IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 229

Originating Summons No 1446 of 2018 (Summons No 3929 of 2020)

Between

Lin Jianwei

… *Plaintiff*

And

(1) Tung Yu-Lien Margaret
(2) Raffles Town Club Pte Ltd

… *Defendants*

JUDGMENT

[Civil Procedure] — [Appeals] — [Leave]

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Lin Jianwei
v
Tung Yu-Lien Margaret and another

[2020] SGHC 229

High Court — Originating Summons No 1446 of 2018 (Summons No 3929 of 2020)
Tan Siong Thye J
5, 26 October 2020

26 October 2020 Judgment reserved.

Tan Siong Thye J:

1 The plaintiff, Lin Jianwei, and the first defendant, Tung Yu-Lien Margaret, are the only two shareholders and directors of the second defendant, Raffles Town Club Pte Ltd. The plaintiff is the executive chairman and 60% shareholder of the second defendant. The first defendant is the director and 40% shareholder of the second defendant.

2 This is an application by the plaintiff who seeks a declaration that he does not require leave to appeal against the decision in Summons No 1281 of 2020 ("SUM 1281") delivered on 27 July 2020. Alternatively, if leave is required, the plaintiff seeks an extension of time to apply for leave, and that leave be granted for the plaintiff to bring an appeal against the decision in SUM 1281.

3 For the purpose of Summons No 3929 of 2020 ("SUM 3929"), it is pertinent to know the background and genesis of the parties' disputes which were first initiated by the plaintiff when he commenced Originating Summons No 1446 of 2018 ("OS 1446") against the defendants.

The background facts

OS 1446 and SUM 4

4 OS 1446 was commenced by the plaintiff against the defendants to, *inter alia*, obtain a declaration that the second defendant had validly appointed a third director or, in the alternative, to convene an extraordinary general meeting ("EGM") to effect such an appointment.[1] The first defendant counterclaimed in OS 1446 for a declaration that several notices of EGMs and the decisions taken at those EGMs, as well as several notices of board of directors' meetings and the decisions taken at those meetings, are invalid and of no effect.[2]

5 Subsequently, the first defendant discovered that the plaintiff's solicitors were also representing the second defendant in OS 1446 notwithstanding the plaintiff's action against the second defendant. The first defendant took the view that the plaintiff was acting in conflict of interest and appointed Nair & Co LLC ("N&C") to act for the second defendant. This was vehemently objected to by the plaintiff. Hence, on 31 December 2018, the first defendant filed Summons No 4 of 2019 ("SUM 4"), seeking a declaration to the following effect:

> 1. A declaration that of the validly appointed directors and the shareholders of the 2nd Defendant, only the 1st Defendant was and remains entitled to decide on and engage solicitors to act for and represent the 2nd Defendant, as well as give instructions

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1 Plaintiff's Written Submissions ("PWS"), at para 4.

2 PWS, at para 6.

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> to and receive advice from such solicitors, in and in connection with HC/OS 1446 of 2018 ("**OS**") and all appeals therefrom;
>
> 2. A declaration that the 1st Defendant was entitled to and did validly engage Nair & Co LLC ("**N&C**"), with effect from 13 December 2018, to act for and represent the 2nd Defendant, as well as to give instructions to and receive advice from N&C, in and in connection with this OS and all appeals therefrom;
>
> …
>
> [emphasis in original]

6 On 4 March 2019, the parties agreed to a consent order ("the Consent Order") in respect of SUM 4.[3] The Consent Order provided that the plaintiff's solicitors would give the first defendant a list of 30 law firms in Singapore. The first defendant would select and engage one law firm from that list "in her discretion … in the name and on behalf of RTC [the second defendant] to act for and represent RTC, as well as to give instructions to and receive advice from such solicitors" in relation to OS 1446. The Consent Order further provided, *inter alia*, that:

> 2. … RTC will pay for all that law firm's fees and expenses without requiring for that or for any other purpose the law firm or MT [the first defendant] to produce the instructions from MT or anyone on her behalf to the law firm, the advice from that law firm or communications, oral or otherwise, between that law firm and MT or anyone on her behalf;
>
> …
>
> 4. Lin accepts that only MT, and anyone on her behalf, and no one else (including Lin), shall be entitled to give instructions to that selected law firm and to receive and be privy to any instructions, advice and communications, oral or otherwise, with and from that selected law firm, including but not limited to instructions, advice and communications, oral or otherwise, with and from Nair & Co LLC …
>
> …

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[3] HC/ORC 1565/2019; PWS, at paras 8–10.

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> 7. RTC shall reimburse MT for the costs incurred and paid or to be paid by her to N&C in connection with her engagement of N&C on behalf of RTC in and in connection with this OS.

7 From the list of law firms provided by the plaintiff's solicitors, the first defendant appointed Joseph Tan Jude Benny LLP ("JTJB") on 14 March 2019 to act for the second defendant in OS 1446.[4] The inference from this Consent Order and the subsequent appointment of JTJB is that both the plaintiff and the first defendant are satisfied that JTJB represents the second defendant. The logical implication must be that the second defendant has to pay for the legal services rendered by JTJB in safeguarding its interest in OS 1446.

8 On 4 October 2019, the plaintiff sought leave to discontinue his claim in OS 1446 and this application was granted. However, the first defendant insisted on pursuing her counterclaim in OS 1446.[5] Presently, pursuant to the decision in Summons No 2628 of 2020, the hearing of OS 1446 has been stayed pending the hearing of Suit No 1048 of 2018, which deals with similar issues as in OS 1446.

OS 320 and SUM 1281

9 On 16 March 2020, the plaintiff commenced Originating Summons No 320 of 2020 ("OS 320"), in which he sought leave to commence a derivative action on behalf of the second defendant, pursuant to s 216A of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act"), for N&C's and JTJB's fees

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4 PWS, at para 11.

5 PWS, at para 7.

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("the Fees") to be taxed under the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA").[6]

10 On 17 March 2020, the first defendant filed SUM 1281 in OS 1446 seeking reimbursement of the Fees she had paid on behalf of the second defendant to N&C and JTJB.[7]

11 OS 320 and SUM 1281 were heard together. On 27 July 2020, I dismissed OS 320 and allowed SUM 1281. The reasons for my decision are set out in *Lin Jianwei v Tung Yu-Lien Margaret and another and another matter* [2020] SGHC 158 ("the Judgment").

The Notices of Appeal and the present application

12 On 12 August 2020, the plaintiff filed two Notices of Appeal in Civil Appeal No 137 of 2020 ("CA 137") and Civil Appeal No 140 of 2020 ("CA 140") against the decision in OS 320 and SUM 1281 respectively.[8]

13 On 27 August 2020, the first defendant applied to the Court of Appeal by way of Summons No 90 of 2020 ("CA SUM 90") and Summons No 91 of 2020 ("CA SUM 91") to strike out the Notices of Appeal in CA 137 and CA 140 respectively.[9] This was on the basis that the plaintiff had not obtained the requisite leave to appeal against the decision in OS 320 and SUM 1281.

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6 PWS at para 14; First Defendant's Written Submissions ("DWS"), at para 93.

7 PWS, at para 15; DWS at para 94.

8 PWS, at para 21.

9 PWS, at para 22.

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14 On 11 September 2020, the plaintiff filed SUM 3929 seeking a declaration that leave is not required to appeal against the decision in SUM 1281. In the alternative, the plaintiff seeks an extension of time to apply for leave to appeal, and for leave to appeal to be granted to the plaintiff.[10] This application was filed 46 calendar days (including weekends and public holidays) after I handed down the decision in SUM 1281.

My decision

The issues

15 The issues that arise for my determination are as follows:

(a) Whether the plaintiff requires leave to appeal against the decision in SUM 1281?

(b) If leave to appeal is required, whether the plaintiff should be granted an extension of time to apply for leave to appeal?

