Lim Chi Szu Margaret and Another v Risis Pte Ltd
[2005] SGHC 206

Case Number : OS 521/2005, SIC 2448/2005, 2504/2005

Decision Date : 31 October 2005

Tribunal/Court : High Court

Coram : Andrew Phang Boon Leong JC

Counsel Name(s) : Mohd Sadique bin Ibrahim Marican (Sadique Marican and Z M Amin) for the plaintiffs; Tan Tian Luh (Tan and Tan Partnership) for the defendant

Parties : Lim Chi Szu Margaret; Soh Leng Hui — Risis Pte Ltd

Civil Procedure – Extension of time – Application for leave to appeal against order of High Court judge in chambers for interlocutory judgment with damages to be assessed – Parties assuming order of High Court judge in chambers interlocutory in nature – Application filed out of time – Whether to grant extension of time to file application – Order 56 r 3 Rules of Court (Cap 322, R 5, 2004 Rev Ed), ss 34(1)(c), 34(2) Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

31 October 2005

Andrew Phang Boon Leong JC:

Introduction and background

1 The most seemingly innocuous legal proceedings can, on occasion at least, generate (or, in the case of the present proceedings, unearth) awkward legal issues. The present proceedings constitute one such occasion.

2 However, the crucial legal issue in the present proceedings could not be simpler: Should the plaintiffs be granted an extension of time to file an application for leave to appeal (here, to the Court of Appeal), the original application having been filed out of time? Nevertheless, one of the issues that was raised, although (as we shall see) not ultimately vital to the actual outcome of the present proceedings, generated serious implications for appeals in interlocutory proceedings generally. For this reason, amongst others, the present judgment is necessary to attempt to clarify any doubts that would otherwise arise in this particular context.

3 The plaintiffs had interlocutory judgment entered against them, with damages to be assessed. They appealed from the decision of the assistant registrar to the District Court. Their appeal was dismissed and they appealed to the High Court. In other words, they had had a "third bite at the cherry", but were unsuccessful yet again. They were dissatisfied and wanted a "fourth bite" in the Court of Appeal. For that, leave to appeal was required. Counsel for the plaintiffs filed their application for leave to appeal (in Originating Summons No 521 of 2005 ("OS 521/2005")). Unfortunately, this particular application was out of time. Not surprisingly, perhaps, counsel for the defendant sought (in Summons In Chambers No 2448 of 2005 ("SIC 2448/2005")) to strike out this application for failure to comply with s 34(1)(*c*) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("the Act") or, in the alternative, for failure to comply with O 56 r 3 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed). In response, counsel for the plaintiffs applied (in Summons in Chambers No 2504 of 2005 ("SIC 2504/2005")) for an extension of time to file their application for leave to appeal.

4 I held that there was no reason to grant an extension of time on the facts before me. There was simply no merit to the application premised even just on what had been done. More importantly

and generally, sound grounds based on established principles were not shown meriting an extension of time. For this reason alone, the defendant was entitled to succeed in SIC 2448/2005 and I therefore dismissed the plaintiffs' application pursuant to SIC 2504/2005 and, accordingly, struck out OS 521/2005. I also held, however, that the plaintiffs had failed to comply with s 34(1)(*c*) of the Act, although this was not strictly necessary for my decision (being an argument tendered by the defendant in the alternative). For reasons that I will elaborate upon below, although my decision with regard to s 34(1)(*c*) was correct *on the assumption upon which counsel for both parties relied* (to the effect that I was considering an interlocutory order), I have, upon further reflection, come to the view that this assumption by counsel was probably erroneous. This, in turn, itself raised an issue as to the nature of an interlocutory judgment, with damages to be assessed and for which I have, to the best of my knowledge, been unable to locate any local authority. This is yet another reason why I thought that writing grounds would be helpful in clarifying the position.

5 In so far as the argument with respect to s 34(1)(*c*) of the Act is concerned, it is significant to note, at the outset, a point briefly alluded to above. And it is that counsel for *both* parties *assumed* that the present proceedings were *interlocutory* in nature. If, indeed, the proceedings were interlocutory in nature, then counsel for the plaintiffs' argument to the effect that there was no need to comply with s 34(1)(*c*) of the Act would – as I shall emphasise below – be both startling as well as contrary to the spirit behind the provision itself.

6 However, this was *not* the *only* issue relating to s 34(1)(c). As already mentioned, on further reflection, it seemed to me that the assumption by both counsel in the preceding paragraph *might* be *misconceived* to begin with. In other words, although the present proceedings were indeed held in chambers, they might *not* in fact be of an *interlocutory* nature so as to bring into operation s 34(1)(*c*) in the first instance. Indeed, *this* was the argument that counsel for the *plaintiffs ought* to have run in order to counter counsel for the defendant's argument that the applicant had not complied with the requirements in s 34(1)(*c*). In other words, counsel for the plaintiffs mistakenly conceded that the proceedings were interlocutory in nature. If the proceedings were in fact interlocutory in nature, then s 34(1)(*c*) ought to have been complied with and I indeed so held. *However*, as I held that the plaintiffs failed on the facts before me with regard to O 56 r 3, the defendant's argument with regard to the failure by the plaintiffs to comply with s 34(1)(*c*) became immaterial in any event. To the extent that there is no conclusive authority to the effect that the proceedings in the present case were clearly final and not interlocutory in nature, my holding with regard to the plaintiffs' failure to comply with s 34(1)(*c*) still stands, not least because both counsel argued before me on the basis that the proceedings were interlocutory in nature. Further, the (related) *broader implications* of the plaintiffs' argument that there was no necessity to comply with s 34(1)(*c*) had, as I have pointed out, an importance that justifies an analysis of the spirit and intent behind the provision in the present judgment.

