IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC(A) 11

Appellate Division / Civil Appeal No 39 of 2025

Between

Malayan Banking Berhad

… *Appellant*

And

Zhang Zhencheng

… *Respondent*

In the matter of Originating Application No 870 of 2024 (Registrar's Appeal No 30 of 2025)

Between

Malayan Banking Berhad

… *Claimant*

And

Zhang Zhencheng

… *Defendant*

JUDGMENT

[Civil Procedure — Service — Service of originating process — Defendant filing a notice of appointment of solicitor — Whether defendant's solicitors have instructions to accept service]

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Malayan Banking Bhd
v
Zhang Zhencheng

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Appellate Division of the High Court — Civil Appeal No 39 of 2025
Woo Bih Li JAD and Debbie Ong Siew Ling JAD
27 June 2025

6 August 2025

Woo Bih Li JAD (delivering the judgment of the court):

1 This appeal concerns the validity of the service of an originating application. The appellant obtained an order for substituted service on the respondent and effected substituted service. The respondent then appointed solicitors to file an application to set aside the order for substituted service. The application was successful. However, relying on a Notice of Appointment of Solicitor filed by the respondent's solicitors, the appellant's solicitors effected service of the originating process on him by serving his solicitors by way of eLitigation (the "Service"). The respondent then applied to set aside the Service. He failed at first instance. On appeal, the judge below (the "Judge") set aside the Service. The appellant then obtained permission to appeal and proceeded to appeal against the decision of the Judge.

2 We dismiss the appeal. In our view, the Service is invalid. The appellant cannot rely on the Notice of Appointment of Solicitor to effect service on the

respondent's solicitors in circumstances where the Notice of Appointment of Solicitor was followed by an application to set aside an earlier order for substituted service.

Facts

3 On 29 August 2024, Malayan Banking Berhad (the appellant) commenced HC/OA 870/2024 ("OA 870") for the enforcement of two mortgages granted by Mr Zhang Zhencheng (the respondent).

4 On the same day, the appellant's solicitors, Shook Lin & Bok LLP ("SLB") wrote to the respondent's solicitors, LVM Law Chambers LLC ("LVMLC"), to ask whether LVMLC had instructions from the respondent to accept service of the originating process for OA 870.

5 On 3 September 2024, LVMLC replied that it had no such instruction.

6 As it was unknown to the appellant that the respondent had been out of Singapore, it attempted personal service at the respondent's Singapore address. After two failed attempts, the appellant sought and obtained an order for substituted service. This was effected the next day on 10 September 2024 by posting copies of the OA 870 papers on the front door of the property at that Singapore address.

7 On 18 September 2024, LVMLC filed a Notice of Appointment of Solicitor in OA 870 (the "NOAS") which states that the named solicitors from LVMLC "ha[d] been appointed to act as the solicitor of [the respondent] in this action".

8 About a week later, on 27 September 2024, LVMLC filed HC/SUM 2795/2024 ("SUM 2795") to challenge the validity of the substituted service. The respondent's position in SUM 2795 was that, amongst others, the appellant ought to seek permission for service out of Singapore in order to establish jurisdiction over him as he was not in Singapore.

9 After SUM 2795 was served, it was heard on 11 November 2024. An Assistant Registrar (the "AR") reserved judgment and adjourned the hearing to 18 November 2024 at 2.30pm.

10 On 18 November 2024 at 12.14pm, the AR's written decision to set aside the order for substituted service was released to the parties by way of correspondence from the court. The decision was on the grounds that the respondent had not submitted to the jurisdiction of the Singapore courts and that the appellant had to first seek permission for service out of jurisdiction before resorting to substituted service as he was not in Singapore. In the same correspondence, it was directed that the hearing at 2.30pm that day would remain for submissions on costs.

11 On the same day at 1.29pm (*ie*, about an hour after the AR's decision and before the costs hearing at 2.30pm), SLB served the originating process and the supporting affidavit for OA 870 on LVMLC by eLitigation (*ie*, the Service).

12 On 12 December 2024, LVMLC filed HC/SUM 3639/2024 to set aside the Service. The AR dismissed that application.

13 In HC/RA 30/2025, the respondent appealed against the entirety of the AR's decision. The Judge allowed the appeal.

14 The appellant then filed AD/OA 9/2025 ("OA 9") to seek permission to appeal against the Judge's decision. We granted the appellant permission to bring the present appeal. This was on the grounds that the matter concerned a question of general principle decided for the first time and a question of importance upon which further arguments and a decision of a higher tribunal would be to the public's advantage.