(c) If an extension of time is granted, whether the plaintiff should be granted leave to appeal against the decision in SUM 1281?

16 I shall address each of these issues in turn.

Whether leave is required

17 Section 34(2) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") provides that:

> (2) An appeal may be brought to the Court of Appeal in any of the following cases only with the leave of the High Court or the

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10 PWS, at para 24.

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> Court of Appeal unless otherwise provided in the Fifth Schedule:
>
> (*a*) any case where the amount in dispute, or the value of the subject-matter, at the hearing before the High Court (excluding interest and costs) does not exceed $250,000 or such other amount as may be specified by an order made under subsection (3);
>
> (*b*) any case specified in paragraph 1 of the Fifth Schedule.

18 In turn, paras 1(*b*) and 1(*h*) of the Fifth Schedule to the SCJA provide that:

> Subject to paragraphs 4 and 5, an appeal may be brought to the Court of Appeal only with the leave of the High Court or the Court of Appeal, in any of the following cases:
>
> …
>
> (*b*) where the only issue in the appeal relates to costs or fees for hearing dates;
>
> …
>
> (*h*) where a Judge makes an order at the hearing of any interlocutory application other than an application for any of the following matters:
>
> …

19 The first defendant submits that pursuant to paras 1(*b*) and/or 1(*h*), the plaintiff requires leave to appeal against the decision in SUM 1281.[11] Conversely, the plaintiff submits that leave is not required to appeal against the decision in SUM 1281 because the matter does not fall within paras 1(*b*) and/or 1(*h*).[12]

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11 DWS, at para 1.

12 PWS, at para 28.

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Whether para 1(b) applies

20 The first defendant submits that SUM 1281 is her application seeking reimbursement from the second defendant for her payment to the solicitors of the second defendant for defending the second defendant's interest in OS 1446. The plaintiff was not against the reimbursement to the first defendant for the Fees she paid to the second defendant's solicitors. The plaintiff opposed SUM 1281 as he opined that the Fees were excessive and he wanted to send the solicitors' bills for taxation. The first defendant submits that the central focus or dispute in SUM 1281 is solely about costs. Hence, SUM 1281 comes within para 1(*b*), and leave of the court is required if the plaintiff intends to appeal.[13] The plaintiff disagrees and raises a host of issues as follows:

(a) issues relating to the construction of the Consent Order;[14]

(b) issues relating to the first defendant's alleged misconduct and breaches of directors' duties in making payment of the Fees without consulting the second defendant's board of directors and concealing the fact of such payments until several months later;[15]

(c) issues relating to whether the plaintiff should be granted leave to commence a derivative action under s 216A of the Companies Act on behalf of the second defendant to seek taxation of the Fees;[16]

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13 DWS, at paras 41–42.

14 PWS, at para 30.

15 PWS, at para 31.

16 PWS, at para 32.

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(d) issues relating to whether the first defendant has a personal entitlement to be reimbursed for the moneys expended in making payment of the Fees;[17] and

(e) issues relating to whether s 122 of the LPA applies to the Fees.[18]

21 The issues raised at [20(c)] and [20(e)] above are issues relating to OS 320, rather than SUM 1281. The plaintiff, through SUM 3929, seeks a declaration in relation to SUM 1281 which has nothing to do with OS 320. Hence, OS 320 may not be fully relevant to SUM 3929.

22 I turn now to whether para 1(*b*) applies, *ie*, whether SUM 1281 related only to the issue of costs. In my view, para 1(*b*) applies. SUM 1281 is an application for the reimbursement of the second defendant's solicitors' fees, or solicitor-and-client costs. This is the only issue in SUM 1281 as the Consent Order requires the second defendant's solicitors to be paid. The plaintiff does not deny that the second defendant's solicitors had to be paid for their services in safeguarding the interest of the second defendant in OS 1446. The bone of contention was the amount or quantum of the Fees. The first defendant had paid the second defendant's solicitors and sought reimbursement from the second defendant, which was resisted by the plaintiff who wanted the second defendant's solicitors' bills to be taxed. It is obvious that this issue, in substance, relates only to the Fees (*ie*, costs). Therefore, para 1(*b*) applies. This is based on a broad reading of para 1(*b*), with a view to evaluating the *substance* of the dispute between the parties and consequently, the issue that will arise on appeal.

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17 PWS, at para 34.

18 PWS, at para 35.

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23 In adopting this substantive approach, I consider the purpose of para 1(*b*) as well as the approach taken by the Court of Appeal in *Kosui Singapore Pte Ltd v Thangavelu* [2016] 2 SLR 105 ("*Kosui*") in its interpretation of s 34(2)(*b*) of the SCJA (as enacted prior to the amendments made to the SCJA in 2018). Section 34(2)(*b*) of the old SCJA is *in pari materia* to para 1(*b*) of the Fifth Schedule to the SCJA as presently enacted.

24 The purpose of para 1(*b*)/s 34(2)(*b*) was alluded to by the Court of Appeal in *Kosui* at [33], where it observed that "Parliament's intention in [the SCJA] as a whole has always been to assist the efficient working of the Court of Appeal by allowing the screening of certain categories of appeals". The effect of para 1(*b*) is that costs constitute one of the subject matters in respect of which appeals are restricted. This is logical – costs are often of lesser significance than the substantive claim itself and generally do not involve novel or complicated principles of law. In the interest of ensuring the efficiency of the Court of Appeal and maximising court resources, appeals are restricted to "where the only issue in the appeal relates to costs". After all, the use of court resources involves public funds that have to be utilised prudently and judiciously.

25 Turning to *Kosui* itself, the Court of Appeal held that an application under s 122 of the LPA fell within the scope of s 34(2)(*b*). The following observations by the Court of Appeal in particular are pertinent:

> 31 … To accept the appellant's argument meant that we would be restricting the meaning of the term 'only issue … relates to costs' in s 34(2)(*b*) to the issue of quantum of costs. There is no reason why that term should be limited in this way. *When one is considering an issue relating to costs, one can be considering a whole host of matters.* For example, whether or not costs should be awarded at all or whether parties should be allowed to argue about costs in a taxation (*per* s 122 of the LPA) or whether costs should be fixed or whether separate costs orders should be made in respect of separate issues. *There are many aspects that may need a court's attention when it has to*

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> *decide issues which relate to costs, whether at first instance or on appeal. …*
>
> …
>
> 33 … Although the 1993 *Hansard* does not contain any specific discussion of this amendment, *bearing in mind that Parliament's intention in this legislation as a whole has always been to assist the efficient working of the Court of Appeal by allowing the screening of certain categories of appeals, it would be hard to argue that Parliament did not intend to widen the scope of the word 'costs'* when it removed the phrase that had hitherto qualified it and limited it to costs orders made by the court.
>
> [emphasis added]

26 Based on the above, the Court of Appeal rejected the appellant's submissions that s 34(2)(*b*) should be restricted to the issue of quantum of costs or to party-and-party costs, holding that a broader interpretation should be given to the provision.[19] In coming to its decision, the Court of Appeal also considered the wording of s 34(2)(*b*) as well as the fact that such an interpretation would not be unfair (see *Kosui* at [32] and [33]). Instead, it would accord with the policy consideration underlying s 34(2)(*b*). Furthermore, in applying s 34(2)(*b*) to the facts of that case, the Court of Appeal identified the issue on appeal as such at [35]:

> … That was far from the issue here: the appellant accepted liability as a client but was dissatisfied with the quantum of that liability in respect of the amount that the respondent received, while not disputing the reasonableness of the total bill. *The issue which the appellant sought to raise related* ***essentially*** *to quantum, not to liability per se.* In our view, the appellant's grievance was an issue that was encompassed by the phrase 'issue [that] relates to costs' that appears in s 34(2)(*b*). [emphasis added in italics and bold italics]

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19 DWS, at para 41.

