Alphomega Research Group Ltd *v* Nanyang Law LLC
[2010] SGHC 45

Case Number : Suit No 540 of 2009 (Summons No 6121 of 2009)

Decision Date : 08 February 2010

Tribunal/Court : High Court

Coram : Nathaniel Khng AR

Counsel Name(s) : Tan Gim Hai Adrian (Drew & Napier LLC) for the defendant/applicant; Phillip Anthony Jeyaratnam SC and Ng Hui Min (Rodyk & Davidson LLP) for the plaintiff/respondent.

Parties : Alphomega Research Group Ltd — Nanyang Law LLC

Civil Procedure

Companies

Statutory Interpretation

Words and Phrases

8 February 2010 Judgment reserved.

Nathaniel Khng AR:

Introduction

1 This is an application ("the Application") by Alphomega Research Group Ltd ("Alphomega") for the setting aside of a default judgment dated 7 July 2009 ("the Default Judgment") granted to Nanyang Law LLC ("Nanyang"), as well as the setting aside of two Orders of Court ("the Orders") and a Writ of Seizure and Sale ("the WSS") obtained by Nanyang in connection with the Default Judgment. The hearing for the Application took place on 18 January 2010. At the hearing, leave was granted to Alphomega to amend the Application to include a prayer for the removal of a caveat registered in connection with the WSS ("the Caveat"), as well as to include an alternative basis for the setting aside of the Default Judgment, *viz*, that Alphomega had a defence on the merits (see [7] below).

2 After counsel for both parties had presented their respective arguments, judgment was reserved. At my request, further submissions on the applicability of s 48A of the Interpretation Act (Cap 1, 2002 Rev Ed) were filed and exchanged on 1 February 2010.

Background facts

3 Nanyang (a law firm) represented Alphomega in two suits, *viz*, Suit No 49 of 2008 ("Suit 49") and Suit No 856 of 2008 ("Suit 856"). Suit 49 was an action by one Dr Tan Choon Yong ("Dr Tan") against Alphomega and two directors/shareholders of Alphomega, *viz*, one Mr Goh Jon Keat ("Mr Goh") and one Ms Tan Hui Kiang ("Ms Tan"), for oppression. Suit 856 was an action by Dr Tan against Alphomega for damages for his summary dismissal from employment. Suit 49 and Suit 856 were consolidated together with a third suit, *viz*, Suit 855 of 2008 ("Suit 855"), by an Order of Court dated

13 November 2008. In the course of the trial, both Suit 855 and Suit 856 were withdrawn. On 9 February 2009, in the middle of the trial, Sterling Law Corporation ("Sterling") was instructed by Alphomega to take over from Nanyang as its counsel with immediate effect. On 30 April 2009, Tan Lee Meng J gave his decision in Suit 49 – the decision being in favour of Dr Tan (see *Tan Choon Yong v Goh Jon Keat* [2009] 3 SLR(R) 840 ("*Tan Choon Yong*")).

4 After its discharge, Nanyang proceeded to render invoices to Alphomega for work that it had done. No payment was made. Subsequently, Alphomega agreed to taxation of solicitor and client costs. In the proceedings that followed (referred to hereafter as "the taxation proceedings" for convenience), Alphomega was represented by Sterling. Eventually, Nanyang was able to obtain registrar's certificates for sums payable by Alphomega amounting to a total of S$332,229.40. Letters were sent in June 2009 by Nanyang to Sterling to demand payment, as well as to seek confirmation that Sterling could accept service. In a letter dated 23 June 2009, Sterling wrote to Nanyang to state that it had "no instructions to act". Since no payment was made, Nanyang commenced the present action, *viz*, Suit 540 of 2009 ("Suit 540"), to recover the amount of S$332,229.40.

5 The writ of summons for Suit 540 ("the Writ") was filed on 23 June 2009. Service of the Writ was purportedly effected by a court clerk of Nanyang ("the Court Clerk") on 24 June 2009 at 3.45pm at 6 Sungei Kadut Way, which was the address of Alphomega's *place of business*. According to the affidavit of Mr Ismail Atan ("Mr Atan"), Nanyang's director of litigation, which was filed on 9 December 2009, service of the Writ was acknowledged by one "Chris", who signed and also affixed Alphomega's stamp on a copy of the Writ. According to the Accounting and Corporate Regulatory Authority ("ACRA") records at that time, the address of Alphomega's registered office was 141 Market Street #10-00, which was also the address of Nanyang's offices, and Nanyang's chairman, Mr Ng Kim Tean ("Mr Ng"), was Alphomega's company secretary. Previously, in February that year, however, Alphomega had sent a letter to Mr Ng to inform him that he had been removed from the company secretary position, and Mr Ng had sent Alphomega a letter of resignation from the position. The ACRA records, for reasons unknown, were only updated in September to reflect the change of company secretary. The address of Alphomega's registered office also remained unchanged on the ACRA records until September.

6 No appearance was entered by Alphomega, and, on 3 July 2009, judgment in default of appearance (*ie*, the Default Judgment) was obtained by Nanyang for the sum of S$332,229.40. After the Default Judgment was granted, Nanyang obtained the Orders and the WSS, and registered the Caveat. On 13 November 2009, a Notice of Appointment of Solicitor was filed to give notice that Sterling had been appointed as solicitors for Alphomega in Suit 540. On 19 November 2009, a Notice of Change of Solicitor was filed to give notice that Drew & Napier LLC had been appointed as solicitors for Alphomega in place of Sterling. On 26 November 2009, Alphomega filed the Application. On 10 December 2009, a Notice of Change of Solicitor was filed to give notice that Allen & Gledhill LLP had been appointed as solicitors for Nanyang. On 8 January 2010, a Notice of Change of Solicitor was filed to indicate that Rodyk & Davidson LLP would be Nanyang's solicitors instead.

