's Court Forms* to support the submission that there was only one action before the Court and that discontinuance ordinarily refers to the abandonment of an entire action rather than only part of it.
16. The Plaintiff further relies upon Order 37 rule 3 of the Rules of the Supreme Court, which provides that where judgment in default has been entered against one defendant and the action proceeds against others, damages are ordinarily to be assessed at the trial unless the Court otherwise Orders. The Plaintiff submits that this provision demonstrates that no separate assessment of damages was required immediately after default judgment. The Plaintiff also cites ***Ak Muhd Abd Hafiz bin Pg Zainal v Awg Lutfi bin Haji Awang Lamat & Anor*** for the proposition that the automatic discontinuance regime is intended to promote efficient case management and prevent dormant litigation rather than compel unnecessary procedural steps.
17. The 3rd Defendant principally relies upon ***Tan Kim Seng v Ibrahim Victor Adam [2003] SGCA 49***, in which the Singapore Court of Appeal held that Order 21 rule 2(6) continues to apply after interlocutory judgment because further steps remain necessary before an enforceable judgment is obtained. The 3rd Defendant also relies upon ***Woon Tek Seng & Anor v V Jayaraman [2008] SGHC 38***, which affirmed that automatic discontinuance remains applicable until a final enforceable judgment has been obtained. In addition, the 3rd Defendant refers to the commentary in the *Singapore Civil Procedure* to support the propositions that only steps advancing the relevant action count for the purposes of Order 21 rule 2(6), that concurrent proceedings do not interrupt the running of time, and that steps taken after the expiry of the one-year period cannot revive an action already deemed discontinued.
18. Finally, the case of ***Suparni v Metrobina & partners Sdn Bhd and 2 Others (Civil Appeal COACV 14/2024)*** supports the general proposition that Order 21 rule 2(6) continues to apply notwithstanding that a matter has been set down for trial and that parties remain responsible for prosecuting their litigation diligently.

Issues to be Determined

Issue 1 – Does Order 21 continue after default/interlocutory judgment? and the Applicability of *Tan Kim Seng*

19. Much reliance has been put on this case. The Court must therefore determine whether *Tan Kim Seng* is applicable to the present case, or whether it is distinguishable because that decision involved a single defendant whereas the present proceedings involve multiple defendants with continuing litigation against one of them.
20. In my view, *Tan Kim Seng* is clearly applicable on one issue, but it is arguably distinguishable on another.
21. The case establishes that O.21 r.2(6) continues to apply after interlocutory/default judgment. There is little room for dispute that ***Tan Kim Seng v Ibrahim Victor Adam* [2003] SGCA 49** is directly applicable on this point. Applying the principles of the case, if the Plaintiff argues that Order 21 rule 2(6) cannot apply after default judgment, that submission is excluded by the ***Tan Kim Seng* case**. The case also emphasised that responsibility for moving litigation forward rests primarily upon the parties and is not displaced by the Court's case management powers.
22. However *Tan Kim Seng* is distinguishable. The most obvious distinction is that the issue involved a single plaintiff and a single defendant. Once interlocutory judgment had been entered, the only remaining step in the litigation was the assessment of damages. There were no continuing proceedings against any other party.
23. By contrast, the present appeal concerns three defendants. Although judgment in default had been entered against the 3rd Defendant, the Plaintiff's claim against the 1st Defendant remained actively contested. This is where the issue therefore becomes whether those continuing proceedings constitute "steps or proceedings in the action" for the purposes of Order 21 rule 2(6). That question did not arise in *Tan Kim Seng*.

Issue 2 – Does Order 21 continue after default judgment and what is the effect of Order 37 r.3?

24. *Tan Kim Seng v Ibrahim Victor Adam* [2003] SGCA 49 appears to be the leading authority on this issue. The precise issue determined before the Singapore Court of Appeal was whether Order 21 rule 2(6) applies where interlocutory judgment has been entered against the defendant but damages have yet to be assessed. The Court answered the question in the affirmative and held that Order 21 rule 2(6) continues to apply because interlocutory judgment does not finally dispose of the proceedings. Until damages are assessed, further procedural steps remain necessary before an enforceable judgment can be obtained. Consequently, the plaintiff remains under an obligation to pursue the action diligently.
25. Several important principles arise from this case. First, interlocutory judgment determines only liability. It leaves the issue of damages outstanding and therefore does not conclude the action. Secondly, until assessment is completed, the case remains an outstanding matter on the court's docket. Thirdly, permitting plaintiffs to leave assessment proceedings outstanding indefinitely would undermine the purpose of Order 21, which is to ensure that litigation proceeds expeditiously.