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27 The Court of Appeal thus gave a broader reading to the phrase "issue [that] relates to costs" and considered the essence of the issue sought to be raised by the appellant. I agree with this approach. In my view, a substantive approach to the interpretation of para 1(*b*) would be in line with the approach taken by the Court of Appeal in *Kosui* as well as with Parliament's intention for the following reasons.

28 First, it is notable that para 1(*b*) uses the word "relates" besides the other words "only issue". Therefore, the central plank of the appeal has to relate to or focus on costs although there could be tangential issues. This affords some latitude to the court when assessing whether the issue arising on appeal bears some relation to costs.

29 Secondly, a substantive approach is in line with the nature of the issues relating to costs. As the Court of Appeal observed in *Kosui* at [31], "[w]hen one is considering an issue relating to costs, one can be considering a whole host of matters" and "[t]here are many aspects that may need a court's attention when it has to decide issues which relate to costs". A substantive approach to determine the issues arising on appeal and whether these relate to costs accords with the breadth of the issues that may arise when the court is dealing with costs. It also diminishes the possibility that a case essentially dealing with costs will fall outside the scope of para 1(*b*) just because it tangentially relates to matters not pertaining to costs *per se*.

30 Finally, such an interpretation of para 1(*b*) would not be unfair. To the contrary, adopting a technical and narrow reading of para 1(*b*) would allow the appellant to easily circumvent the subject matter restriction in para 1(*b*) by dividing the substance of the case into an entire range of potential sub-issues in order to bring the case on appeal through the backdoor. This would mean that

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parties could creatively open a Pandora's box on costs and overcomplicate the costs issues in order to gain access to the Court of Appeal. This also means that the Court of Appeal will be faced with a greater caseload although issues relating to costs are generally quite minor. Moreover, it is important to emphasise that the restriction in para 1(*b*) is not absolute. The appellant can still seek leave to appeal against the court's decision if it believes that the case warrants an appeal despite the fact that the only issue on appeal relates to costs. In this way, the court can sieve out the cases deserving of appeal while avoiding a deluge of cases to the Court of Appeal.

31 Therefore, I find that a substantive approach to para 1(*b*) is justified on the wording of para 1(*b*), as well as in principle and policy. On this approach, SUM 1281 falls within para 1(*b*) because the only issue therein – whether the plaintiff can resist procuring the second defendant to reimburse the first defendant for the Fees – relates to costs. All of the parties' arguments in SUM 1281 ultimately led to the question of whether the first defendant had to be reimbursed for the Fees and whether the plaintiff's arguments that the Fees had to be taxed were justifiable. The underlying context for the application for reimbursement is the Consent Order and this is merely tangential and does not change the fact that in substance, SUM 1281 is essentially about costs. This was recognised by the plaintiff himself, as evident from both the written and oral submissions of his solicitors.[20]

32 For the above reasons, I find that para 1(*b*) applies to the court's decision in SUM 1281 as the only issue in the appeal relates to costs.

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[20] DWS, at para 42; Plaintiff's Written Submissions, dated 20 July 2020, filed in SUM 1281 at para 10; 13th Affidavit of the first defendant, dated 22 September 2020, Exhibit MT-85, at p 113,

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Whether para 1(h) applies

33 The meaning of "order" and "interlocutory application" in para 1(*h*) is well-settled. The word "order" means an "interlocutory order", which is one that "does not finally dispose of the rights of the parties" (see *Telecom Credit Inc v Midas United Group Ltd* [2019] 1 SLR 131 ("*Telecom Credit*") at [19], citing *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 ("*Dorsey*") and *The "Nasco Gem"* [2014] 2 SLR 63 ("*The Nasco Gem*")). On the other hand, an "interlocutory application" is "an application whose determination may or may not finally determine the parties' rights 'in the cause of the pending proceedings in which the application is being brought'" (see *Telecom Credit* at [26], citing *The Nasco Gem* at [16]). The concepts of an interlocutory application and an interlocutory order are separate. Where an application is interlocutory, the court must look further at whether the order is also interlocutory (see *Telecom Credit* at [18]).

34 The Court of Appeal in *Telecom Credit* explained the underlying rationale of para 1(*h*) at [6] and [8] as follows:

> 6 To understand how para [1(*h*)] is intended to operate, it is useful first to consider the Act's basic approach to leave to appeal. In essence, the general philosophy that is reflected in these provisions is that a party's ability to appeal an interlocutory matter ought to depend on the importance of that matter to the substantive outcome of the case. Hence, matters that are non-appealable include decisions to grant unconditional leave to defend or to set aside unconditionally a default judgment, which send the matter back along the ordinary route to trial, where the parties' substantive rights will be decided after undertaking the forensic process … Matters that are appealable with leave concern matters which, although they do not directly determine the substantive outcome of the case, may nevertheless have some material impact on it …
>
> …
>
> 8 The cases have recognised that para [1(*h*)] of the Fifth Schedule of the Act should operate in a way that is consistent

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> with this general philosophy which places the focus on whether the application in question is one that has an effect on the final outcome of the case. …

35 The plaintiff submits that SUM 1281 is not an interlocutory application, and that the orders made in SUM 1281 finally determined the parties' rights in relation to SUM 4 and OS 320.[21] In contrast, the first defendant submits that SUM 1281 is an interlocutory application and that the orders made in SUM 1281 were interlocutory orders which did not dispose of the parties' rights in relation to the substantive proceedings in OS 1446.[22]

36 I agree with the first defendant's submission. The plaintiff's arguments are incorrect in law. The assessment of whether the application and/or order finally determines or disposes of the parties' rights must be made in the context of the proceedings in which they arise. As the Court of Appeal made clear in *The Nasco Gem* at [16] (affirmed in *Telecom Credit* at [17] and [26]):

> … To determine whether an order made at an interlocutory application is final, the matter must be viewed in the context of ***the cause in the pending action***. To reiterate, it is the cause of the pending *proceedings* ***in which the application is being brought*** which is significant, not the specific purpose of the *application*. [emphasis in original in italics; emphasis added in bold italics]

37 Similarly, the Court of Appeal observed in *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 525 at [16] that:

> We recognise that on this approach, it is possible that an order granted in one proceeding may be interlocutory and yet the same nature of order granted in another proceeding may well be final. The point may again best be illustrated by an example. Taking the case of an action for breach of contract, where an application is made for the discovery of documents, the order

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21 PWS, at paras 42, 46 and 53.

22 DWS, at para 45.

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> on discovery will be an interlocutory order. But it does not follow that every discovery order will necessarily be an interlocutory order. *It will depend on the nature of the originating process and the relief(s) prayed for.* … [emphasis added]

38 This also appears to have been the legislative intention behind para 1(*h*), based on the following explanation of para 1(*h*) given by the Senior Minister of State for Law, Assoc Prof Ho Peng Kee (see *Singapore Parliamentary Debates, Official Report* (18 October 2010), vol 87 at cols 1368–1370):

> … Between the time *when a party files a civil case in court* and *when the case is heard*, lawyers may file what are known as 'interlocutory applications' in court. These applications deal with procedural matters that prepare the case for hearing; for example, requesting the court to order the other party to furnish information or documents that are relevant to the hearing. …
>
> …
>
> … Interlocutory applications will now be categorised based on their importance to the *substantive outcome of the case*. With this calibrated approach, some interlocutory orders will not be allowed to go to the Court of Appeal, whilst others can only go to the Court of Appeal with the permission of the High Court. The decision of the High Court whether to grant permission is final. The right to appeal all the way to the Court of Appeal will, however, remain for interlocutory applications that could affect the *final outcome of the case*. …
>
> [emphasis added]

39 Thus, the authorities and parliamentary intention affirm the conclusion that the court should look at the originating process from which the application arises. While the plaintiff seeks to distinguish the relevant cases on the basis that none of them involved multiple related originating processes, I do not think it is appropriate to do so. As explained above, the purpose of para 1(*h*) is to limit appeals to applications and/or orders which do not finally determine or dispose of the substantive outcome of the case itself. That is the threshold which Parliament considered would strike an appropriate balance between the various policy considerations of allowing access to avenues of appeal, developing

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jurisprudence on interlocutory matters, avoiding strain to the ability and resources of the Court of Appeal, and effective case management in the interests of timely and efficient administration of justice (see *Dorsey* ([33] *supra*) at [35]–[37]). The plaintiff has not produced any authority supporting its contention that the court should assess the effect of the application and/or orders by reference to other summonses in the same originating process, or to another originating process altogether. Therefore, the reference point for SUM 1281 must be OS 1446 and not OS 320.