Preliminary applications

7 After the filing of the Application on 26 November 2009, Alphomega filed Summons No 6297 of 2009 ("SUM 6297) and Summons No 6440 of 2009 ("SUM 6440") on, respectively, 9 December 2009 and 17 December 2009. SUM 6297 was for the amendment of the Application to include a prayer for the setting aside of the Caveat. SUM 6440 was for the amendment of the Application to include the merits of the defence as an additional basis for the setting aside of the Default Judgment. At the hearing on 18 January 2010, counsel for Nanyang did not object to the proposed amendments. As such, I granted Alphomega leave to amend the Application. The issue of costs was reserved.

Applications for an extension of time

8 In December 2009, Alphomega filed applications for an extension of time to apply for a review of the taxing registrar's decision in the taxation proceedings. On 20 January 2010, the applications were dismissed by an assistant registrar. An appeal against that decision is now pending.

The submissions

9 Alphomega submitted that the Application had been filed promptly, and the Default Judgment was irregular and should (along with the Orders, the WSS, and the Caveat) be set aside *ex debito justitiae*. In this regard, Alphomega submitted that it had no notice of Suit 540 until 17 November 2009, when a bailiff visited its premises, and Sterling had confirmed that the Writ was never served on them. Also, Nanyang should have served the Writ at Alphomega's registered office as required under s 387 of the Companies Act (Cap 50, 2006 Rev Ed), even though the address of Alphomega's registered office was also the address of Nanyang's offices, and, as this was not done, the manner of service was improper. Alphomega added that it had, in any event, not been served with the Writ, and argued that there was no proof of service other than the Court Clerk's affidavit. In this connection, Alphomega pointed out that the copy of the Writ exhibited in the Court Clerk's affidavit was not endorsed, denied that it had an employee by the name of "Chris" and produced Central Provident Fund ("CPF") records for May 2009 and June 2009 in support, and claimed that Nanyang had possession of Alphomega's rubber stamp during the period when service was alleged to have been effected.

10 Alphomega further submitted that Nanyang (or Mr Ng, as company secretary, in particular) had acted in bad faith in failing to inform it of Suit 540, and that even if the Default Judgment was not deemed to be irregular, Alphomega had a *prima facie* defence and ought to be allowed to defend itself against Nanyang's claim. In regard to the latter contention, it was submitted that Nanyang had not been validly appointed by Alphomega to represent it in Suit 49 and Suit 856, Nanyang had acted in the interests of Mr Goh and Ms Tan instead of the interests of Alphomega, and Mr Goh and Ms Tan had wrongly utilised Alphomega's money to pay Nanyang for legal advice given to them in their personal capacity. Reference was made to the judgment of Tan J, where he stated (*Tan Choon Yong* ([3] *supra*) at [76]–[80]):

> 76 When considering the actions of Mr Goh and Ms Tan in thwarting Dr Tan at every turn, the role of the "company's lawyer", Mr Ng Kim Tean ("Mr Ng"), cannot be overlooked. While Dr Tan acted correctly by retaining Drew & Napier LLC as his personal lawyer to advise him on his problems with his fellow directors, Mr Goh and Ms Tan utilised the company's funds to pay for legal advice given to them with respect to their personal battle against Dr Tan.
>
> 77 Mr Ng admitted that he knew that neither the board nor the CEO would appoint him as the company's lawyer. All the same, he thought that as Mr Goh and Ms Tan were the majority shareholders, he could accept *their* invitation to become the company's lawyer. Ms Tan confirmed how useful Mr Ng was to her "side" when she testified as follows:
>
> > Q: ... I suggest to you that the only reason why you wanted ... Nanyang Law [*ie*, Nanyang] was ... you felt that Nanyang Law, and especially Mr Ng Kim Tean [*ie*, Mr Ng], was on your side? You felt that he was on your side?
> >
> > A: Yes ...[.]
> >
> > Q: ... And you preferred them because ... they were helpful to you. You considered them

helpful to you. Right?

A: Yes, they were helpful to us.

78 Mr Ng advised Mr Goh and Ms Tan without informing the CEO, Dr Tan, as to what was going on behind his back. When cross-examined, Mr Ng accepted that he had acted inappropriately when he testified as follows:

Q: ... Mr Ng, since there are two camps, do you agree that as the company's lawyer, you must take great care to be neutral and not to take sides?

A: I have admitted ... that I should have done that, on hindsight ...[.]

Q: You were not neutral.

A: I was not neutral, that's right.

Q: That is wrong?

A: That is wrong, in hindsight, yes.

79 When confronted with evidence of oppressive behaviour, Mr Goh often claimed that he had acted on Mr Ng's advice. Towards the end of the trial, Mr Ng was subpoenaed by Mr Goh and Ms Tan, presumably to corroborate their evidence. This was a colossal mistake as Mr Ng distanced himself from their position and denied their allegations. Not surprisingly, after Mr Ng had testified, the company replaced his law firm, which had acted for the company at the trial for five weeks, with [Sterling], which had the unenviable task of appearing for the company during the last few days of the trial.

80 What is noteworthy is that when cross-examined, Mr Ng admitted that he abetted Mr Goh and Ms Tan to "oppress and prejudice" Dr Tan's rights. After reviewing the evidence, I find that the use of company funds to pay for Mr Ng's services to the majority faction was uncalled for and is another example of oppression against Dr Tan.