The argument from s 34(1)(*c*) of the Supreme Court of Judicature Act

The relevant provisions

7 Section 34(1)(*c*) of the Act reads as follows:

> **Matters that are non-appealable or appealable only with leave**
> **34.**—(1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> …
>
> (*c*) *subject to any other provision in this section*, where a Judge makes an interlocutory

order in chambers unless the Judge has certified, on application within 7 days after the making of the order by any party for further argument in court, that he requires no further argument; …

[emphasis added]

8 The relevant corresponding provision (O 56 r 2) in the Rules of Court reads as follows:

Further arguments on interlocutory orders (O. 56, r. 2)

2.—(1) An application to a Judge for further argument in Court pursuant to section 34 (1) (*c*) of the Supreme Court of Judicature Act (Chapter 322) shall, subject to the provisions of that section, be made in accordance with practice directions for the time being issued by the Registrar.

(2) Unless the Registrar informs the party making the application within 14 days of the receipt of the application that the Judge requires further arguments, the Judge shall be deemed to have certified that he requires no further arguments.

(3) Upon hearing further arguments, the Judge may affirm, vary or set aside the interlocutory order previously made or may make such other order as he thinks fit. Any such hearing, if in Chambers, shall be deemed to be a hearing in Court for the purposes of section 34 (1) (*c*) of the Supreme Court of Judicature Act.

Issue one: What constitutes an interlocutory order?

9 As I have already mentioned, *both* counsel assumed that the proceedings in the main action were *interlocutory* in nature. This assumption is crucial for the simple reason that if the order of the High Court in the main action in the present proceedings dismissing the appeal of the plaintiffs against the interlocutory judgment against them (with damages to be assessed) was a *final* one *instead of* an *interlocutory* one, then s 34(1)(*c*) of the Act would not be even potentially applicable in the first instance.

10 The test presently adopted in the Singapore context to distinguish between interlocutory and final orders is clear. It is that laid down in the English Court of Appeal decision of *Bozson v Altrincham Urban District Council* [1903] 1 KB 547 ("*Bozson*"), where Lord Alverstone CJ stated the test to be applied as follows (at 548–549):

Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then … it ought to be treated as a final order; but if it does not, it is then … an interlocutory order.

11 The above test (popularly known as the "order" test) has been preferred to that laid down in the (also) English Court of Appeal decision of *Salaman v Warner* [1891] 1 QB 734 (and popularly known as the "application" test), where Fry LJ observed (at 736) thus:

[A]n order is "final" only where it is made upon an application or other proceeding which must, whether such application or proceeding fail or succeed, determine the action. Conversely, I think that an order is "interlocutory" where it cannot be affirmed that in either event the action will be determined.

12 As already alluded to above, the test in *Bozson* is clearly the law in Singapore: see, for

example, the Singapore Court of Appeal decisions of *Ling Kee Ling v Leow Leng Siong* [1996] 2 SLR 438; *Aberdeen Asset Management Asia Ltd v Fraser & Neave Ltd* [2001] 4 SLR 441 ("*Aberdeen Asset Management Asia Ltd*"); *Rank Xerox (Singapore) Pte Ltd v Ultra Marketing Pte Ltd* [1992] 1 SLR 73; *Jumabhoy Asad v Aw Cheok Huat Mick* [2003] 3 SLR 99; and *Lim Kok Koon v Tan JinHwee Eunice & Lim ChooEng* [2004] 2 SLR 322; as well as the earlier Federal Court decision (on appeal from Singapore) in *Tee Than Song Construction Co Ltd v Kwong Kum Sun Glass Merchant* [1965–1968] SLR 230. It is not surprising that this particular test constitutes the emphatic preference in the local context, not least because it is imbued with practical justice and common sense. In this regard, Chao Hick Tin JA, delivering the decision of the court in *Aberdeen Asset Management Asia Ltd*, helpfully observed (at [19]–[20]) thus:

> It seems to us that it must be a rather exceptional sort of a case where, applying the *Salaman* test, the order obtained would be held to be final. This is because that test requires that whatever order made on the application must determine the action, irrespective of whether the application succeeds or fails. We can understand that where an application succeeds that that could determine an action. It is more difficult to envisage a situation where the application fails and yet the action is determined. As we see it, under the *Salaman* test, few orders obtained would be held to be final. In most instances, the orders would be interlocutory in nature.
>
> In our view, the *Bozson* test seems more logical. We will illustrate it by a simple O 14 application for summary judgment. In accordance with the *Salaman* test, a summary judgment obtained on such an application would not be a final order because the test requires that even if the application fails, it should also have determined the action. This will not be so in an O 14 application. If the application for summary judgment fails, the action would certainly not be determined. But, if the application should succeed, it will be a final order, applying the *Bozson* test. This accords with reality and common sense. But under the *Salaman* test, this is only an interlocutory order.