40 Applying this principle to the present case, the application and orders made in SUM 1281 must be assessed in the context of OS 1446 and the relief prayed for in OS 1446. Since the plaintiff withdrew his claim in OS 1446, the relevant claim is the first defendant's counterclaim, which involves a declaration that several notices of EGMs and the decisions taken at those EGMs, as well as several notices of the board of directors' meetings and the decisions taken at those meetings, are invalid and of no effect ("the Declarations") (see [4] above). The parties' rights as to the Declarations would not be affected by a determination of SUM 1281 either way. This is because SUM 1281 deals with the entirely separate issue of whether the first defendant should be reimbursed by the second defendant for the Fees she paid to the second defendant's solicitors. Similarly, the orders made in respect of SUM 1281 pertain only to the reimbursement to the first defendant for the Fees and have nothing to do with the Declarations sought by the first defendant in OS 1446.

41 This coheres with the fact that SUM 1281 in effect arises as a result of SUM 4 (the application in respect of which the Consent Order was made). SUM 4 was taken out by the first defendant in OS 1446 due to her concern that the plaintiff's solicitors were also representing the second defendant in OS 1446, which gave rise to a conflict of interest situation. This relationship

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between SUM 4 and SUM 1281 was not denied by the plaintiff. SUM 4 thus arose out of OS 1446. In this light, SUM 4 is clearly an interlocutory application as it did not concern the Declarations sought for in OS 1446. Instead, it was purely facilitative in so far as it ensured that the second defendant would have appropriate and independent representation for the proceedings in OS 1446. The plaintiff argues that SUM 4 is "standalone" and "bears absolutely no relation to the ultimate issue to be determined in OS 1446" and that is why he submits that SUM 4 is also not an interlocutory application.[23] But SUM 4 is an interlocutory application that arose from the plaintiff's initiation of OS 1446 where he chose his own solicitors to also represent the second defendant. The outcome of SUM 4 will not determine the substantive rights of the parties in OS 1446. It was the Consent Order in SUM 4 that resulted in SUM 1281 as the first defendant sought reimbursement of the Fees. Given the close relationship between SUM 4 and SUM 1281, it is logical that SUM 1281 must be an interlocutory application from which the interlocutory orders were derived.

42 Therefore, SUM 1281 is an interlocutory application and the orders made in respect of SUM 1281 are interlocutory orders falling within the scope of para 1(*h*).

Conclusion on whether leave is required to appeal

43 For the above reasons, I find that both paras 1(*b*) and 1(*h*) of the Fifth Schedule to the SCJA apply in the present case. Therefore, leave to appeal against the decision in SUM 1281 is required.

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[23] PWS, at para 51.

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Whether an extension of time should be granted

44 Pursuant to O 56 r 3(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court"), a party applying for leave to appeal under s 34 of the SCJA must do so within seven days (excluding weekends and public holidays) from the date of the order or judgment in respect of which leave to appeal is being sought. The decision in SUM 1281 was handed down on 27 July 2020. The latest date on which leave to appeal could have been sought was 6 August 2020. However, this application was only filed on 11 September 2020. This amounts to a 36-day delay, including weekends and public holidays.

45 The applicable principles in relation to extensions of time to file a Notice of Appeal are well-established. In *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 ("*Lee Hsien Loong*"), the Court of Appeal reiterated at [18] the four factors that the court will have to consider when deciding whether to grant an extension of time: (a) the length of the delay; (b) the reasons for the delay; (c) the chances of the appeal succeeding if time for appealing were extended; and (d) the prejudice caused to the would-be respondent if an extension of time was in fact granted.[24]

46 The Court of Appeal also set out the following general principles in relation to these four factors:

(a) The precise facts and circumstances of each case are "all-important" (see *Lee Hsien Loong* at [28]).

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[24] PWS, at para 68; DWS, at para 23.

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(b) Although all four factors are "equally important" and must be "balanced against one another", the emphasis will invariably be on the first two factors of the length of the delay and the reasons for the delay (see *Lee Hsien Loong* at [19] and [28]).

(c) The court's approach towards the applications for the extensions of time will be "far stricter" than in other situations. The starting point is that the Rules of Court should be obeyed, with reasonable diligence being exercised. This is because the court's "overriding concern" is the need for finality in order to ensure justice and fairness. In the Court of Appeal's words, the winning party "should not be kept waiting – at least, not indefinitely – on tenterhooks to receive the fruits of its judgment" (see *Lee Hsien Loong* at [18] and [33]; *Lai Swee Lin Linda v Attorney-General* [2006] 2 SLR(R) 565 at [45]).

47 In relation to the individual factors themselves, the Court of Appeal explained as follows:

(a) If the delay is not *de minimis*, the court must examine the reasons for such delay. What amounts to a satisfactory explanation depends on the precise factual matrix, although the mere assertion that there was an oversight is insufficient. In assessing the applicant's explanation, the court must "ensure that justice and fairness are ultimately achieved in the context of the need to ensure that there is finality in litigation" (see *Lee Hsien Loong* at [21]–[23]).

(b) In evaluating the chances of the appeal succeeding, the court applies a "very low threshold" – whether the appeal is "hopeless" or "there are no prospects of the applicant succeeding on appeal". In considering this factor, the court should not go into a full-scale

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examination of the issues. If the appeal is not hopeless, the factor will be neutral (see *Lee Hsien Loong* at [19]).

(c) Whether prejudice to the would-be respondent can be shown depends on the precise facts of the case. The prejudice must be one that cannot be compensated by an appropriate order as to costs. Moreover, the prejudice must be "tangibly proven" and cannot simply refer to the fact that the appeal would continue if the extension is granted, or that the respondent would be deprived of the benefits of the judgment until after the appeal (see *Lee Hsien Loong* at [24]–[27]; *Aberdeen Asset Management Asia Ltd and another v Fraser & Neave Ltd and others* [2001] 3 SLR(R) 335 ("*Aberdeen*") at [44]).

48 The plaintiff submits that if leave is required, it should be granted an extension of time to apply for leave to appeal.[25] Having considered all the four factors in their totality, I find that it is not appropriate for the court to grant the plaintiff an extension of time to apply for leave to appeal against the decision in SUM 1281. I shall address each factor in turn.

Length of the delay and reason for the delay

49 The plaintiff's delay of 36 days is clearly not *de minimis*. The plaintiff's explanation for this delay is that his omission to apply for leave to appeal was "a *bona fide* mistake borne out of complexity in applying the relevant legal principles to the present facts".[26] According to the plaintiff, the decision not to

25 PWS, at para 66.

26 PWS, at para 70.

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apply for leave had been arrived at after "an elaborate consideration" of the relevant legal principles.[27]

50 In my view, this is not a satisfactory explanation. First, although the plaintiff claims that SUM 3929 was filed "out of an abundance of caution",[28] I am not entirely convinced that the plaintiff and his solicitors were seriously of the view that leave to appeal was not required. If that was the case, there would have been no need to file this present application to seek a declaration to the same effect. The plaintiff could simply have contested the first defendant's application in CA SUM 91 to strike out his Notice of Appeal in CA 140, as he is doing in respect of CA SUM 90. The plaintiff is not seeking a declaration that leave is not required to appeal against the decision in OS 320 notwithstanding that the first defendant has lodged CA SUM 90 to strike out CA 137 on the ground that leave is required to lodge an appeal. The plaintiff's solicitors explained that this was because there was no uncertainty regarding the need for leave to appeal against the decision in OS 320. In other words, the plaintiff is confident that he can fend off the first defendant's striking out application in CA SUM 90. The implication of this explanation is that the plaintiff was not as certain about his position in SUM 1281 as he seeks to suggest.