[emphasis in original]

11 Alphomega also claimed that it had the right to set off any amount due to Nanyang with amounts that had been wrongly paid to Nanyang by Alphomega to fund the personal legal costs of Mr Goh and Ms Tan. Alphomega, lastly, submitted that it had certain counterclaims against Nanyang for losses and damages suffered.

12 Nanyang, in response, submitted that it had acted properly at all material times. To begin with, Mr Ng had been terminated as company secretary in February 2009, and various correspondences indicated that it was known and accepted that he was no longer the company secretary. It was pointed out that Alphomega was represented by Sterling at the taxation proceedings, and Alphomega clearly had notice of Suit 540 prior to 17 November 2009, as, *inter alia*, a Notice of Appointment of Solicitor was filed on 13 November 2009 to give notice that Sterling had been appointed as Alphomega's solicitors. Also, on 19 June 2009, Nanyang wrote to Sterling to ask whether it could accept service on behalf of Alphomega, and Sterling's reply was that it had no instructions to act.

13 Nanyang submitted that Alphomega's contentions on service, *ie*, that there was a lack of service of the Writ or a lack of proper service of the Writ, should be dismissed. In regard to whether

there was proper service, it was submitted that if a company's registered office was abandoned, a party could choose to serve documents at the company's place of business. However, if this mode of service were to be considered to be unacceptable, then the merits of Alphomega's case should be considered in the court's decision on whether to set aside the Default Judgment. In this respect, it was submitted that the High Court decision of *Shook Lin & Bok v Yeo Kian Teck* [1991] 2 SLR(R) 944 ("*Shook Lin & Bok*") would be authority that the registrar's certificates obtained by Nanyang should be taken as conclusive as to both liability and quantum, unless set aside on review, and it should not be for the court to go behind the decision of the taxing registrar in the enforcement proceedings. As such, Alphomega had no case on the merits, and the Default Judgment should not be set aside, whether or not service had been properly effected.

The further submissions

14 The further submissions concerned the applicability of s 48A of the Interpretation Act, and, in particular, s 48A(1)(*c*) (set out at [24] below), which states that unless there is a contrary intention, where a written law requires a document to be served on a person, the document may be served, in the case of a body corporate, by delivering it to the secretary or other like officer of the body corporate, or by leaving it at, or by sending it by pre-paid post to, the registered office or a principal office of the body corporate.

15 Alphomega submitted that s 387 of the Companies Act would be the provision that governs service on a company, and any contrary intention apparent from s 387 that circumscribes the operation of s 48A(1)(*c*) of the Interpretation Act would mean that the latter would not be applicable. Such a contrary intention would exist, as it is clear that service of documents on companies has to be in the manner set out in s 387 of the Companies Act. It was added that no authority can be found to support the application of s 48A(1)(*c*) of the Interpretation Act, and, in any event, there was non-compliance with the methods of service set out in that provision.

16 Nanyang submitted that s 387 of the Companies Act would not evince a contrary intention such as to exclude the methods of service permitted by s 48(1)(*c*) of the Interpretation Act. Section 387 of the Companies Act pre-dated s 48A of the Interpretation Act, and permitted rather than required a particular mode of service. It was further argued that since the purpose of service would be to inform the other party of the commencement of proceedings, service at the principal place of business, which was the course that Nanyang had chosen, was plainly sensible.

The basic principles for setting aside default judgments

17 The law relating to the setting aside of default judgments was clarified in the seminal decision of the Court of Appeal in *Mercurine Pte Ltd v Canberra Development Pte Ltd* [2008] 4 SLR(R) 907 ("*Mercurine*"). In that case, the approach in the English Court of Appeal case of *Faircharm Investments Ltd v Citibank International plc* [1998] EWCA 171 ("*Faircharm*") was adopted with some qualifications, and it was clarified that the *ex debito justitiae* rule would be the starting point for irregularly obtained judgments, although it may be departed from where proper, and, where this course is taken, the merits of the defence would be a crucial consideration and the plaintiff would bear the onus of showing that the defendant would be "bound to lose".

18 The views of the court were summarised by V K Rajah JA, who delivered the judgment of the court, in a passage that should be set out in full (*Mercurine* at [95]–[99]):

> 95 To summarise, where the default judgment sought to be set aside is a *regular* one, the *Evans v Bartlam* test (*ie*, whether the defendant can show a *prima facie* defence that raises

triable or arguable issues) is preferable to the *Saudi Eagle* test both in principle and as a matter of practical application.

96 Where the default judgment sought to be set aside is an *irregular* one, setting aside as of right (*viz*, the *ex debito justitiae* rule) remains the starting point, especially in cases where the irregularity consists of the premature entry of a default judgment or a failure to give proper notice of the proceedings to the defendant – *ie*, in cases where there has been egregious procedural injustice to the defendant. This starting point may, however, be departed from where there are proper grounds for doing so. The court has an unfettered discretion to decide whether the *ex debito justitiae* rule should be followed, and, in exercising this discretion, it may take into account, among other factors …:

(a) the blameworthiness of the respective parties (*eg*, whether there has been undue delay on the defendant's part in making its setting-aside application);

(b) whether the defendant has admitted liability under the default judgment; and

(c) whether the defendant would be unduly prejudiced if the irregular default judgment is allowed to stand.

In those instances where the court is of the view that there has been no procedural injustice of such an egregious nature as to warrant setting aside the irregular default judgment as of right, the court has to go on to consider whether to nonetheless set aside the irregular default judgment on some other basis apart from the *ex debito justitiae* rule. To this end, it is crucial for the court to take into account the merits of the defence. Should the court find that the defendant is "bound to lose" (*per* Sir Staughton in *Faircharm* …) if the default judgment is set aside and the matter re-litigated, the court should ordinarily uphold the default judgment, subject to any variation which the court deems fit to make and/or any terms which it deems fit to impose.