13 The approach adopted by the Singapore courts in the present context is apparently another instance where the local position has diverged from the then English position, emphasising (once again) the need to always keep sight of what is appropriate in the local context, rather than blindly following the received English law.

14 However, it should be mentioned that the *application* of the test in *Bozson* is (as is almost invariably the situation with application in the legal context generally) one of the most difficult aspects for courts to contend with. As was very aptly put in the Singapore Court of Appeal decision in *Aberdeen Asset Management Asia Ltd* ([12] *supra*) by Chao JA (at [24]), "[w]e agree that the question of whether an order is interlocutory or final is sometimes not an easy one to decide".

15 The situation in the present case, it will be recalled, involved an interlocutory judgment, with damages to be assessed. The appellation "interlocutory" is not, in my view conclusive: It only denotes the fact that the quantum of damages remains to be assessed. However, in so far as *liability* is concerned, the order of the High Court, affirming that of the District Court, must surely be treated as *final*.

16 On another view, however, it could be argued that, taking the proceedings as a *whole*, the fact that damages remained to be assessed meant that the order made by the High Court in the present proceedings was interlocutory in nature. Whilst this argument is not unpersuasive at first blush, the weakness in its reasoning is that both the District Court and (subsequently) the High Court were dealing with appeals (stemming from the original order of the assistant registrar) with respect to the correctness of the interlocutory judgment, which related to *liability* (although the *quantum* of

damages remained to be assessed at a *separate* hearing). In this regard, and as pointed out in the preceding paragraph, the respective orders made by both these courts (affirming the decision of the learned Assistant Registrar) must surely be considered to be *final* orders in so far as they *finally* disposed of the substantive rights of the parties in so far as *liability* was concerned.

17 Not insignificantly, in my view, *Bozson* itself related to a situation where in an action brought to recover damages for breach of contract, the court held that an order with respect to questions of liability and breach of contract only (with the rest of the case, if any, going to an official referee) was in fact a *final* order (reference may also be made to the English Court of Appeal decision of *White v Brunton* [1984] 1 QB 570, where although (ironically perhaps) the *Salaman* test was endorsed in point of principle, Sir John Donaldson MR (with whom Fox and Stephen Brown LJJ agreed) was of the view (at 573) that *Bozson* could be upheld on the basis that that was a case of a "split trial"). The Singapore Court of Appeal decision of *Ling Kee Ling v Leow Leng Siong* ([12] *supra*) might suggest otherwise. However, that particular case, whilst relating generally to a situation of an interlocutory judgment with damages to be assessed in the context of a traffic accident, was in fact concerned with an order by the judge in chambers redirecting the assistant registrar to reassess the general damages, with leave given to the parties concerned to adduce further evidence to meet what ought to be the correct basis for the reassessment. In the circumstances, therefore, it was clear that *that* order by the judge in chambers was, in the specific factual context in question, indeed an interlocutory one.

18 However, I should point out once again that there appears, to the best of my knowledge, to be no definitive ruling on this particular issue in the Singapore context (relating to the specific situation relating to interlocutory judgments, with damages to be assessed). Given that there is something to be said for the view contrary to that which I prefer, it is hoped that the Court of Appeal will clarify the issue should an appropriate occasion arise in the future.

Issue two: The scope of section 34(1)(c) of the Act

19 Assuming (contrary to the view I have expressed above) that the relevant proceedings in the present case were in fact interlocutory in nature, it should be noted that the plaintiffs had made no attempt whatsoever to comply with the requirements under s 34(1)(*c*) of the Act.

20 If s 34(1)(*c*) must be complied with and is not in fact complied with, no appeal can then be brought (see, for example, the Singapore Court of Appeal decisions of *Singapore Press Holdings Ltd v Brown Noel Trading Pte Ltd* [1994] 3 SLR 151 ("the *Brown Noel Trading* case"), affirming *Brown Noel Trading Pte Ltd v Singapore Press Holdings Ltd* [1993] 3 SLR 787 and reversing *Brown Noel Trading Pte Ltd v Singapore Press Holdings Ltd (No 2)* [1993] 3 SLR 978); and *Denko-HLB Sdn Bhd v Fagerdala Singapore Pte Ltd* [2002] 3 SLR 357).

