



Singapore High Court affirms UK approach for determining a plaintiff's knowledge under the Limitation Act

Introduction

1. In the recent decision of *Leow Peng Yam v Aryall Kang Jia Dian* [2022] SGHC(A) 25 ("**Leow Peng Yam**"), the Appellate Division of the High Court ("**Appellate Division**") considered whether a negligence claim brought by the respondent, Ms Aryall Kang Jia Dian (the "**Plaintiff**"), was time-barred under s 24A(2)(b) read with ss 24A(4)(b) and 24A(6)(a) of the Limitation Act (Cap 163, 1996 Rev Ed) ("**Limitation Act**").
2. This is the first reported Appellate Division decision that upheld a lower court's decision to apply the prevailing English test laid out in *Adams v Bracknell Forest Borough Council* [2005] 1 AC 76 ("**Adams approach**") under Singapore law. In light of the significance of this decision, this update will discuss the parameters of the *Adams* test and the reasoning behind the Court's decision.

Background to the dispute

3. The Appellate Division dismissed an appeal brought by the Plaintiff against the defendant, Mr Leow Peng Yam (the "**Defendant**"), for negligently causing her personal injury. The personal injury in question arose on 14 May 2016, when the Plaintiff was severely injured in a collision with a bus driven by the Defendant.
4. The crux of this dispute centered on whether the Plaintiff's claim was time-barred. Relying on s 24A(2) of the Limitation Act, the Defendant argued that the action was time-barred because it was only commenced after 3 years from the date of the accident. On the other hand, the Defendant relied on s 24A(4)(b) of the Limitation Act, arguing that the action was not time-barred because she did not have the requisite knowledge for bringing the action due to cognitive impairments suffered as a result of the accident.
5. The Plaintiff succeeded before the District Court and on appeal to the General Division of the High Court ("**General Division**").

Holding by the Court

6. On further appeal to the Appellate Division, the Defendant contended that the fact-specific approach taken by the lower court departed from the prevailing English position, *i.e.*, the *Adams* approach.
7. In *Adams*, the majority of the UK Supreme Court held that an objective standard of reasonableness was to be applied in determining the requisite knowledge under s 14(3) of the Limitation Act 1980 (c 58) (UK), which is *in pari materia* with ss 24A(6) and 24A(7) of the Limitation Act. Per Lord Hoffmann at [47]-[49], Lord Philips of Worth Matravers at [58] and Lord Scott of Foscote at [71]-[73] of *Adams*, "*the inquiry concerns the knowledge that a reasonable person placed in the situation of the plaintiff would have been*

expected to acquire". In this regard, personal aspects of character or intelligence (such as shyness, embarrassment, and lack of assertiveness) which are peculiar to the plaintiff should not be considered.

8. The Defendant contended that the fact-specific approach taken by the lower court, which suggested the court *could* account for the Plaintiff's personal characteristics, departed from the *Adams* approach.
9. The Appellate Division disagreed with the Defendant's argument and found the lower court was in fact applying the very same approach in *Adams*. The lower court was simply stating that the objective test entailed a fact-specific inquiry into whether a plaintiff could reasonably be said to possess the requisite knowledge to commence the action.
10. In any case, the Appellate Division held that it was clear the lower court did not allude to the personal attributes or characteristics of the Plaintiff. The lower court only took into account the injuries suffered by the Plaintiff, which Lord Hoffmann held in *Adams* that the Court was entitled to do. Thus, the lower court had correctly applied the *Adams* test and the Appellate Division did not decide which was the correct test to adopt (see *Leow Peng Yam* at [36]). Accordingly, the Defendant's appeal was dismissed.

Concluding observations

11. While the Appellate Division did not decide if the *Adams* approach should be adopted under Singapore law, it is significant that the Appellate Division did not overrule the lower court's application of the *Adams* approach.
12. It is the authors' respectful view that a strict application of the *Adams* approach may unduly narrow the scope of "reasonable belief" under s 24A of the Limitation Act.
13. First, the majority in *Adams* considered that a plaintiff's particular character or intelligence is irrelevant (see *Adams* at [47]). A strict application of the majority's approach would exclude a plaintiff who may be handicapped in seeking advice because of his particular character, circumstances or intelligence. For instance, plaintiffs such as foreign domestic helpers or foreign construction workers who have suffered a workplace injury may not seek timely advice for a variety of legitimate reasons. Yet, adopting such a strict approach would fetter the courts' discretion to allow such plaintiffs their day in court.
14. Second, the statutory regimes in the UK and Singapore for limitation periods are materially different. As noted by the District Court in *Chang Tong Seng v Lim Tai Kwong t/a Da Li Contractors (Loke Keeng Kwang, Third Party)* [2007] SGDC 74 ("*Chang Tong Seng*") at [19], s 33 of the UK Limitation Act grants the English courts the discretionary power to allow a time-barred action to proceed should the Court consider it equitable to do so. The English courts thus have the discretion to allow deserving plaintiffs to proceed with their claims notwithstanding the strict *Adams* approach. There is no such equivalent power under the Singapore Limitation Act. Adopting the *Adams* approach may therefore unduly curtail the Singapore courts' discretion.
15. Instead, it is the authors' respectful view that the Singapore courts should not strictly preclude considering the personal attributes or circumstances of the plaintiffs in exceptional cases. By adopting a more nuanced approach which accounts for such exceptions, the courts would have the discretion to ensure that justice can be done to all deserving plaintiffs.

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