97 In both types of setting-aside applications – *ie*, relating to regular and irregular default judgments respectively – the defendant's delay in making the application is a relevant consideration and may be determinative where there has been undue delay …. As a rule of thumb, the longer the delay, the more cogent the merits of the setting-aside application have to be.

98 Although the issue of whether the defendant has a defence on the merits is now a crucial factor with regard to both the setting aside of regular default judgments and (where the *ex debito justitiae* rule is not followed) the setting aside of irregular default judgments, an important distinction remains between these two types of setting-aside applications. Where the default judgment has been *regularly* obtained, the legal burden rests on the defendant to show that its defence raises triable issues so that, notwithstanding its default which resulted in judgment being properly entered against it, the court should exercise its discretion to deprive the plaintiff of its rights under the (regular) default judgment. In contrast, where it is alleged that the default judgment was *irregularly* obtained, the defendant only needs to establish the irregularity, whether factual or legal (see, *eg*, *Purwadi v Ung Hooi Leng* [2003] 4 SLR(R) 292). Once the defendant discharges this burden and the court finds that the alleged irregular judgment is indeed irregular, the legal burden falls on the plaintiff to show (based on the factors outlined at … [96] above) why the judgment should not be set aside. Even if the plaintiff succeeds in persuading the court that the *ex debito justitiae* rule should not be followed, the court may nonetheless still set aside the irregular default judgment in view of (*inter alia*) the apparent merits of the defence. As such, where the plaintiff has established that the irregular default judgment should not be set

aside as of right, the plaintiff will *also* have to go on to show that the defendant is "bound to lose" (*per* Sir Staughton in *Faircharm* …) in the event that the judgment in question is set aside and the matter re-litigated. The defendant's setting-aside application will ordinarily be dismissed only if the plaintiff manages to convince the court *both* that, first, the *ex debito justitiae* rule should not be followed *and*, second, the defence is bound to fail. In other words, where the defendant seeks to set aside a *regular* default judgment, it is for the *defendant* to establish the merits of its defence (based on *the* Evans v Bartlam *test*). In contrast, where the defendant seeks to set aside an *irregular* default judgment, it is for the *plaintiff* to show (after it has successfully persuaded the court that the *ex debito justitiae* rule should not be applied) the lack of merit in the defence – based on *the "bound to lose" test* – for the purposes of countering the defendant's setting-aside application.

99 At the end of the day, given the court's wide discretion as to whether to set aside, uphold or vary a default judgment, the list of factors which the court may take into account when ruling on a setting-aside application is open-ended. We do not wish to lay down determinative guidelines as to which of these factors ought to prevail so as not to impose any fetters on the court's discretion (for instance, a case could conceivably arise where the plaintiff's procedural default offends the essence of due process, but, at the same time, the defendant's defence is bound to fail). As this court stated in *Lee Chee Wei v Tan Hor Peow Victor* [2007] 3 SLR(R) 537 at [82] apropos the nexus between procedural and substantive justice:

> ... The rules of court practice and procedure exist to provide a convenient framework to facilitate dispute resolution and to serve the ultimate and overriding objective of justice. Such an objective must never be eclipsed by blind or pretended fealty to rules of procedure. On the other hand, a pragmatic approach governed by justice as its overarching aim should not be viewed as a charter to ignore procedural requirements. *In the ultimate analysis, each case involving procedural lapses or mishaps must be assessed in its proper factual matrix and calibrated by reference to the paramount rationale of dispensing even handed justice*. [emphasis added]

Unnecessary fetters should not be judicially created when the Rules of Court have themselves conferred on the court an extraordinarily wide discretion to deal with procedural irregularities. In the ultimate analysis, it must be the factual matrix itself that determines the appropriate outcome of each setting-aside application.

[emphasis in original]

Service on companies

19 According to Alphomega, there was either a lack of service of the Writ or a lack of proper service of the Writ, and, accordingly, the Default Judgment was irregular.

20 Turning, first, to the issue of whether there was service of the Writ, in my view, on a balance of probabilities, the Writ had been left at Alphomega's place of business, *ie*, 6 Sungei Kadut Way, as Nanyang had claimed. There was no reason to doubt the veracity or the truth of what the Court Clerk and Mr Atan had said in their affidavits. The Court Clerk, it could be added, described how service was effected in detail in a statutory declaration, and Ms Tay Wan Ting, a legal executive from Nanyang, explained in another statutory declaration that the failure to attach a copy of the endorsed Writ to the Court Clerk's affidavit was due to an oversight. The suggestion that Nanyang had affixed Alphomega's stamp to the Writ is an assertion of dishonest behaviour that is supported (indirectly) only by the CPF statements proffered by Alphomega. In my view, although none of the people

mentioned in the CPF statements have the name of "Chris", more would be needed to counter the clear evidence provided by Nanyang that indicated that someone from Alphomega had signed and affixed Alphomega's stamp to a copy of the Writ.

21 Turning, next, to the issue of whether there was proper service of the Writ, this issue would invite an analysis of the law on service of originating process on companies, as no local case has expressly dealt with the question of whether service of originating process on companies has to be in the manner prescribed in s 387 of the Companies Act, which states that "[a] document may be served on a company by leaving it at or sending it by registered post to the registered office of the company". Nanyang's case on the law, in essence, would be that other methods of service, such as those set out in s 48A(1)(*c*) of the Interpretation Act, would not be precluded by s 387 of the Companies Act. Alphomega's case, in contrast, would be that service could only be proper if it was in accordance with s 387 of the Companies Act, which would mean that Nanyang had to serve the Writ at Alphomega's registered office, irrespective of whether the address of Alphomega's registered office was also the address Nanyang's offices, and that s 387 would preclude the application of s 48A(1)(*c*) of the Interpretation Act.