21 Most startlingly, however, counsel for the plaintiffs boldly declared that he did not need to comply with these requirements in the first instance. Whilst conceding that these were *interlocutory* proceedings, he cited the *dicta* of the Singapore Court of Appeal in *Seabridge Transport Pte Ltd v Olivine Electronics Pte Ltd* [1995] 3 SLR 545 ("the *Seabridge Transport* case") in support of his argument. The crucial language of the court appears towards the end of its judgment (at 549, [16]), as follows:

> However, Mr Loo [who was counsel for the appellants], whilst conceding that the order of Goh Joon Seng J was an interlocutory order made in chambers, nevertheless contended that the opening words of s 34(1)(c) — 'subject to any other provision in this section' — took that order, which fell within s 34(1)(b), out of the province of s 34(1)(c). With respect, we are unable to

agree. This is tantamount to saying that whilst all other interlocutory orders made by a judge-in-chambers are subject to the provisions of s 34(1)(c) an order giving a defendant conditional leave to defend the action made by a judge-in-chambers, although it is an interlocutory order made by a judge-in-chambers is not subject to the provisions of s 34(1)(c) simply because it fell within s 34(1)(b). This is to put a defendant who is given conditional leave to defend the action by a judge-in-chambers in a very special position which Parliament could never have intended and which is not justified by the scheme of s 34(1). Quite obviously, as Mr Chong [counsel for the respondents] submitted, these words refer to s 34(2) which refers to matters which are appealable but only with the leave of the Court of Appeal or a judge and since leave to appeal is required from either it would be otiose also to require certification by the judge that no further argument is required.

22 It will now become apparent why the words "subject to any other provision in this section" in s 34(1)(*c*) of the Act were italicised (at [7] above). However, before proceeding any further, the provisions of s 34(2) of the Act ought also to be reproduced, as follows:

> Except with the leave of the Court of Appeal or a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (*a*) where the amount or value of the subject-matter at the trial is $250,000 or such other amount as may be specified by an order made under subsection (3) or less;
>
> (*b*) where the only issue in the appeal relates to costs or fees for hearing dates;
>
> (*c*) where a Judge in chambers makes a decision in a summary way on an interpleader summons where the facts are not in dispute;
>
> (*d*) an order refusing to strike out an action or a pleading or a part of a pleading; or
>
> (*e*) where the High Court makes an order in the exercise of its appellate jurisdiction with respect to any proceedings under the Adoption of Children Act (Cap. 4) or under Part VII, VIII or IX of the Women's Charter (Cap. 353).

23 The thrust of the proposition embodied in the *Seabridge Transport* case (as quoted at [21] above) appears to be as follows. The commencing words "subject to any other provision in this section" in s 34(1)(*c*) refers to s 34(2). The latter provision relates to situations where leave of either the Court of Appeal or a judge is required before an appeal may be brought before the Court of Appeal. Since the former provision is subject to the latter provision, it follows (so the argument goes) that if a situation falls within the ambit of the latter (*viz*, s 34(2)), *only the requirements under this latter provision need be satisfied*. In other words, the requirements under the former (*viz*, s 34(1)(*c*)) can be ignored as, in the court's view, "since leave to appeal is required from either [a judge or the Court of Appeal] it would be otiose also to require certification by the judge that no further argument is required" (see [21] above).

24 Such a conclusion entails the following closely-related assumptions. First, that the requirements under s 34(1)(*c*) are subsumed within the requirements (for leave to appeal) under s 34(2). Secondly, and perhaps, more importantly, the assumption is that s 34(1)(*c*) and s 34(2) do *not* serve *different* functions.

25 Hence, counsel for the plaintiffs in the present proceedings very confidently declared that his clients did not need to satisfy the requirements under s 34(1)(*c*) because, on the reasoning in the

Seabridge Transport case set out above, certification by the judge that no further argument was required under that particular provision would be otiose or redundant in the light of the requirement that an application had to be made to the judge (or the Court of Appeal) for leave to appeal under s 34(2) in any event. He argued, more specifically, that his clients' case fell within s 34(2)(*a*) of the Act and that, as leave had therefore to be sought for an appeal to the Court of Appeal, his clients were under no obligation to satisfy the requirements under s 34(1)(*c*) and that, hence, counsel for the defendant's argument on this particular point failed.

26 Even if counsel for the plaintiffs were correct, this would have made no difference whatsoever to the outcome of the present proceedings. As mentioned above (at [4]), the application for extension to file an application for leave to appeal by the plaintiffs was, on the *facts alone*, wholly unmeritorious. *However*, if I had had to decide the issue *and* had accepted the argument centring around the interpretation of s 34(1)(*c*) and s 34(2), this would have had profound implications for all future proceedings inasmuch as s 34(1)(*c*) would have been rendered otiose and redundant in a great many interlocutory proceedings.

27 Counsel for the plaintiffs sought to allay my apprehension by arguing that such consequences would only befall interlocutory proceedings emanating from the Subordinate Courts. All interlocutory proceedings originating in the High Court would remain subject to s 34(1)(*c*). However, he could not explain the legal basis for drawing such a distinction. If correct, this would mean that there would be a difference in the manner interlocutory proceedings are treated, depending on where they originated from. From the perspective of both logic and common sense, this did not seem to me to be correct.