51 Secondly, even if I accept the plaintiff's explanation that he honestly believed leave to appeal was not required, this only means that the plaintiff and his solicitors made a mistake in interpreting and/or applying the applicable legal principles. This is not a sufficient ground to grant an extension of time. The Court of Appeal observed in *Lee Hsien Loong* ([45] *supra*) at [22] that oversight

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27 PWS, at para 75.

28 14th Affidavit of Lin Jianwei, dated 11 September 2020, at para 105; DWS, at para 53.

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in itself is "obviously insufficient" to justify an extension of time. Similarly, in *Pearson Judtih Rosemary v Chen Chien Wen Edwin* [1991] 2 SLR(R) 260, the Court of Appeal held at [20] that a *bona fide* mistake by the party's solicitors in the computation of time was not a sufficient ground to grant an extension of time to apply for leave to appeal.[29]

52 This is similarly the case here. As I have concluded above, both paras 1(*b*) and 1(*h*) apply in the present case. Contrary to the plaintiff's suggestion,[30] the position that leave to appeal is not required was *not* a reasonable or principled conclusion to reach based on the existing jurisprudence and authorities. In particular, the principles relating to para 1(*h*) are well-settled and the courts have clearly spelt out the ambit of what constitutes interlocutory applications and interlocutory orders. Indeed, these principles were set out in the cases cited by the plaintiff in his written submissions. In these circumstances, it seems that there was a dereliction of duty on the part of the plaintiff's solicitors when they advised the plaintiff not to apply for leave to appeal, which resulted in an application for leave to appeal being made long after the time limit for doing so had expired.

53 Finally, even if the legal principles and/or facts of the present case are of such complexity as the plaintiff contends, the appropriate course of action for the plaintiff was to seek a declaration from the court that leave to appeal was not necessary. This was explained by Steven Chong J (as he then was) in *The "Xin Chang Shu"* [2016] 3 SLR 1195 ("*Xin Chang Shu*") at [9] as follows:

> … [The Court of Appeal] suggested that in an appropriate case, where there is uncertainty over whether leave to appeal is

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29 DWS, at para 58.

30 PWS, at para 77.

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> required, *the proper approach is for the appellant to seek a declaration from the judge that it does not need leave to appeal* (at [57]). I should mention that it is implicit in the suggestion by the Court of Appeal that *any application to seek clarification from the judge should be made … within the seven-day deadline* stipulated under O 56 r 3(1) of the Rules of Court … [emphasis added]

54 It is true that such a course of action should only be taken where there is "*genuine* uncertainty" (see *Xin Chang Shu* at [9]). However, in this case it is notable that the issue of whether leave to appeal is necessary surfaced almost immediately after I handed down my decision in respect of SUM 1281. After SUM 1281 was granted, the plaintiff's solicitors made an oral application for a stay of execution in light of the fact that the plaintiff was considering an appeal. In response, the first defendant's solicitors stated that as far as SUM 1281 was concerned, the plaintiff needed to apply for leave to appeal.[31] Therefore, it was expressly brought to the plaintiff's attention immediately after SUM 1281 was decided that leave to appeal was required. At the very least, it should have alerted the plaintiff and put him on notice that there might be some contention between the parties on the issue of whether leave was required to appeal. Although the plaintiff contends that it was only "formally alerted" to this position when the first defendant filed CA SUM 91 to strike out CA 140,[32] this misses the point. The first defendant's solicitors had informed the plaintiff's solicitors and the court in an official court hearing that the first defendant's position was that leave to appeal was required. This should have made the first defendant's position abundantly clear.

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31 DWS, at para 50.

32 PWS, at para 78.

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55 In these circumstances, if the plaintiff had truly found the facts and applicable principles complex, he should have applied for a declaration that leave to appeal was not required as soon as possible. The plaintiff cannot have his cake and eat it too; he cannot contend that the facts and/or legal principles were so complex that a *bona fide* mistake was justifiably made, yet not complex enough to warrant an application for a declaration that leave was not required. With due respect, the application of paras 1(*b*) and 1(*h*) to SUM 1281 was not legally and factually complex as it is clear that SUM 1281 was an interlocutory application giving rise to interlocutory orders, and only dealt with reimbursement of the Fees.

56 For these reasons, I do not find that the plaintiff has provided a satisfactory explanation for his 36-day delay in seeking leave to appeal.

Chances of the plaintiff's appeal succeeding

57 I turn now to the chances of the plaintiff's appeal succeeding. I reiterate that the threshold in this regard is extremely low as it only requires that the appeal cannot be described as "hopeless" or having "no prospects" (see [47(b)] above). Having considered the arguments that the plaintiff intends on raising in the appeal, I find that the chances of success in the appeal, while not completely "hopeless", are nevertheless extremely remote. I shall elaborate on the plaintiff's arguments in greater detail below. Since the plaintiff's chances of success in the appeal are remote but not completely "hopeless", I consider this a neutral factor.

Prejudice to the first defendant

58 Finally, I turn to whether prejudice would be occasioned to the first defendant if the court granted the plaintiff an extension of time to apply for leave

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to appeal. The first defendant submits that if the extension of time was granted, prejudice would be occasioned in so far as the proceedings would continue to "hang over" the first defendant and the first defendant would have to spend time and incur costs to defend the appeal.[33]

59 In my view, the prejudice the first defendant alleges is the same as that experienced by any respondent in a case which proceeds on an appeal. However, the Court of Appeal made clear in *Lee Hsien Loong* ([45] *supra*) and *Aberdeen* ([45] *supra*) that the alleged prejudice cannot simply refer to the fact that the appeal would be continued if the extension was granted (see [47(c)] above).[34] In this regard, the authorities cited by the first defendant were not persuasive.[35] *Hong Leong Finance Ltd v Famco (S) Pte Ltd and others* [1992] 2 SLR(R) 224 concerned an application for leave to amend a party's defence, whereas *Ong Jane Rebecca v PricewaterhouseCoopers and others* [2011] SGHC 203 concerned an application for the vacation of trial dates. The observations made by the court in those cases cannot override the express principles set out by the Court of Appeal as regards what amounts to prejudice in the context of extensions of time for leave to appeal.

60 Furthermore, given that the first defendant has been reimbursed by the second defendant for the payment of the Fees, she will not suffer the prejudice of having to bear the Fees out-of-pocket should the appeal of SUM 1281

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33 DWS, at paras 76–78.

34 PWS, at para 94.

35 DWS, at para 77.

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proceed.[36] For these reasons, I do not find that the first defendant would suffer prejudice if an extension of time were granted.

Conclusion on whether extension of time should be granted

61 Although the first defendant would not suffer prejudice if an extension of time were granted, I am of the view that an extension of time is nevertheless not justified. The length of the delay was excessive and the plaintiff does not have a satisfactory explanation for his delay as the plaintiff's solicitors were alerted to the fact that leave was required for an appeal of SUM 1281 as early as 27 July 2020 when the order was made. In the circumstances, it would not be just or fair to grant the plaintiff an extension of time simply because the plaintiff's solicitors were negligent. This was not a case in which the plaintiff's solicitors misinterpreted or misapplied the principles relating to whether leave to appeal was required. It seems clear that the plaintiff's solicitors decided not to apply for leave to appeal despite knowing that leave to appeal was likely to be required. I emphasise that seeking a declaration as in SUM 3929 was an option available to the plaintiff from the very beginning. However, the plaintiff *chose* not to take up that option until after the time limit had expired. Having made that decision, it is only fair that the plaintiff should live with the consequences.