22 An appropriate starting point for an analysis of the law on service of originating process would be the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules"). Service of originating process in general is dealt with in O 10 r 1, which stipulates that there must be personal service for a writ of summons (and, concomitantly, an originating summons (*per* O 10 r 5)), "[s]ubject to the provisions of any written law and [the] Rules". The requirement of personal service and the manner in which personal service is to be effected is dealt with in O 62 rr 1–3. Order 62 r 4, which deals specifically with personal service on bodies corporate, states that "[p]ersonal service of a document on a body corporate may, in cases for which provision is not otherwise made by any written law, be effected by serving it … on the chairman or president of the body, or the secretary, treasurer or other similar officer thereof".

23 It is obvious from the above that the rules relating to service of originating process allow for the application of other written law on service. The term "written law" is defined in s 2(1) of the Interpretation Act as including "all Acts, Ordinances and enactments by whatever name called and subsidiary legislation made thereunder for the time being in force in Singapore". The Interpretation Act is relevant to the interpretation of rules of civil procedure, as O 1 r 3 of the Rules states that that the "Interpretation Act … shall apply for the interpretation of [the] Rules as it applies for the interpretation of an Act of Parliament". Clearly, s 387 of the Companies Act, which, as mentioned earlier, states that "[a] document may be served on a company by leaving it at or sending it by registered post to the registered office of the company", could be considered to fall under the term "written law" for the purposes of O 10 r 1 and O 62 r 4 of the Rules. Parenthetically, it could be added that the term "document" in s 387 would, according to s 4(1) of the Companies Act, include "summons, order and other legal process, and notice and register".

24 However, it could equally be said that s 48A(1)(*c*) of the Interpretation Act falls within the term "written law" for the purposes of O 10 r 1 and O 62 r 4 of the Rules. The Explanatory Statement provided for the Statutes (Miscellaneous Amendments and Repeal) Bill (No 28 of 2000), the bill which amended the Interpretation Act to include s 48A, indicates that s 48A was intended to "prescribe rules of substantive law to be implied into legislation in relation to … service of documents". That said, s 48A(1)(*c*) states as follows:

> **Service of documents**
>
> **48A**.—(1) *Where a written law authorises or requires a document to be served on a person*,

whether the expression "serve", "give" or "send" or any other expression is used, then, *unless the contrary intention appears, the document may be served —*

…

(*c*) *in the case of a body corporate —*

(i) by delivering it to the secretary or other like officer of the body corporate; or

(ii) *by leaving it at, or by sending it by pre-paid post to, the registered office or a principal office of the body corporate in Singapore*.

…

[emphasis added]

25 Section 48A(1)(*c*) of the Interpretation Act applies where "a written law authorises or requires a document to be served on a person … unless the contrary intention appears". The term "written law", as had been observed earlier, would include subsidiary legislation (*per* s 2(1) of the Interpretation Act (see [23] above)). Therefore, s 48A(1)(*c*) can be read with the requirement of personal service of originating process in the Rules, unless, of course, a contrary intention is apparent. If the qualification were to be taken at its widest, the issue to be considered in the present context would be whether the Rules or s 387 of the Companies Act manifests a contrary intention. In my view, there is no contrary intention in the Rules, as both O 10 r 1 and O 62 r 4 allow for the application of other written law – and the Interpretation Act would come under the term "written law" for the purposes of both rules (*per* s 2(1) of the Interpretation Act (see [23] above)). As for s 387 of the Companies Act, however, there could be a contrary intention if, as Alphomega argued, service on companies has to be in the manner prescribed by that provision.

26 Section 387 of the Companies Act, as mentioned, states that "[a] document may be served on a company by leaving it at or sending it by registered post to the registered office of the company". Service of documents at the registered office of a company will be held to be proper, even if the company does not receive the documents and even if the company has ceased to have a link with the registered office. In *Loh Poh Lai v Wei Sheng Marine Services Pte Ltd* [1996] 3 SLR(R) 338, Lai Kew Chai J held (at [5]):

> Section 387 of the Companies Act (Cap 50, 1994 Ed) provides that service of documents on a company should be done at its registered office. The onus is on the controllers of a company to ensure that they put in place a system by which documents delivered at their registered office are immediately brought to their attention, even if they have ceased to do business at the premises: see *Sabatier v The Trading Company* [1927] 1 Ch 495. In principle it must be right that service of documents on a company must be at its registered office. Even if the defendants had ceased to have any link with their registered office, which was not the situation in this case, they could not be heard to say that such service was bad. One had to ask: if service at the registered office was bad, where could a regular service of the writ on the defendants be effected? The need for certainty is very compelling.