28 I should point out, at this juncture, that, coming as they did towards the end of the judgment and with merely passing endorsement of the argument made by counsel for the defendant in that case, the observations in the *Seabridge Transport* case (set out above at [21]) were clearly *obiter dicta* and were therefore not binding on me. That these observations are *obiter dicta* is clearly acknowledged in one of the leading local reference books in this particular area of the law: see *Singapore Civil Procedure 2003* (Sweet & Maxwell Asia, 2003) at para 56/3/3. However, notwithstanding that the observations concerned were merely *obiter dicta*, it would be remiss of me to disregard them without good reason. Indeed, counsel for the defendant stated that he could not controvert the clear language of the *dicta* in the *Seabridge Transport* case, although he maintained, with respect, that they were at odds with the statutory intention behind each of the provisions themselves (*viz*, ss 34(1)(*c*) and 34(2)). Counsel for the defendant was, as we shall see in a moment, not in fact far from the truth. In other words, there are in fact good reasons why the observations in the *Seabridge Transport* case ought *not*, with respect, to be adhered to. As an important preliminary point, it should be noted (as already alluded to above) that these observations were *not considered* propositions analysed and tested by the court concerned. They were merely *passing references* to arguments by one of the counsel in that case itself.

29 Turning to s 34(1)(*c*) and s 34(2) of the Act, it is clear that both provisions are intended to serve *different* functions. As we shall see, there could be some overlap, especially with respect to interlocutory proceedings originating from the Subordinate Courts (albeit not in the manner that counsel for the plaintiffs had argued for). However, the provisions are, in essence and in the final analysis, quite different in their nature and purport. Section 34(1)(*c*) is intended to serve a *more specific* function, whereas s 34(2) is, in contrast, intended (also, in the final analysis) to serve a *quite different and (more importantly) general function*. I now proceed to elaborate on the different nature and functions of – as well as the relationship between – each provision *seriatim.*

30 The general purport of s 34(1)(*c*) is clear enough. Counsel for the unsuccessful party in the interlocutory proceedings in question may request the judge concerned to hear further arguments – in

the hope that the judge might either modify or (better still, I should imagine) reverse his or her decision. The reason for such a provision is not difficult, in essence at least, to grasp. In contrast to trials in open court, interlocutory proceedings may not furnish sufficient time for the judge concerned to arrive at a decision which he or she considers to be clear and, hence, clearly final. The relatively short duration of the proceedings is an important factor. On more occasions that one may want to imagine, such interlocutory proceedings may nevertheless raise very significant points of law. The opportunity afforded to counsel for further arguments as well as to the judge concerned for further consideration before finalising his or her decision could be crucial.

31 In this regard, the following observations by Karthigesu JA, delivering the judgment of the court in the *Brown Noel Trading* case, are in fact directly on point ([20] *supra* at 166, [40]):

> The intent and purpose of s 34(1)(c) of the re-enacted Supreme Court of Judicature Act and O 56 r 2 of the Rules of the Supreme Court [reproduced above at [7] and [8], respectively] is to us abundantly clear and free from doubt. It is to prescribe a procedure for appeals in interlocutory matters heard by a judge-in-chambers being brought to this court, *which may have arisen from full arguments not being presented to the judge-in-chambers due to the shortness of time available for the hearing of such applications or due to the judge-in-chambers having to decide on an issue without the time available to him for mature consideration*. [emphasis added]

32 The following observations by Chan Sek Keong J (as he then was) in the Singapore High Court decision of *JH Rayner (Mincing Lane) Ltd v Teck Hock & Co (Pte) Ltd* [1988] SGHC 103 (digested in [1989] Mallal's Digest 394) are also apposite (and were in fact cited and applied in the *Brown Noel Trading* case at 166, [40] and *Thomson Plaza Pte Ltd v The Liquidators of Yaohan Department Store Pte Ltd* [2001] 3 SLR 248 at [7]; see also *Aberdeen Asset Management Asia Ltd* ([12] *supra* at [23]):

> Section 34(2) [the predecessor of the present s 34(1)] contemplates a situation where a party who is adversely affected by an interlocutory order may wish to appeal against that order but before so doing would like the judge to reconsider the order in the light of such further arguments as he may be able to put forward. If a judge agrees to hear further arguments, it must mean that he is prepared to change his mind if on hearing further arguments he comes to the conclusion that the original decision is wrong wholly or in some respects. In other words, until he has heard such arguments, his decision must remain tentative.

33 Of course the need for an *actual* hearing of further arguments is *not always* necessary. This is why the relevant Order in the Rules of Court (O 56 r 2, reproduced above at [8]) as well as the relevant Practice Directions (see the Supreme Court Practice Directions, Pt X, paras 51(1)–51(4)) allow the requirements under s 34(1)(*c*) to be complied with in a simple and straightforward fashion where further requirements are not considered by the judge, before whom the application for further arguments is to be heard, to be in fact necessary. This may occur where the judge concerned is sure of his or her decision and/or where counsel for the unsuccessful party has no real further arguments but nevertheless feels that an appeal is still necessary. At *that* point, the judge can certify that no further arguments are required. If the judge does not take any action at all, then it is *deemed*, under the Rules of Court, that the judge concerned does not require any further arguments after 14 days have elapsed from the date of the request for further arguments (see O 56 r 2(2)). At this juncture, the way is open for an appeal to the Court of Appeal should the unsuccessful party feel that this is necessary.