26. The Court stated "O 21 r 2(6) would apply to any case where steps are still required to be taken to obtain a judgment which is enforceable." That statement has since become the governing principle.
27. The Singapore authority serve as guidance and are uniform to our own Order 21 rule 2(6) in that the Order 21 rule 2(6) continues to apply where a default or interlocutory judgment has been entered but damages remain to be assessed. This means that the plaintiff must take the next step to file in the Notice of Assessment of Damages or Notice of Intention to proceed against the 3rd Defendant before automatic discontinuance kicks in.
28. The Court must also determine the proper effect of Order 37 rule 3 and whether that provision permits a plaintiff to defer assessment of damages against a defaulting defendant until the trial of the remaining defendants without engaging the automatic discontinuance provisions.
29. The answer appears to be in the affirmative. Order 37 rule 3 provides, in substance, that where judgment has been entered against one or more defendants but the action proceeds against the remaining defendants, damages are ordinarily assessed at the trial unless the Court otherwise Orders.
30. This procedural rule serves obvious practical purposes. It avoids duplicate hearings, prevents inconsistent findings on quantum, and promotes efficient case management where issues of causation and damages overlap. Therefore, Order 37 r.3 appears to contemplate a deliberate postponement of assessment.
31. Order 37 rule 3 undoubtedly contemplates that assessment of damages may be deferred until the trial of the remaining defendants. The question is whether procedural steps taken in preparation for that trial constitute "a step or proceeding in the action" for the purposes of Order 21 rule 2(6), notwithstanding that no separate assessment proceedings have yet been commenced against the 2nd and 3rd defendants.
32. Order 21 and Order 37 should be construed harmoniously so that each provision is given effect. Order 37 rule 3 does not create an exception to, or suspend the operation of, Order 21 rule 2(6). Rather, it establishes the ordinary procedural course where judgment has been entered against one or more defendants, but the action continues against others, namely that the assessment of damages should ordinarily await the trial. In those circumstances, the postponement of assessment itself cannot constitute inactivity. The relevant issue remains whether, during the period of postponement contemplated by Order 37 rule 3, there has been "any step or proceeding in the action" within the meaning of Order 21 rule 2(6). Where the procedural steps taken in preparing the action for trial objectively advance the outstanding assessment of damages against the defendant against whom default judgment has been entered, those steps may satisfy the requirements of Order 21 rule 2(6), notwithstanding that no separate assessment proceedings have yet been commenced.
33. I therefore find Order 37 rule 3 does not suspend or displace Order 21 rule 2(6). Rather, it provides the procedural context within which the Court must determine whether the steps taken in preparing the action for trial objectively advanced the outstanding assessment against the defaulting defendant.

Issue 3 – What constitutes "any step or proceeding in the action" where there are multiple defendants?

34. The principal issue for determination is whether Order 21 rule 2(6) requires the Court to examine inactivity in the action as a whole or whether it requires the Court to consider inactivity in respect of each individual claim against each defendant.
35. If the latter interpretation is correct, the Court must determine whether the Plaintiff failed to take any relevant procedural step against the 3rd Defendant within one year after judgment in default was entered, such that the claim was automatically discontinued.
36. The Plaintiff's position is that the wording of Order 21 refers to "the action". Order 21 rule 2(6) provides that an action is deemed discontinued if:
 - a. "...no party to the action has taken any step or proceeding in the action for more than one year..."
37. The repeated use of the words "the action" is significant.
38. The rule does not refer to either "the claim", "the cause of action", "the proceedings against that defendant" or even "the proceedings for assessment." Ordinarily, "action" means the civil proceedings commenced by one originating process.
39. That definition is reflected in the Rules themselves and in Atkin's Court Forms, which describes an action as the civil proceedings begun by one writ. A literal reading suggests that the Court asks whether any procedural step has been taken in the action, not whether a step has been taken against every individual defendant.
40. The Rules distinguish between an action and individual claims. Further reading of the Order 21 Rules expressly permit discontinuance of an action, of part of an action or against one or more defendants. For example, Order 21 rule 2(2) expressly permits discontinuance "...against all or any of the defendants." However, that language does not appear in Order 21 rule 2(6).
41. It could therefore be argued that where the Rules intended to distinguish individual defendants, they said so expressly. The principle *expressio unius est exclusio alterius*, or "the express mention of one thing implies the exclusion of another" is used where legislation expressly refers to certain matters but omits others. The court may infer that the omission was deliberate.
42. I turn back to Order 37 rule 3 which provides that where judgment has been entered against one defendant but the action continues against others, damages are ordinarily assessed at trial unless the Court Orders otherwise.
43. That rule contemplates one continuing action, one eventual trial, and following on from that one assessment of damages. It assumes that the proceedings remain unified despite default judgment against one defendant. In applying that principle, procedural steps towards that trial such as filing discovery, witness statements, fixing trial dates, etc. would arguably be all "steps in the action."