27 Alphomega's position on the law finds support in *Halsbury's Laws of Singapore* vol 6 (LexisNexis Singapore, 2006 Reissue) ("*Halsbury's Laws of Singapore*"), which indicates that service on a company must be effected at the registered office of a company (at para 70.298):

> Service of documents at a company's registered office is good service even if the company never receives those documents. *Concomitantly, if documents are served other than at the company's registered office, that service is ineffective* and a default judgment obtained by a plaintiff may be set aside *ex debito justitiae*. This is so even if the company has actual notice of the documents. [emphasis added]

Similarly, in *Walter Woon on Company Law* (Tan Cheng Han SC gen ed) (Sweet & Maxwell, Rev 3rd Ed, 2009) ("*Walter Woon on Company Law*"), it has been stated (at para 10.2):

> Service of documents at a company's registered office in accordance with s 387 is good service even if the company never receives those documents. *The other side of the coin is that if documents are served other than at the company's registered office as provided in s 387, that service is ineffective* and a default judgment obtained by a plaintiff may be set aside *ex debito justitiae*. This is so even if the company has actual notice of the documents. [emphasis added]

28 The case cited in *Halsbury's Laws of Singapore* and *Walter Woon on Company Law* as support for the proposition that service has to be at the registered office of a company would be the Malaysian case of *P T Pelajaran Nasional Indonesia v Joo Seang & Co Ltd* [1958] MLJ 113 ("*P T Pelajaran Nasional Indonesia*"), where a judgment in default was set aside as the defendant company had not been served at its registered office. In his judgment, Rigby J stated (*id* at 115–116):

> On the authorities it seems abundantly clear, therefore, that where the law provides a particular method or form of procedure for effecting service, or a particular place at which, or to which, service may be effected, then there must be strict compliance with those provisions, and the Court will set aside a judgment obtained by default where the requirements have not been complied with.

29 Amongst the authorities referred to by Rigby J in *P T Pelajaran Nasional Indonesia*, only one case appears to be directly relevant to the issue of service on companies. This would be the case of *Wood v Anderson Foundry Co* (1888) 36 WR 918 ("*Wood*"), where service in accordance with s 62 of the Companies Act 1862 (c 89) (UK) ("the Companies Act 1862"), a provision stating that "[a]ny summons, notice, order, or other document required to be served upon the company may be served by leaving the same or sending it through the post in a prepaid letter addressed to the company at their registered office" was considered. In that case, Stirling J stated (*id* at 928–929):

> … As to the second point, as to how service is to be effected, the rules now in force have, I think, made a very great change. That is evident by comparing the Common Law Procedure Act of 1852 with the present rules. Section 16 of that Act provided as follows:– "Every writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation …"[.] …
>
> Now, under the present rules, ord. 72, r. 2, must first be considered. That rule provides that where no other provision is made by the Act or rules the existing procedure and practice is to remain in force. We have therefore, to see whether any provision is made by the rules with reference to service upon corporations. The material rule is ord. 9, r. 8, which provides that "in the absence of any statutory provision regulating service of process, every writ of summons issued against a corporation aggregate may be served on the mayor or other head officer …; and where by any statute provision is made for service of any writ of summons … or other process upon any corporation … every writ of summons may be served in the manner so provided." So that the words, which in the Common Law Procedure Act, s. 16, stood unqualified and absolute, are now governed by these words – "in the absence of any statutory provision regulating service

> of process." … We have … to consider whether the present case is governed by any statutory provision within the rule.
>
> The company was registered under the [Companies Act 1862], and section 62 of that Act provides that any summons or document required to be served upon a company may be served by leaving the same or sending it through the post in a prepaid letter addressed to the company at their registered office. The words of the concluding clause of the rule are very remarkable, and bear evidence that it was framed to meet this case, and that view is confirmed by looking at the previous set of rules, which were rather differently worded, and the word "summons" seems to be introduced here for the purpose of introducing the provision contained in section 62 …. Therefore, the writ of summons … must be served in [the] manner provided by that section [*ie*, s 62], and no choice is given to the plaintiff. …

30 In a subsequent case, *viz*, *Pearks, Gunston & Tee Limited v Richardson* [1902] 1 KB 91 ("*Pearks, Gunston & Tee Limited*"), Lord Alverstone CJ expressed a similar opinion, stating (at 92) that "in the absence of any legislation or of any rule of practice lawfully made by a competent authority, the service of … a summons upon a company should be in the manner prescribed by s. 62 of the [Companies Act 1862]". He added (*id* at 93) that there "is no doubt that writs and other proceedings, both in the High Court and in the county court, must be served on a limited company in the manner required by s. 62". The same sentiments were reiterated in *Vignes v Stephen Smith & Co* (1909) 53 SJ 716 ("*Vignes*") in respect to a similar provision. The brief judgment of Eve J, in full, would be as follows (*id* at 716):

> On the 8th of July last the plaintiff issued a writ for trespass, damages, and costs. On the same day he took the writ down to the works of the company where they carried on business, and where he saw a building with "office" written over it, and there he served the writ. Now it turns out that that was not the registered office of the company, and the defendants launched this motion to set aside the writ in the action. The ground of the application is that the writ must be served on the company in the manner directed by the statute. Ord. 9, r. 8, provides that where by any statute provision is made for service of any writ of summons on any body or number of persons, whether corporate or unincorporate, every writ of summons may be served in the manner so provided. Here the defendant company is incorporated, and by section 116 of the Companies Consolidation Act, 1908, it is provided that "a document may be served on a company by leaving it at or sending it by post to the registered office of the company." Now counsel for the plaintiff points out that the words in the section and in the rule are "may be served" and not "must be served," and he says that the court may look at the surrounding circumstances and say whether the fact that the writ has been issued has been brought home to the company, and whether the company have not done all that is necessary for that purpose, and he cited cases where the writ was not set aside, though the rule had not been strictly adhered to. Those cases were mostly cases of foreign companies, and are not really germane to the present case. Here the question is whether it is competent to serve a company with a writ except in the prescribed form. I am precluded by the decisions cited by the defendants' counsel [*viz*, *inter alia*, *Wood* and *Pearks, Gunston & Tee Limited*] from holding that the writ has been properly served. The rule and the section clearly indicate that the only way in which a writ can be served on a company is by leaving it at or sending it by post to the registered office. There will therefore be an order setting aside the writ.