34 It is precisely at this particular point that the requirements under *s 34(2)* become relevant as well as important. This is because, in so far as interlocutory proceedings are concerned, if s 34(1)(*c*) were the only provision that had to be satisfied before an appeal before the Court of Appeal could be

brought, all parties satisfying the requirements under that provision, would have, *in effect*, an *automatic* right of appeal to the Court of Appeal. This is because, as we have seen in the preceding paragraph, even if the judge concerned did not approve of the request for further arguments by counsel for the unsuccessful party, this would not constitute an obstacle in so far as a projected appeal by that party was concerned. This is because, after 14 days have elapsed from the date of the request for further arguments, the judge concerned would (again, as we have seen in the preceding paragraph) be *deemed* to have certified that no further arguments are in fact required.

35 In so far as interlocutory proceedings originating in the *High Court* are concerned, there is, on satisfaction of the requirements of s 34(1)(*c*), indeed an *automatic* right of appeal because no further requirements are stipulated in the Act.

3 6 *However*, in so far as interlocutory proceedings originating in the *Subordinate Courts* are concerned, the situation may be quite different. In the present proceedings, for instance, the subject matter of the main proceedings was clearly below the jurisdiction of the High Court. As counsel for the plaintiffs himself conceded, leave to appeal to the Court of Appeal was required from the Court of Appeal or from a judge – here, because the proceedings fell within the ambit of *s 34(2)(a)* of the Act. *However*, the *underlying rationale as well as requirements necessary* before leave to appeal is given are *quite different* from those which obtain under s 34(1)(*c*). We are, at this point, *no longer concerned with the specific decision proper*. We are, *instead*, concerned with *broader* reasons as to why leave to appeal should be given in situations which would otherwise not merit an appeal. After all, the Court of Appeal is the highest appellate court in the land. There should therefore be compelling reasons why its time and expertise should be expended where, as in the present proceedings (to take but one of a number of analogous instances set out in s 34(2) itself (reproduced at [22] above)), the case would not even have been heard by the High Court at first instance. And these reasons must surely be *in addition to* satisfying the requirements under s 34(1)(*c*), which (as we have seen above at [30]–[33]) serves a quite *different* function in any event.

37 That the reasons before leave to appeal is granted pursuant to s 34(2) are different from those underlying the requirements under s 34(1)(*c*) can be seen from simply setting out those reasons themselves. In the leading Singapore Court of Appeal decision of *Lee Kuan Yew v Tang Liang Hong* [1997] 3 SLR 489, Yong Pung How CJ set out (at [16]) the following summary of the law that has been followed ever since (and see, in particular, the recent Singapore Court of Appeal decision of *IW v IX* [2005] SGCA 48, where the more liberal approach adopted in the English Court of Appeal decision of *Smith v Cosworth Casting Processes Ltd* [1997] 4 All ER 840 compared to guideline (1) below was not followed):

> Hence, from the cases, it is apparent that there are at least three limbs which can be relied upon when leave to appeal is sought: (1) prima facie case of error; (2) question of general principle decided for the first time; and (3) question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

38 It is clear, from the statement of principle just quoted, that there is little – or no – overlap, in point of law and fact, between s 34(1)(*c*) and s 34(2). And there is certainly no overlap in so far as the *respective purposes* of both these provisions are concerned, as elaborated upon in some detail above.

39 Drawing the various threads together, it is clear, from the above analysis, that s 34(1)(*c*), far from being rendered otiose by s 34(2), *is in fact as necessary as the latter provision. In other words, the requirements laid down under ss 34(1)(c) and 34(2) are, whenever applicable (as in the present proceedings), cumulative.* This is what the commencing words in s 34(1)(*c*) mean – satisfaction of

the requirements under s 34(1)(*c*) is *insufficient in and of itself if (as was the case in the present proceedings) s 34(2) also applied*. In other words, it *cannot* be argued that there is an *automatic* right of appeal to the Court of Appeal (*ie*, without the need for leave from the Court of Appeal or from a judge) if the situation concerned also falls within one or more of the paragraphs in s 34(2) itself. If the situation does in fact fall within one or more of these paragraphs, *leave must, in addition to certification under s 34(1)(c), be obtained to appeal to the Court of Appeal pursuant to s 34(2)*.

40 It bears repeating that the nature and functions of s 34(1)(*c*) are *quite different* from those which obtain under s 34(2). I have already set out the nature and functions of each of these provisions above (at [30]–[33] and [34]–[37], respectively) and will therefore not repeat them.

41 In the circumstances, therefore, it is submitted, with the greatest of respect, that the *obiter dicta* in the *Seabridge Transport* case (set out at [21] above) ought *not* to be followed. As I have attempted to demonstrate, there are sound underlying reasons why ss 34(1)(*c*) and 34(2) embody, where applicable, *cumulative requirements, all of which must be satisfied* before an appeal can be brought before the Court of Appeal.

A summary

42 On further reflection, the relevant proceedings were, possibly at least, not, in my view, interlocutory in nature and, hence, the defendant's argument to the effect that the plaintiffs had not complied with the requirements of s 34(1)(*c*) of the Act would be unsuccessful based on this threshold reason alone. However, as I have mentioned, there has not, to the best of my knowledge, been any definitive pronouncement in the local context in so far as orders relating to interlocutory judgments with damages to be assessed are concerned. Nevertheless, it should be noted that counsel for the plaintiffs did not, in any event, raise this particular argument at all, as counsel for *both* parties *assumed* that the relevant proceedings were interlocutory in the first instance (see [9] above).