Whether the plaintiff should be granted leave to appeal

62 Even if the plaintiff is granted an extension of time to apply for leave to appeal, I would nevertheless have declined to grant the plaintiff leave to appeal against the decision in SUM 1281.

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36 PWS, at para 93.

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63 The principles concerning leave to appeal are well-settled. There are at least three limbs which can be relied on when leave to appeal is sought. The "common thread" underlying these grounds is that to deny leave may result in a "miscarriage of justice" (see *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 at [15] and [16]). The grounds are as follows:

(a) There is a *prima facie* case of error.

(b) The appeal involves a question of general principle decided for the first time.

(c) The appeal involves a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

Whether there is a prima facie case of error

64 I shall first consider whether there is a *prima facie* case of error. The plaintiff submits that there are several *prima facie* errors of law and/or fact arising from the Judgment. When it comes to errors of fact, Kan Ting Chiu J in *Essar Steel Ltd v Bayerische Landesbank and others* [2004] 3 SLR(R) 25 ("*Essar Steel*") at [26] held that the court will only grant leave to appeal where the error is "clear beyond reasonable argument".[37] Kan J suggested that this threshold might be satisfied where, for example, undisputed evidence showed the court had made a mistake in respect of the date of service of a notice. In contrast, complaints "that a judge had erred in accepting the evidence of one witness over that of another, or had erred in drawing an inference or coming to a conclusion, will not be considered". Similarly, the Court of Appeal in *IW v IX*

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37 PWS, at para 104.

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[2006] 1 SLR(R) 135 ("*IW*") at [20] approved the observations in *Abdul Rahman bin Shariff v Abdul Salim bin Syed* [1999] 3 SLR(R) 138 that:

> … [T]he test of *prima facie* case of error would not be satisfied by the assertion that the judge had reached the wrong conclusion on the evidence. Leave should not be granted when there were mere questions of fact to be considered. …

65 Bearing these principles in mind, I turn to consider the various errors raised by the plaintiff.

(1) The court's findings regarding the Consent Order

66 The plaintiff submits that there was no basis for the court's conclusion that the plaintiff had agreed by virtue of the Consent Order that:[38]

(a) the first defendant would be solely responsible for determining the reasonableness or otherwise of the bills of the second defendant's solicitors;

(b) the first defendant would be "solely responsible and solely entitled to hide the bills where received" from the second defendant and its board of directors; and

(c) the first defendant was entitled to make payment of the Fees from her personal bank account and seek reimbursement "after a protracted delay of up to 7 months, thereby potentially prejudicing [the second defendant's] rights to taxation".

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38 PWS, at para 106.

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67 With respect, this submission is based on a serious misunderstanding of the Judgment. For clarity, I set out the relevant portion of the Judgment at [22] as follows:

> … The import of the Consent Order, therefore, was that the plaintiff had agreed for the first defendant to be solely responsible for *liaising with the solicitors* and for *managing the company's affairs in relation to its solicitors*. There was no expectation of any involvement on the plaintiff's part. This reinforces the above points that under these unique circumstances, *the first defendant was entitled to assess the solicitors' bills and make payment for the bills on the second defendant's behalf* and seek reimbursement from the second defendant. [emphasis added]

68 Thus, the court did not make the findings alleged in [66(b)] and [66(c)] above. It did not make any finding that the first defendant had concealed the relevant bills of costs from the second defendant and its board of directors, nor did it endorse the same. Neither did it endorse the amount of time taken by the first defendant to seek reimbursement of the Fees.

69 As for the finding raised in [66(a)] above, the plaintiff raises further arguments relating to the construction of the Consent Order. The plaintiff submits that the Consent Order does not expressly provide for the reimbursement of JTJC's fees,[39] although the word "reimbursement" was used in relation to N&C's fees.[40] The plaintiff further alleges that the court's construction of the Consent Order was contrary to the plaintiff's allegations regarding the first defendant's financial improprieties in managing the second defendant which resulted in OS 1446.[41]

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39 PWS, at paras 108.

40 PWS, at paras 110–113.

41 PWS, at para 109.

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70 It appears from these arguments that the plaintiff is not relying on any error of law made by the court. Rather, the plaintiff is disagreeing with the court's interpretation of the facts, specifically, the meaning and scope of the Consent Order. However, the threshold for errors of fact is that they must be "clear beyond reasonable argument" (see *Essar Steel* ([64] *supra*) at [26]). I am not persuaded by the plaintiff's arguments that this is the case here. The plaintiff is contending that the court had made the wrong inferences in its construction of the Consent Order, based on the wording of the Consent Order and the circumstances surrounding the Consent Order. The plaintiff is essentially saying that the court should have drawn a conclusion similar to that set out in his submissions based on the evidence. This is insufficient to amount to a *prima facie* error of fact that justifies the granting of leave to appeal.

71 This disposes of the first argument raised by the plaintiff. I find it necessary to clarify, however, the plaintiff's assertion that the court had concluded that the plaintiff had "impliedly agreed to give [the first defendant] a free unfettered rein to decide on the reasonableness of the bills of costs, regardless of how ludicrous the bills may be", or that such was the effect of the Consent Order.[42] This is by no means the case. As I observed in the Judgment at [11], the solicitors' fees have to be reasonable and if they are not, the first defendant's duty as a director is to send the fees for taxation. If the first defendant fails to do so, the proper recourse for the plaintiff is to pursue an action on behalf of the second defendant against the first defendant for breach of her fiduciary duties, rather than pursue an action for the taxation of the Fees. For reasons I have explained in the Judgment (see *eg*, the Judgment at [20]), this would be the most appropriate and equitable course of action, taking into

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42 PWS, at paras 108–109.

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account the parties' arrangement under the Consent Order, as well as the interests of the plaintiff, the first defendant, the second defendant and the second defendant's solicitors. The plaintiff's dogged attempts to send the second defendant's solicitors' bills for taxation may not be the correct approach.

(2) The court's finding that OS 320 had not been commenced in good faith

72 The plaintiff submits that the court made several errors in relation to its analysis of whether OS 320 had been commenced in good faith. However, this conflates SUM 1281 and OS 320. The present application concerns the appeal against the decision in SUM 1281, not OS 320. In fact, the plaintiff himself had decided not to make such an application in respect of OS 320, electing only to do so in respect of SUM 1281. Therefore, it is unclear how the court's reasoning as regards the plaintiff's good faith for the purposes of s 216A of the Companies Act can affect whether leave to appeal should be granted in respect of SUM 1281.

73 Nevertheless, for completeness, I clarify that I do not think that the errors raised by the plaintiff provided sufficient grounds to grant leave to appeal in any case. The plaintiff raises the following arguments:

(a) The court applied the wrong legal threshold for good faith by placing undue emphasis on the issue of hostility between the parties, and failing to consider the factual context behind the plaintiff's commencement of OS 1446 and OS 320, as well as the fact that the plaintiff was a 60% shareholder of the second defendant.[43]

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43 PWS, at paras 114 and 116.