31 The provisions considered in *Wood* ([29] *supra*), *Pearks, Gunston & Tee Limited*, and *Vignes* would be similar to s 387 of the Companies Act, and these provisions would be predecessors to s 437 of the Companies Act 1948 (c 38) (UK) ("the Companies Act 1948"). Section 437 of the Companies Act 1948, like s 387 of the Companies Act, states that a "document may be served on a company by

leaving it at or sending it by post to the registered office of the company". Section 437 of the Companies Act 1948 would be one of two provisions that s 387 of the Companies Act could be said to be based on (see, in this respect, the sidenote provided for s 387). In *Davies v British Geon Ltd* [1957] 1 QB 1 ("*Davies*"), Harman J made reference to s 437 of the Companies Act 1948 in the following fashion (at 19–20):

> [I]f the defendants were a foreign corporation having a factory at Barry, as they have, it may well be that a writ could be served on the company there. But this is not a foreign corporation; it is a company limited under the Companies Acts and can only be served at its registered office (Companies Act, 1948, s. 437). Service, therefore, on this company at Barry would be bad. The defendants have their registered office in London and must be served there unless their solicitors are willing to accept service.

32 A second provision that s 387 of the Companies Act could be said to have been based on would be s 362 of the Companies Act 1961 (Vic) ("the Companies Act 1961") (see, again, the sidenote provided for s 387). No relevant case law on s 362 appears to exist, but there is case law on an earlier provision, *viz*, s 252 of the Companies Act 1958 (Vic) ("the Companies Act 1958"), which, similar to s 387 of the Companies Act, states that a "document may be served on a company by leaving it at or sending it by post to the registered office". In *Eagles v Eagles* [1960] VR 400 ("*Eagles*"), the Supreme Court of Victoria had to consider s 252 of the Companies Act 1958. One issue was whether the service of a writ of summons on a manager of a branch of the defendant bank was acceptable. Even though there was a letter that showed that the defendant bank was aware of the proceedings, Pape J held that service was not proper. He held (*id* at 400–401):

> The writ was on 18 September 1959 served upon the second defendant, the Commercial Banking Co. of Sydney Ltd., by delivering a copy thereof to the manager of the Geelong branch, the branch through which the money was advanced upon the mortgage. This service was irregular, inasmuch as there was no evidence that the branch office at 36 Malop Street, was the registered office of the company (see *Companies Act* 1958, ss. 252 and 299), and no order had been made under s.109 of the *Instruments Act* 1958. This irregularity might have been cured had the bank entered an appearance to the writ, but in this case no such appearance was entered. The authorities show that O. IX, rule 6 requires that service on a corporation should be in accordance with any statutory provision regulating such service … and that service at any office of the corporation other than the registered office is bad [citing, *inter alia*, *Wood* ([29] *supra*)] …. The evidence in this case included that of Keith Clement Cumberland, the acting manager of the defendant bank's branch at Geelong, and he produced a letter which indicated that the defendant bank was aware of the proceedings but, in my view, that does not make the service good service. … I think that service of the writ ought to be made in accordance with either s. 252 or s. 299 of the Companies Act. [italics in original]

33 In *Peters v Oscar Mayer Pty Ltd* [1963] VR 390 ("*Peters*"), s 252 of the Companies Act 1958 was considered again. The case concerned an application for judicial review of a conviction under the Health Act 1958 (Vic) ("the Health Act"). A notice to inform of an intention to have the sausages of the defendant company analysed was sent, pursuant to s 281 of the Health Act, to the address of the defendant company that was shown on the label of a packet of sausages. However, this address was not the defendant company's registered office, and one issue that was raised was that service was not proper, having regard to s 252 of the Companies Act 1958. The Full Court of the Supreme Court of Victoria expressed its opinion as follows (at 395):

> ... All that s. 281 requires is the sending of the notice and of the sample to the seller. …

One further matter should be referred to.

Mr Burbank contended that service of the notice and of the sample was ineffective because of the provisions of s. 252 of *Companies Act* 1958 which provide: "A document may be served on a company by leaving it at or sending it by post to the registered office of the company".

This enactment does not purport to provide an exclusive mode of effecting service on a company. It provides what will be sufficient leaving other methods open of proving effective service: cf. [*Eagles*], where Pape, J., held that consistently with specific rules of court service of process at the registered office of a company was required in the particular case.

[emphasis added]

34 Although the court in *Peters* held that s 252 "does not purport to provide an exclusive mode of effecting service on a company … [but] … provides what will be sufficient leaving other methods open of proving effective service", the court did not overrule *Eagles*, but sought to *distinguish* it by indicating that the rules of civil procedure on service of process required service at the registered office in the latter case. The opinion of the court, in other words, would appear to be that s 252, in itself, should not be interpreted as precluding other forms of effective service, but due to certain circumstances, such as the requirements of rules of civil procedure, the methods of proper service on a company could be limited to that which was set out in the provision. Interestingly, *Wood* ([29] *supra*), *Vignes* ([30] *supra*), and *Eagles* ([32] *supra*), which were cases prior to *Peters* that gave more than a cursory examination of the requirements for service on companies, could possibly be said to be consistent with the opinion of the court in *Peters*, as rules of civil procedure appear to have been significant considerations *vis-à-vis* the decisions that service had to be in the manner prescribed in the provisions similar to s 387 of the Companies Act.