Decision below

15 In his brief grounds of decision ("GD"), the Judge identified the "core issue" as whether O 4 r 8(2) of the Rules of Court 2021 ("ROC") supersedes the requirement of personal service of an originating process under O 6 r 4 (at [7]). Specifically, O 4 r 8(2) provides that a party's solicitor "is deemed to be acting for the party in the action until the final conclusion … and his or her business address is deemed to be the address for service of all documents in the action until such conclusion". A "[c]onnected" issue was whether filing the NOAS amounted to the respondent's agreement for LVMLC to accept service on his behalf (GD at [7]).

16 The Judge answered both issues in the negative. While the "plain words" of O 4 r 8(2) supported the appellant's position that the respondent should be deemed to have agreed to accept service of all documents on the respondent's behalf upon filing the NOAS (GD at [7(a)]), the following suggested otherwise:

(a) First, if the appellant were correct, O 6 r 12(5) of the ROC – which states that filing an affidavit to challenge jurisdiction does not amount to submission – would be rendered otiose. As the respondent submitted, the NOAS cannot "automatically determin[e] the existence of the court's jurisdiction … when the filing of an affidavit to challenge

that jurisdiction (a pre-requisite of which is the filing of the NOAS) is not treated as a submission" (GD at [7(b)]).

(b) Second, as the respondent pointed out, the rules in the ROC that depart from the requirement of personal service under O 6 r 4 do so expressly, which was not the case for O 4 r 8(2) (GD at [7(e)]). In his supplemental grounds of decision, the Judge added that the word "service" in O 4 r 8(2) does not include personal service because the rule only contemplates "service on an address", whereas personal service requires "service on a person" (at [2(a)]).

(c) Third, the authorities relied on by the appellant did not support its position. The commentary that "[s]o long as the solicitor to a party in an action remains on the record, service on that solicitor is good service" (*Singapore Civil Procedure 2022* vol I (Cavinder Bull SC gen ed) (Sweet & Maxwell, 2022) (the "*White Book*") at para 4/8/6), was not on point. As to the Law Society of Singapore's Practice Direction ("Practice Direction") 8.5.4 which states that a solicitor on record is not entitled to refuse acceptance of service of any documents, it took on "a completely different complexion when read with [Practice Direction] 8.5.10 addressing the peculiarities of personal service of originating process" (GD at [7(d)]).

(d) Moreover, the case of *Madison Pacific Trust Ltd and others v PT Dewata Wibawa and others* [2024] SGHC 184 ("*Madison*") suggested that filing a Notice of Appointment of Solicitor in itself, without more, does not mean the party had instructed his solicitors to accept service (GD at [7(f)]).

(e) There was "little sympathy" for the appellant's argument that LVMLC had created ambiguity in filing the NOAS without clarifying whether it had instructions to accept service (GD at [6]). A prescribed form was prescribed for a good reason, so substantial changes are not expected to be made to it (GD at [5]). The "logical course of action" was for SLB to clarify with LVMLC if the previous instructions from the respondent had changed (GD at [6]).

Issue to be determined

17 As the Service was effected through eLitigation, the requirements for electronic filing service under O 28 r 12 of the ROC are applicable. It provides that a document requiring personal service may be served *via* eLitigation if: (a) the party to be served is represented by a solicitor who is an authorised or a registered user of eLitigation; and (b) the party agrees to service using the electronic filing service. Such agreement is deemed if he has instructed his solicitor to accept service of a document requiring personal service.

18 As indicated in our decision in OA 9 to grant the appellant permission to appeal, the validity of the Service turns on the following key issue: whether LVMLC had the respondent's instruction to accept service of the originating process in OA 870 on behalf of the respondent by virtue of the NOAS, in circumstances where the NOAS was followed by an application to set aside an earlier order for substituted service on the respondent. If so, the respondent would be deemed to have agreed to service through eLitigation, and the Service would be valid.

The court's decision

19 In our view, the Service is invalid as the NOAS, filed in the circumstances of this case, does not suggest that LVMLC was instructed by the respondent to accept service of originating process on his behalf.