4 3 *Assuming* that the relevant proceedings were in fact *interlocutory* in nature, the plaintiffs ought to have first requested for further arguments pursuant to s 34(1)(*c*) of the Act. If, in fact, further arguments had been heard and the decision reversed in their favour, the plaintiffs need have taken no further step in the proceedings. It would then have been up to the defendant to seek leave (pursuant to s 34(2)) from the Court of Appeal or from a judge to appeal to the Court of Appeal. If, of course, the decision had not been reversed in their favour, it would then be up to the plaintiffs, instead, to seek leave in the manner just stated. Leave would be required simply because, as already observed above (at [36]), this case fell within the scope of s 34(2)(*a*) of the Act.

44 The plaintiffs did not in fact satisfy the requirements under s 34(1)(*c*) of the Act. As I have already pointed out in some detail above, on the assumption that the relevant proceedings *were* in fact *interlocutory* in nature, these requirements could *not* be dispensed with, the *dicta* in the *Seabridge Transport* case notwithstanding. Hence, I agree with counsel for the defendant that this is another reason why the present application for the extension of time to seek leave to appeal from the Court of Appeal or from a judge was doomed to fail – given the concession by counsel for the plaintiffs that the present proceedings were interlocutory in nature.

An historical coda

45 A slight coda may be in order. This relates to the historical backdrop to what are presently ss 34(1)(*c*) and 34(2) of the Act. Prior to amendments effected by the Supreme Court of Judicature (Amendment) Act 1993 (Act No 16 of 1993), the relevant provisions relating to appeals against interlocutory orders were in fact located in one subsection, *viz*, the *former* s 34(2) of the Supreme

Court of Judicature Act (Cap 322, 1985 Rev Ed), which read as follows:

> No appeal shall lie from an interlocutory order made by a Judge in chambers unless the Judge has certified, after application, within 4 days after the making of the order by any party for further argument in court, that he requires no further argument, *or* unless leave is obtained from the Court of Appeal or from the Judge who heard the application. [emphasis added]

46 It can be seen that the prior position provided for certification of a judge in chambers that no further argument is required and the obtaining of leave from the Court of Appeal or from the judge who heard the application as *alternative routes* of appeal to the Court of Appeal (see also the Singapore Court of Appeal decision of *Seow Teck Ming v Tan Ah Yeo* [1991] SLR 169 at 187, [53]). The approach adopted in the *Seabridge Transport* case is, in substance at least, consistent with the *previous* position. The issue which presently arises is whether or not the legislative amendments to the Act effected in 1993 in fact preserved the original position. If so, this would militate against the approach suggested in the present judgment.

47 It would appear, at first blush, that, as a matter of logic, the Singapore Legislature must have intended to *change* the *previous* position by *removing* the obtaining of leave as an *alternative route* leading to an appeal before the Court of Appeal *and ensuring that the procedure of applying for further arguments in court had to be satisfied before an aggrieved party could proceed on appeal* in so far as *interlocutory* proceedings are concerned. Indeed, this conclusion appears clear simply on *a plain reading of the prior and present provisions*.

48 The view just proffered is also supported, in fact, by the observations of the Singapore Court of Appeal itself in the *Brown Noel Trading* case ([20] *supra*), where Karthigesu JA, delivering the judgment of the court, observed thus (at 165, [38]):

> It should be noted that under s 34(2) of the *repealed* Supreme Court of Judicature Act there was *an alternative procedure* to 'the application for further argument in court' to bringing an appeal to this court from an interlocutory order made by a judge-in-chambers. *It was to obtain 'leave from the Court of Appeal or from the judge who heard the application'.* The *removal* of this *alternative* procedure and the promulgation of O 56 r 2 in its present form to give effect to s 34(1)(c) of the re-enacted Supreme Court of Judicature Act effectively *confined* the procedure *solely to* 'an application for further argument in court' which had to be made within seven days after the making of the order. The position now is that a party aggrieved by an interlocutory order made by a judge-in-chambers cannot proceed on appeal to this court without going through the procedure of applying for further argument in court. [emphasis added]

49 Indeed, the learned judge had earlier stated at 165, [36] that:

> The transposition of the former s 34(2) of the repealed Supreme Court of Judicature Act [reproduced above at [22]] which dealt with appeals from interlocutory orders to s 34(1)(c) of the re-enacted Supreme Court of Judicature Act [reproduced above at [7]] did not … alter the right of appeal as previously contained in the repealed s 34(2) but *in effect enlarged the time* within which an application for further argument was to be made to the judge from four days to seven days

and that an amendment was made to O 56 r 2 (reproduced in its present form at [8] above) "to accommodate the new time limit prescribed by s 34(1)(c) of the re-enacted Supreme Court of Judicature Act within which applications for further argument is to be made" (see *ibid*; emphasis added).