35 In *Wood*, Stirling J placed emphasis on a rule that contained the following phrase: "[W]here by any statute provision is made for service of any writ of summons … or other process upon any corporation … every writ of summons may be served in the manner so provided" (see [29] above). In *Vignes*, Eve J made reference to a rule that, in his words, stated: "[W]here by any statute provision is made for service of any writ of summons on any body or number of persons, whether corporate or unincorporate, every writ of summons may be served in the manner so provided" (see [30] above). Eve J later concluded that the "rule and the section clearly indicate that the only way in which a writ can be served on a company is by leaving it at or sending it by post to the registered office" (see [30] above). And in *Eagles*, the case that the court in *Peters* distinguished, Pape J took cognisance of a rule that, in his words, stated: "[S]ervice on a corporation should be in accordance with any statutory provision regulating such service" (see [32] above). None of the courts in the aforementioned three cases appear to have based their conclusions solely on the operation of the provisions similar to s 387 of the Companies Act.

36 In terms of case law from England and Australia on the statutory provisions that form the heritage of s 387 of the Companies Act, *Peters* appears to be the *final* case before the enactment of s 387 of the Companies Act in 1967 (as s 350 of the Companies Act (Act 42 of 1967) ("the Companies Act 1967")) that considered whether companies had to be served in the manner set out in such provisions. Bearing that in mind, as well as taking into consideration the judgments in *Woods*, *Vignes*, and *Eagles*, in my view, it is plausible that the legislative intention behind the enactment of s 387 (as s 350 of the Companies Act 1967) was that the provision should not, in itself, operate to preclude other forms of effective service, and there is no cogent reason for rejecting such an interpretation. Such an interpretation, it could be added, would not be contrary with a plain reading of the provision.

37 If s 387 does not operate restrictively, there is nothing to prevent originating process from being served on companies in the manner provided by s 48A(1)(*c*) of the Interpretation Act, *viz*, by delivering it to the secretary or other like officer of the company, or by leaving it at, or by sending it by pre-paid post to, the registered office or a principal office of the company. One may, however, be slow to choose not to serve documents at the registered office of a company; in terms of service at a principal office for instance, there is always the possibility of disputes over whether the place of service is a principal office or not. In this connection, the *dicta* of V C George J in *Yew Leek Enterprise Sdn Bhd v Foong Engineering & Constructions Works Sdn Bhd* [1990] 2 MLJ 62, although in reference to Malaysian law (which is not in *pari materia* with Singapore law), is instructive (at 63):

> No doubt a prudent solicitor will not take the risk of attempting to serve a writ at what he understands to be the principal office of the defendant corporation because whether it is the principal office or not could be the subject of dispute.

38 In its further submissions, Nanyang claimed that it had served the Writ at the principal office of Alphomega. In *Lee Boon Tatt & Ors v Takhdir Trading Sdn Bhd* [1984] 2 MLJ 341, it was held (at 342), in commonsensical fashion, that "principal office … should mean the *principal place of business of the corporation*" [emphasis added]. Alphomega did not deny that its place of business was at 6 Sungei Kadut Way, and, from the documents attached to the various affidavits, it would appear that its *principal* place of business can be considered to be at that same address. For one, Alphomega's letterhead up to late 2009 had the address of 6 Sungei Kadut Way, and many correspondences were sent by Nanyang to that address. Incidentally, in Alphomega's Small Offer Document dated 15 August 2007, which could be found in the affidavit of Mr Ng that was filed on 6 January 2010, Alphomega had stated, under the heading "Where you can find us", that "[o]ur *principal office* is located at 6 Sungei Kadut Way" [emphasis added]. Having regard to all the evidence, in my view, the place where Nanyang had effected service could be considered to be a "principal office" of Alphomega, and, for the reasons above, such service was good service.

39 To sum up, my view would be that Nanyang had served the Writ at a location that could be considered to be Alphomega's principal office and such service was good service, and, therefore, the Default Judgment was regular.

The merits of the defence

40 Alphomega submitted that even if the Default Judgment was not deemed to be irregular, it had a *prima facie* defence and ought to be allowed to defend itself. Nanyang's claim, however, was based on the registrar's certificates it had obtained, and O 59 r 33 of the Rules states that a registrar's certificate "unless set aside, shall be conclusive as to the amount thereof". Nanyang's arguments against the merits of Alphomega's putative defence centred on the High Court decision of *Shook Lin & Bok* ([13] *supra*), which considered O 59 r 33. In that case, Michael Hwang JC held (at [19]–[20]):

> 19 Under O 59 r 33 of the Rules of the Supreme Court 1970, the certificate of the Registrar upon taxation "unless set aside, shall be conclusive as to the amount thereof". *There was no application to set aside the certificate of the deputy registrar and accordingly I saw no defence to a claim based on that certificate*.
>
> 20 *Defence counsel sought to argue that the rule only precludes an argument about quantum and not as to liability. I could not accept that argument*.
>
> [emphasis added]

41 In the affidavits filed in support of the Application, it was not denied that Alphomega had agreed to the taxation of solicitor and client costs, and it was also not denied that Alphomega was represented throughout the taxation proceedings by Sterling. Having regard to O 59 r 33 of the Rules and its interpretation in *Shook Lin & Bok*, it is clear that registrar's certificates are conclusive evidence as to the amount of costs properly due to a party unless set aside. In *Shook Lin & Bok*, the defendants failed to challenge an order for taxation, and this situation was described (at [21]) by Hwang JC as being "analogous to an interlocutory judgment for damages to be assessed with the taxation being comparable to an assessment of damages". In a similar vein, the present situation could be said to be analogous to a consent judgment for damages to be assessed with the taxation proceedings being akin to the assessment of damages proceedings. To conclude, based on the current state of the law, which was not seriously challenged, Alphomega has no *prima facie* defence and has failed to raise triable or arguable issues.

Conclusion

42 For the foregoing reasons, the Application is dismissed. I will hear parties on the issue of costs.

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