44. I also wish to raise that as a matter of practical consistency, suppose liability is alleged jointly and severally. The plaintiff continues litigating against the 1st defendant. During that time discovery occurs, expert evidence is exchanged, trial dates are fixed and witness statements are filed. To say that nothing has occurred "in the action" simply because none of those steps specifically concerned the 3rd defendant appears artificial.
45. Looking at it from a wider perspective, the whole purpose of Order 37 rule 3 is to avoid duplicate assessments.
46. I turn to the arguments supporting the "separate claim" approach. Although *Tan Kim Seng* never discusses multiple defendants, its reasoning repeatedly asks whether the plaintiff has advanced the proceedings towards obtaining an enforceable judgment.
47. The Court said Order 21 r.2(6) applies until an enforceable judgment is obtained. That enforceable judgment must be obtained against the particular defendant. If nothing has happened towards assessment against the 3rd defendant, one may say the proceedings against 3rd defendant have remained dormant.
48. I remind myself that the purpose of Order 21 is to prevent stale litigation. If activity concerning 1st defendant could indefinitely preserve the claim against the 3rd defendant, then a plaintiff might leave the 3rd defendant untouched for years while relying upon procedural activity concerning others. That arguably defeats the objective of preventing dormant proceedings.
49. Although commenced under one writ, each defendant remains independently liable. Each defendant may file separate defences, have separate judgments, damages, appeals and enforcement. It is therefore arguable that once default judgment is entered against the 3rd defendant, what remains is a separate procedural track. Nothing done solely against 1st defendant advances the 3rd defendant's track.
50. This is ultimately a question of statutory construction. The Plaintiff's construction emphasizes the literal wording of "the action" read together with Order 37 rule 3 in that there is one action under one writ. The Defendant's construction emphasizes the policy against stale litigation, advancing each defendant's case individually and obtaining an enforceable judgment against each defendant.
51. There appears to be no reported authority directly addressing this issue in the context of multiple defendants following default judgment. In those circumstances, I consider that neither a purely literal nor a purely defendant-specific approach is entirely satisfactory. Rather, the better construction is that a procedural step taken elsewhere in the action will satisfy Order 21 rule 2(6) only if it objectively advances the unresolved proceedings against the defendant who faces automatic discontinuance i.e. the 3rd defendant. Mere activity in the action is insufficient; the step must bear a real procedural connection to the outstanding claim against the 3rd defendant.
52. For the sake of clarification, I take the following example. Filing a joint Notice of Assessment of Damages would count. However, filing documents relating solely to the matter against the 1st defendant may not.

53. This approach gives effect to the words "the action" while still respecting the purpose of Order 21. As the action taken here was the filing of list of documents in respect of the ongoing action against the 1st defendant. I find that Order 21 rule 2(6) therefore applies with respect to the 3rd defendant in that no "action" has been taken and that the matter against the 3rd defendant is discontinued.

Issue 4 – If no qualifying step was taken, was the Plaintiff required to invoke Order 21 r.2(8)?

54. The issue of Order 21 rule 2(8) arises only if the Court concludes that no qualifying procedural step was taken. The Plaintiff submits no extension was required because Order 21 rule 2(6) should not be applied. The 3rd Defendant submits that, if assessment was to await trial, the Plaintiff ought to have protected its position by seeking an extension before expiry of one year.