20 The appellant placed much emphasis on O 4 r 8(2) of the ROC. For context, we set out O 4 rr 8(1) to 8(4) below:

> **Appointment, change and discharge of solicitor (O. 4, r. 8)**
>
> **8.**—(1) Where a party who was not represented by a solicitor decides to appoint a solicitor, the party must file and serve a notice of appointment of solicitor in Form 3 on all the parties.
>
> (2) Unless notice is given according to this Rule, a solicitor who is appointed by a party at any stage of an action is deemed to be acting for the party in the action until the final conclusion of the action in the Court, and his or her business address is deemed to be the address for service of all documents in the action until such conclusion.
>
> (3) A party who intends to change his or her solicitor must file and serve a notice of change of solicitor in Form 3 on all the parties.
>
> (4) A party who after having sued or defended by a solicitor, intends and is entitled to act in person without legal representation, must file and serve a notice of intention to act in person in Form 4 on all the parties.

21 The appellant stressed that since O 4 r 8(2) states that the business address of the solicitors is deemed to be the address for "service of all documents in the action", the NOAS meant that the appellant could serve an originating process on LVMLC after the setting aside of the order for substituted service. According to the appellant, the phrase "all documents" includes originating processes, and the word "service" includes personal service (and not just ordinary service).

22 However, the appellant accepted that this argument in the preceding paragraph was subject to the following qualifications:

(a) if the NOAS itself had been qualified in some way; or

(b) if LVMLC had informed SLB that the NOAS was qualified prior to the service of any document pursuant to the NOAS.

Importantly, the appellant did not suggest that the qualification after the NOAS had been filed and served had to be in any particular form. In other words, although O 4 r 8(2) refers to notice being given according to the rule (*ie*, by filing a Notice of Change of Solicitor under O 4 r 8(3) or by filing a Notice of Intention to Act in Person under O 4 r 8(4)) and there are prescribed forms for such a notice, it is the substance of the notice and not the form which is important especially if the notice is not given under either O 4 rr 8(3) or 8(4).

23 While we agree with the appellant to the extent that the NOAS could have been qualified to state that it was filed solely for the purpose of setting aside the order for substituted service and did not mean that LVMLC has instructions to accept service of an originating process in OA 870, this was not the only way to qualify the NOAS.

24 As mentioned above, SUM 2795, which was the application to set aside the order for substituted service, was filed thereafter and served. In our view, even on the appellant's own case that O 4 r 8(2) was applicable and the NOAS should have been qualified, the filing and service of SUM 2795 made it clear that the NOAS was qualified, *ie*, that the NOAS was subject to the outcome in SUM 2795. Hence, if the order for substituted service were set aside, the appellant could not rely on the NOAS to effect service of the originating process on LVMLC. Otherwise, the outcome in SUM 2795 would be rendered otiose.

25 As for the scope of O 4 r 8(2), we note that in the usual course of things, a claimant would have validly served an originating process on the defendant, in one way or another, before a Notice of Appointment of Solicitor is filed. Although the parties' arguments on appeal focused on whether "service" in O 4 r 8(2) referred to both personal and ordinary service or only the latter, there is some merit in the argument that "service of all documents in the action" in O 4 r 8(2) was not intended to apply to the service of an originating process in the first place but to other subsequent documents (*eg*, pleadings, interlocutory applications, affidavits and written submissions). In particular, the word "action" is defined in O 1 r 3(1) of the ROC as "proceedings commenced by an originating claim or an originating application". As an originating process is a document that initiates the action itself, it gives rise *to* an action, rather than being a document arising "*in* the action". This reading also seems consistent with the purpose of O 4 r 8 which is to ensure that the status of a party's legal representation is properly communicated to the court and the other parties, and that any changes *in the course of the proceedings* are accurately reflected on record in the interest of effective communication and service of documents (Jeffrey Pinsler SC, *Singapore Civil Practice* (LexisNexis, 2022) ("*Singapore Civil Practice*") at para 12-118). Specifically, it appears to us that O 4 r 8(2) provides for a presumption of ongoing representation and a deemed address for service to preserve continuity and avoid any confusion or disruption caused by unnotified changes in a party's solicitor-client relationship in the midst of the proceedings. In other words, O 4 r 8(2) arguably only contemplates a situation *after* service of an originating process has been validly effected.

26 The appellant also referred to the following commentaries on O 4 r 8(2):

(a) *Singapore Rules of Court – A Practice Guide* (Chua Lee Ming ed-in-chief, Paul Quan gen ed) (Academy Publishing, 2023) at

para 04.028 which states that O 4 r 8(2) is a "new" provision providing for a default position that "the solicitor's business address is deemed to be the service address for all documents in the action";

(b) the *White Book* at para 4/8/6 (cited at [16(c)] above); and

(c) *Singapore Civil Practice* at para 12-118 (cited at [25] above), para 12-120 (which states that the rebuttable presumption that a party's solicitor is deemed to be acting for the party "arises pursuant to the appointment") and para 12-123 (which states that in the absence of a notice, "the opposing party (if he is unaware of the change) would be entitled to continue to serve documents on the previous solicitor (because he is still on the record)".