50 It is true, however, that the views expressed in the *Seabridge Transport* case (at [21] above) apparently militate against such an approach. However, as I have sought to demonstrate above, the views in the *Seabridge Transport* case were *dicta* that were not, with respect, consistent with the basic underpinnings of (the present) s 34(1)(*c*) and s 34(2), respectively. It would appear, in contrast, that the view expressed in the *Brown Noel Trading* case above is consistent with the underpinnings of these provisions instead. It is also significant to note that the *Brown Noel Trading* case, like the *Seabridge Transport* case, is a Court of Appeal decision.

51 It may, however, be argued that the court in the *Brown Noel Trading* case did not, unlike the court in the *Seabridge Transport* case, consider the meaning of the commencing words in s 34(1)(*c*) of the Act (*viz*, "subject to the provisions of this section"). However, as I have already attempted to demonstrate above, a reasonable interpretation of these words clearly suggests that the requirements in ss 34(1)(*c*) and 34(2) (where the latter provision in fact applies) are in fact *cumulative* in nature. Such an interpretation is also wholly consistent with the respective rationale underlying both the aforementioned provisions.

52 As importantly, perhaps, the relevant legislative history buttresses the approach suggested in the present judgment. In so far as the Supreme Court of Judicature (Amendment) Act 1993 was concerned, during the Second Reading of the Bill, the Minister for Law, Prof S Jayakumar, made the following observations (see *Singapore Parliamentary Debates, Official Report* (12 April 1993) vol 61 at col 96):

> Clause 17 [which repealed the previous version and re-enacted the current version of s 34 of the Act] restricts the right of appeal to the reconstituted Court of Appeal in order to check the number of unmeritorious or unimportant appeals, especially on interlocutory matters. The minimum value of the subject matter involved for which there is an automatic right of appeal from the High Court to the Court of Appeal will be increased from $2,000 to $30,000.

53 The minimum value is now $250,000. However, it is suggested that the *general* thrust of the 1993 amendment was, as the Minister pointed out, to "[restrict] the right of appeal … in order to check the number of unmeritorious or unimportant appeals". In this regard, it is important to note that the equivalent of our *present* s 34(2) (reproduced at [22] above) was also present in the pre-1993 amendment Act (Cap 322, 1985 Rev Ed) – albeit in a modified form and as s 34(1) instead. The *then* s 34(1) read as follows:

> (1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (*a*) where the amount or value of the subject matter at the trial is less than $2,000, except with the leave of the Court of Appeal or a Judge of the Supreme Court;
>
> (*b*) where a Judge makes an order giving unconditional leave to defend an action;
>
> (*c*) where the judgment or order is made by consent of parties;
>
> (*d*) where the judgment or order relates to costs only, which by law are left to the discretion of the Court, except with the leave of the Court of Appeal or a Judge of the Supreme Court;
>
> (*e*) where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final.

54 What is important for our present purposes is the fact that the *then* s 34(2) (which, as we have seen is the *analogue* of the *present* s 34(1)(*c*)), *by providing an additional (and alternative) route of appeal* in *interlocutory* proceedings, would, theoretically at least, enable a litigant desiring to lodge an appeal to the Court of Appeal to *bypass certain provisions* of the *then* s 34(1) (reproduced in the preceding paragraph and which, as we have seen, is the *analogue* of our *present* s 34(2)) in the *interlocutory* context. These were provisions where there would otherwise have been a *blanket* prohibition against appeal to the Court of Appeal (specifically, the *then* ss 34(1)(*b*), 34(1)(*c*) and 34(1)(*e*), again as reproduced in the preceding paragraph). *Further, and perhaps more importantly*, the *then* s 34(2) (reproduced at [45] above) also enabled a litigant desiring to lodge an appeal to *bypass all* the provisions of the *then* s 34(1) (reproduced in the preceding paragraph) in the *interlocutory* context *by providing an additional (and alternative) route of appeal* by way of *a certification by a judge in chambers that no further argument was required*.

55 The *present version* of s 34 in general and my analysis of the relationship between ss 34(1) and 34(2) in particular envisage *a less liberal approach towards* appeals in the *interlocutory* context inasmuch as in *addition* to satisfying the requirements under s 34(1)(*c*), an aggrieved litigant *must also* satisfy *any applicable* requirement under s 34(2) (the *former* s 34(1)). Such an approach is, of course, consistent with the general approach of the 1993 amendment as noted at [52] and (especially) [53] above.

Conclusion

56 As pointed out right at the outset (at [4] above), the plaintiffs' case fails in so far as the plaintiffs had filed their application for leave to appeal out of time and could not satisfy me that an extension of time ought to be granted. The defendant hence succeeds on this ground alone.

5 7 *Assuming* that the order in question was an *interlocutory* one, I find (having regard to the spirit and intent of s 34(1)(*c*)) that the plaintiffs had not complied with s 34(1)(*c*) of the Act and reject the plaintiffs' argument to the effect that compliance with the requirements of s 34(1)(*c*) was unnecessary. However, it is my view that it can probably be argued that the order in question was final and not interlocutory. Unfortunately, both counsel before me *assumed* that the order was an interlocutory one. Nevertheless, I should emphasise once again that, in so far as the *present case* is concerned, it is, *regardless of* the approach adopted with respect to s 34(1)(*c*), my view that the defendant would still succeed for the reason stated in the preceding paragraph.

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