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(b) The court wrongly considered the fact that the first defendant was a 40% shareholder of the second defendant in concluding that the plaintiff lacked good faith in bringing OS 320 and resisting SUM 1281.[44]

(c) The court applied the wrong legal threshold for good faith. The correct legal threshold was the same as in an application for striking out on the basis of abuse of process – where the circumstances show that the application was actuated by bad faith.[45]

74 I am not persuaded by these arguments. It is clear from [7] of the Judgment that the court had applied the legal threshold for good faith set out by the Court of Appeal in *Ang Thiam Swee v Low Hian Chor* [2013] 2 SLR 340 ("*Ang Thiam Swee*"). While the court had regard to the hostility between the parties, it also considered whether the plaintiff honestly held the belief that the Fees were unreasonable and excessive, as well as the merits of the proposed action for taxation (see [9]–[13] of the Judgment). These were permissible factors for the court to consider (see *Ang Thiam Swee* at [29]). Thus, there was no error of law.

75 Furthermore, to the extent that the plaintiff is submitting that the court should have drawn a different conclusion based on the facts of the case (*ie*, the circumstances surrounding the commencement of OS 1446 and OS 320 and the plaintiff's and the first defendant's shareholdings in the second defendant), this would again fail to meet the threshold of "clear beyond reasonable argument" required for purported errors of fact.

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44 PWS, at para 117.

45 PWS, at para 118.

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(3) The court's finding that the taxation of the Fees was not *prima facie* in the interests of the second defendant

76 The plaintiff submits that the court had made a *prima facie* error of law in finding that the taxation of the Fees would not be *prima facie* in the interests of the second defendant. According to the plaintiff, this is based on the court's "holding that [the plaintiff] had only made bare assertions that the [Fees] billed are excessive".[46]

77 With respect, the court made no such finding regarding whether the taxation of the Fees would be *prima facie* in the interests of the second defendant. The issues considered by the court are set out clearly at [5] of the Judgment – (a) whether the plaintiff had shown that he was acting in good faith; and (b) whether s 122 of the LPA was operative and if so, whether special circumstances had been shown warranting an order for taxation. The court's observation that the plaintiff only made bare assertions regarding the excessiveness of the Fees went towards the first inquiry (*ie*, whether the plaintiff was acting in good faith). Having concluded that the plaintiff was not acting in good faith, there was no reason for the court to consider the other requirements of s 216A of the Companies Act, including whether the taxation of the Fees would *prima facie* be in the interests of the second defendant.

(4) The court's findings regarding the applicability of s 122 of the LPA

78 The plaintiff submits that the court had misapplied and misconstrued the scope of s 122 of the LPA, as follows:[47]

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46 PWS, at para 119.

47 PWS, at para 125.

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(a) The court's analysis was incomplete as it failed to address those bills which were issued within 12 months of the plaintiff's application in OS 320.

(b) The court erred in interpreting the scope of the phrases "delivery of a bill of costs", "payment of the bill" and "special circumstances" in s 122 of the LPA.

79 As regards the point raised in [78(a)] above, s 122 of the LPA refers to the "expiration of 12 months from the delivery of a bill of costs, *or* after payment of the bill" [emphasis added]. The use of the word "or" means that the two conditions are disjunctive. It is clear from [17] and [18] of the Judgment that while only *some* of the invoices were issued more than 12 months before the commencement of OS 320, *all* of the invoices had been paid for by the first defendant. This is made even clearer from the court's conclusion at [19] of the Judgment, as follows:

> Since payment has been made to the second defendant's solicitors, and 12 months have elapsed from the delivery of the bill in respect of some of the Fees, s 122 of the LPA applies. …

Therefore, the court's analysis as to whether s 122 applied was not incomplete.

80 As regards the point raised in [78(b)] above, the plaintiff does not offer any reasons or authorities as to why the court may have made an error in law in interpreting the meaning of those phrases.[48] To the contrary, it is clear from [19] of the Judgment that in relation to the phrase "special circumstances" specifically, the court had regard to the test set out by the courts in *JWR Pte Ltd v Syn Kok Kay (trading as Patrick Chin Syn & Co)* [2019] SGHC 253, *Sports*

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48 PWS, at para 126.

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Connection Pte Ltd v Asia Law Corp and another [2010] 4 SLR 590 and *Kosui Singapore Pte Ltd v Thangavelu* [2015] 5 SLR 722.

81 For the above reasons, I am not persuaded that there is a *prima facie* case of error of law and/or fact which justifies the granting of leave to appeal.

Whether the appeal involves a question of general principle decided for the first time

82 I shall now consider whether the appeal involves a question of general principle decided for the first time. Questions which are peculiar to the particular facts of the case are not questions of general principle, notwithstanding that they may be decided for the first time (see *Essar Steel* ([64] *supra*) at [28(b)]). Questions which involve the exercise of judgment depending on all the circumstances of a particular case are also not questions of general principle (see *IW* ([64] *supra*) at [27]).[49]

83 The plaintiff submits that there are five questions (which the plaintiff refers to as "Question 1", "Question 2", "Question 3", "Question 4" and "Question 5") to be raised in the appeal which would constitute questions of law involving general principles to be decided for the first time in Singapore.[50]

84 I turn first to Questions 1 to 4. In my view, although these questions are phrased in general terms, they essentially concern the applicability of s 122 of the LPA to the present facts. Specifically, whether there had been a "delivery of bill of costs" (Question 1), whether there had been "payment of the bill" (Question 2), and whether there were "special circumstances" justifying

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49 DWS, at para 82(a).

50 PWS, at paras 128–133.

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taxation nonetheless (Question 3 and Question 4). These are not questions of general principle. Rather, they require consideration of the peculiar circumstances of this case, in particular, the ambit of the Consent Order and the way in which the Fees were paid by the first defendant. The fact that these questions can be phrased in general terms does not assist the plaintiff.

85 The same can be said for Question 5. Question 5 concerns whether the first defendant was in a position of conflict of interest by reason of her counterclaim in OS 1446, such that she was barred "from making any decision with regard to the representation of [RTC] in the suit".[51] The plaintiff has no basis to make this argument as it must be emphasised that the plaintiff, with the benefit of legal advice from his solicitors, had agreed to the Consent Order in SUM 4. Thus, the issue raised in Question 5 is one which must be decided on the particular facts of this case, rather than as a matter of general principle.

86 The plaintiff's suggestion that Question 5 would be an issue raised on appeal is perplexing. The Consent Order expressly sets out the plaintiff's and the first defendant's agreement that:

> 2. … the 1st Defendant ("MT") shall be entitled, in her discretion, to select one [law firm] and to engage that law firm in the name and on behalf of RTC to act for and represent RTC, as well as give instructions to and receive advice from such solicitors, in and in connection with this OS and all appeals therefrom. RTC will pay for all that law firm's fees and expenses without requiring for that or for any other purpose the law firm or MT to produce the instructions from MT or anyone on her behalf to the law firm, the advice from that law firm or communications, oral or otherwise, between that law firm and MT or anyone on her behalf;
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> …

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51 PWS, at para 132.

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> 4. Lin accepts that only MT, and anyone on her behalf, and no on else (including Lin), shall be entitled to give instructions to that selected law firm and to receive and be privy to any instructions, advice and communications, oral or otherwise, with and from that selected law firm, including but not limited to instructions, advice and communications, oral or otherwise, with and from Nair & Co LLC …

Thus, the plaintiff himself had clearly agreed that the first defendant was entitled to decide on and engage solicitors for the second defendant in respect of OS 1446. It is not clear why the plaintiff now seeks to raise on appeal the argument that the first defendant was in a position of conflict of interest *vis-à-vis* the second defendant, or whether he can even do so given his previous position on the matter.

87 For these reasons, I find that the questions to be raised on appeal are not questions of general principle to be decided for the first time.

Whether the appeal involves a question of importance to the public advantage

88 I turn now to whether the appeal would involve a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage. The plaintiff relies on Questions 1 to 5 and submits that:[52]

(a) Questions 1 to 4 have important ramifications on a corporate client's entitlement to tax its solicitor's bill of costs in circumstances where there is potential misconduct by one of the company's directors;

(b) Questions 1 to 4 are questions of law relating to the interpretation of s 122 of the LPA and s 216A of the Companies Act;

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52 PWS, at paras 135–139.