55. In my view, Order 21 rule 2(8) is preventative rather than curative. I have concluded that no qualifying procedural step was taken within the prescribed period, and no extension was sought before expiry of that period, therefore automatic discontinuance followed by operation of law and the plaintiff ought to have then applied to involve Order 21 r.2(8).

56. The Plaintiff's failure to invoke Order 21 rule 2(8) is therefore not an independent ground for dismissing the appeal. Rather, it is the consequence of my earlier finding that Order 21 rule 2(6) was triggered and that no qualifying procedural step had been taken.

Conclusion

57. For the reasons set out above, I conclude as follows.

58. First, *Tan Kim Seng v Ibrahim Victor Adam* is directly applicable to the extent that it establishes that Order 21 rule 2(6) continues to operate after interlocutory or default judgment has been entered where damages remain to be assessed. A default judgment on liability does not finally dispose of the action. Until damages are assessed and an enforceable judgment is obtained, further procedural steps remain necessary and the plaintiff remains under a duty to pursue the proceedings diligently.

59. However, *Tan Kim Seng* does not determine the central issue arising in the present appeal. That case involved a single plaintiff and a single defendant, with assessment of damages as the only outstanding step. It did not consider whether, an action involving multiple defendants, continuing procedural steps taken against one defendant may constitute "steps or proceedings in the action" so as to preserve the unresolved claim against another defendant against whom default judgment has been entered.

60. Secondly, Order 37 rule 3 contemplates that, where judgment has been entered against one or more defendants but the action continues against the remaining defendants, the assessment of damages may ordinarily be deferred until trial. Its purpose is to avoid duplication, inconsistent findings and unnecessary expense. Nevertheless, Order 37 rule 3 does not suspend, displace or create an exception to Order 21 rule 2(6). The two provisions must be read harmoniously. The postponement of the assessment pursuant to Order 37 rule 3 is not, by itself, sufficient to prevent automatic discontinuance. The relevant question remains whether, during the period of postponement, a qualifying "step or proceeding in the action" was taken.

61. Thirdly, in determining whether such a step was taken, neither a purely literal approach nor a wholly defendant-specific approach is entirely satisfactory. The repeated use of the words “the action” in Order 21 rule 2(6) indicates that the Court is not confined to asking whether a formal step was taken expressly against each individual defendant. At the same time, mere activity somewhere within the action cannot indefinitely preserve a dormant claim against another defendant.
62. In my judgment, the proper test is whether the procedural step relied upon objectively advanced the unresolved proceedings against the 3rd defendant who was at risk of automatic discontinuance. There must be a real procedural connection between the step taken and the outstanding assessment of damages or other unresolved issues relating to the 3rd defendant. A step directed towards a joint assessment of damages, or towards evidence bearing upon the common issue of quantum, may satisfy Order 21 rule 2(6). By contrast, a step directed solely towards the determination of liability or other issues concerning the remaining defendant will not.
63. Applying that test to the present case, the filing of the List of Documents in the continuing proceedings against the 1st Defendant did not objectively advance the outstanding assessment of damages against the 3rd Defendant. It was not shown to relate to the quantification of the Plaintiff’s claim against the 3rd Defendant or otherwise to progress the unresolved proceedings against that defendant. It therefore did not constitute a qualifying “step or proceeding in the action” for the purposes of Order 21 rule 2(6) in relation to the 3rd Defendant.
64. Finally, Order 21 rule 2(8) provided the Plaintiff with a means of protecting its position by seeking an extension before the expiry of the one-year period. That provision is preventative rather than curative. Since no qualifying procedural step was taken and no extension was sought within time, automatic discontinuance followed by operation of law. The Plaintiff’s failure to invoke Order 21 rule 2(8) is not an independent basis for dismissing the appeal; it is the consequence of the finding that Order 21 rule 2(6) was engaged and that the prescribed period expired without any qualifying step being taken.
65. Accordingly, I find that the proceedings against the 3rd Defendant were automatically discontinued under Order 21 rule 2(6). The appeal is therefore dismissed.

Costs

66. The plaintiff has failed in its appeal. I see no reason why costs should not follow normal events. As such, costs are to be paid to the 3rd defendant. Costs are to be taxed if not agreed.



Hazarena bte POKSJ DP Hj Hurairah

Intermediate Court Judge