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(c) Questions 1 to 4 concern the balance to be struck between the public interest in protecting clients from overcharging by solicitors, and protecting solicitors against clients who raise technical points at the last minute to avoid paying the solicitors' fees; and/or

(d) Question 5 has important ramifications on the scope of directors' powers, rights and duties in situations where the directors of a company and the company itself are embroiled in a lawsuit.

89 Again, I am unable to accept the plaintiff's submissions in this regard. The issues in Questions 1 to 5 concern the application of established principles and statutory provisions to the unique facts of this case. It bears mentioning that the issues arising in this case are highly specific to the facts at hand, in particular, the precise arrangement that was reached between the plaintiff and the first defendant by virtue of the Consent Order. The Consent Order was drafted specifically to cater to the particular circumstances arising between the parties in light of the plaintiff's initial claim against the defendants. The findings made in this case, therefore, turn on their own facts and are not of such importance as the plaintiff seeks to suggest.[53]

90 Furthermore, in so far as the Questions relate to issues of statutory interpretation and policy considerations, these are issues which will arise in many cases. It cannot be the situation that all questions involving such issues of statutory interpretation and policy considerations are automatically regarded as questions of importance, the decision of which would be to the public advantage.

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53 DWS, at para 111.

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91 In relation to Question 5 specifically, I reiterate again that it is not clear whether such an issue will even be permitted to be raised on appeal. In any case, the principles relating to a director's conflict of interest when bringing proceedings against the company are well-settled. It is therefore not a question of importance the decision of which would be to the public advantage.

Conclusion on whether leave to appeal should be granted

92 For these reasons, I am not convinced that any of the grounds warranting the grant of leave to appeal have been satisfied. Contrary to the plaintiff's submissions, no miscarriage of justice arises from the decision not to grant leave to appeal. It is not the case that there is no recourse for the second defendant if the Fees are truly excessive. Taxation of the Fees is inappropriate under these circumstances for the reasons set out in the Judgment. By persisting in his application for taxation, the plaintiff is simply barking up the wrong tree. Thus, even if there are merits to grant an extension of time to the plaintiff to apply for leave to appeal, there is no basis to grant the plaintiff's application for leave to appeal.

The plaintiff's arguments that OS 320 will be rendered nugatory

93 I shall now deal with the plaintiff's submissions that SUM 1281 and OS 320 are "intricately enmeshed" and "two sides of the same coin".[54] Thus, the plaintiff argues that since OS 320 is not an interlocutory application, neither should SUM 1281 be considered an interlocutory application.[55] Similarly, the plaintiff contends that a finding that SUM 1281 requires leave to appeal whereas

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54 PWS, at para 58.

55 PWS, at para 60.

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OS 320 does not would "effectively render the appeal in OS 320 nugatory" as it would enable the first defendant to "take the point that, by no appeal being taken in respect of SUM 1281, [the plaintiff] has in fact conceded the position in OS 320".[56]

94 With respect, this assumption and the consequent arguments are flawed. First, the plaintiff in OS 320 sought to send the second defendant's solicitors' invoices for taxation pursuant to s 216A of the Companies Act. Thus, I agree with the first defendant that leave of the court is required for an appeal against the decision in OS 320 as it deals solely with the issue of costs. The first defendant filed CA SUM 90 and CA SUM 91 to strike out the plaintiff's Notices of Appeal in CA 137 and CA 140 respectively. But the plaintiff only applied for a declaration that no leave was required to appeal in relation to SUM 1281. There is no similar application for the decision in respect of OS 320. Hence, there is a possibility that the Notice of Appeal in CA 137 may be struck out if the first defendant succeeds in her submission to the Court of Appeal that para 1(*b*) applies to OS 320 as well. Given these circumstances, whether there will even be an appeal of OS 320 is presently uncertain.

95 Secondly, even if there is an appeal against the decision in OS 320, the plaintiff overstates the extent of the relationship between OS 320 and SUM 1281. It is true that factually, there is an overlap between OS 320 and SUM 1281 – both deal with the Consent Order, the Fees, and the first defendant's payment of the Fees. Some of the factual issues also overlap, for instance, the scope of the parties' arrangements pursuant to the Consent Order. However, from a legal perspective, the two applications are quite different.

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56 PWS, at para 62.

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OS 320 is an action between the plaintiff and the second defendant, for leave to be granted to the plaintiff to commence a derivative action on behalf of the second defendant to send the Fees for taxation. In contrast, SUM 1281 is an application by the first defendant against the plaintiff to compel the plaintiff to procure the second defendant and the finance manager of the second defendant to reimburse the first defendant pursuant to the Consent Order. The Consent Order, in turn, was arrived at after discussions between the solicitors of the plaintiff and the first defendant in SUM 4. As a result, the issues in OS 320 and SUM 1281 are different. The outcome of one may not necessarily determine the other, and *vice versa*.

96 Even if the application in OS 320 had been allowed, that did not necessarily mean that SUM 1281 would have been dismissed as the dispute in SUM 1281 was only regarding the quantum to be paid to the second defendant's solicitors. The court could have ordered the plaintiff to nevertheless procure the second defendant to reimburse the first defendant pending the taxation proceedings brought pursuant to OS 320. In similar vein, the fact that OS 320 may be appealed without the leave of the court whereas SUM 1281 may not does not render any appeal of OS 320 nugatory. The reasons given by the court in respect of its decision on OS 320 can still be considered by the Court of Appeal. If the appeal against the decision in OS 320 is eventually granted and the Fees are successfully taxed, the second defendant's solicitors can return to the second defendant the amount of the Fees which are found to be excessive.

97 It seems that OS 320 may also require the leave of the court for an appeal since the substance of OS 320 deals solely with the taxation of the Fees. This is as *per* the substantive approach to para 1(*b*) which I have earlier explained (see [31] and [94] above). Notwithstanding that OS 320 is an originating summons, it could also be an interlocutory application like SUM 1281 as

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OS 320 also arose from SUM 4 which is an interlocutory application arising from OS 1446.

Summary of findings

98 In summary, my findings are as follows. I find that leave is required to appeal against the decision in SUM 1281. Paragraph 1(*b*) of the Fifth Schedule to the SCJA applies in this case. The only issue in the appeal is whether the plaintiff can resist procuring the second defendant to reimburse the first defendant on the basis that the Fees should be taxed. This issue is one which relates to costs. Paragraph 1(*h*) of the Fifth Schedule to the SCJA also applies, because SUM 1281 is an interlocutory application and the orders made therein are interlocutory orders *vis-à-vis* OS 1446.

99 As such, leave is required to appeal. However, the plaintiff's application for leave to appeal is out of time. I find that there are no good reasons justifying the grant of an extension of time to apply for leave to appeal, as the plaintiff's delay is not *de minimis* and the plaintiff was negligent and caused the delay. This is notwithstanding the fact that the plaintiff's chances of success on appeal are remote and minimal prejudice would occasion to the first defendant.

100 Even if an extension of time is granted, there is no justification to grant the plaintiff leave to appeal against the decision in SUM 1281 as the plaintiff has not shown that any of the grounds warranting the grant of leave are satisfied in this case.

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Conclusion

101 For the foregoing reasons, I dismiss the plaintiff's application in SUM 3929. I shall now hear parties on the issue of costs.

Tan Siong Thye
Judge

Eng Zixuan Edmund, Brinden Anandakumar, Danica Gan Fang Ling and Chang Chee Jun (Fullerton Law Chambers LLC) for the plaintiff;
Davinder Singh s/o Amar Singh SC, Pardeep Singh Khosa, Tan Siew Wei Cheryl, Tan Mao Lin, Delvin Chua and Kenneth Koh (Davinder Singh Chambers LLC) for the first defendant;
The second defendant absent.

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