However, these commentaries are general statements which do not specifically take into account the particular facts before us and do not assist the appellant.

27 In any event, in the circumstances before us, it is unnecessary to reach a definitive conclusion on the scope of O 4 r 8(2). Even if it does apply to an originating process, as noted above, the circumstances in the present case made it clear that the NOAS was for the purpose of SUM 2795 and subject to its outcome.

28 We also note the Judge's view that O 6 r 12(5) of the ROC supported the respondent's position that the NOAS does not necessarily mean that service of an originating process may be effected on the solicitor in question because service would determine the existence of the court's jurisdiction when in fact that jurisdiction was being challenged. We reproduce the Judge's reasoning below (GD at [7(b)]–[7(c)]):

> (b) As the [respondent] rightly argued, the [appellant's] argument on O4 R8(2) superseding O6 R4 renders otiose the position in O 6 r 12(5) of the ROC 2021 ("O6 R12(5)"). O6 R12(5) provides that an affidavit filed in support of a defendant seeking to challenge the court's jurisdiction should not be treated as a submission to the court's jurisdiction. As noted in O 6 r 12(4) of the ROC, a challenge to jurisdiction may be for the reason that (a) the court has *no jurisdiction* to hear the action (existence of jurisdiction); and (b) the court *should not exercise jurisdiction* because it is not the appropriate court to hear the action (exercise of jurisdiction). Once there is valid service, pursuant to s 16(1)(*a*) of the SCJA, the Singapore courts will have jurisdiction over the action. That goes to point (a) on the existence of jurisdiction. However, the defendant can still challenge the Singapore court's exercise of jurisdiction. In other words, the [respondent's] argument is that [the Notice of Appointment of Solicitor] on its own should not have the effect of automatically determining the existence of the court's jurisdiction (by allowing personal service to be effected in Singapore) when the filing of an affidavit to challenge that jurisdiction (a pre-requisite of which is the filing of the [Notice of Appointment of Solicitor]) is not treated as a submission to the court's jurisdiction.
>
> (c) The [appellant's] retort to this point was that, in order to avoid this issue, the [respondent] should have filed a fresh application to challenge jurisdiction and not a summons under OA 870. Whilst that is not wrong, it is also a peripheral attack … which, in my judgment, carries little weight.
>
> [emphasis in original]

29 We agree. Valid service of an originating process is a means of establishing jurisdiction over the defendant (see s 16(1) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed)). Where a defendant without legal representation challenges the court's jurisdiction on the ground of invalid service, he may subsequently engage a solicitor who would, in the ordinary course of things, file a Notice of Appointment of Solicitor (as required under O 4 r 8(1) of the ROC) and an affidavit to oppose the court's jurisdiction over the case in question. Order 6 r 12(5) makes it clear that such an affidavit is not treated as a submission to jurisdiction. By parity of reasoning, the Notice of Appointment of Solicitor filed in such circumstances would also not be treated

as a submission to jurisdiction and, if the challenge to jurisdiction were successful, it would not be open to the claimant to then "serve" the originating process on the defendant's solicitor in reliance on the Notice of Appointment of Solicitor.

30 For completeness, in so far as the Judge was of the view that the case of *Madison* lent support to his conclusion (see [16(d)] above), we note that the point was not argued in that case. It is also unnecessary to address the Practice Directions (see [16(c)] above) as the parties did not rely on them on appeal.

Application to dispense with personal service

31 In the appellant's submission to this court, it made an alternative application to request the court to make an order to dispense with personal service of originating process on the respondent should its appeal be unsuccessful. We have no hesitation in rejecting this application. The permission to appeal was granted in respect of the question whether the Service was valid in the circumstances. It is not open to the appellant to slip in this application at this stage. For the avoidance of doubt, our rejection of this application does not preclude any fresh application for dispensation of personal service.

Conclusion

32 For the above reasons, we agree with the Judge that the Service is invalid. While the appellant complained that the respondent was evading service to delay the hearing of OA 870, the requirements of service must still be followed.

33 We award costs of OA 9 and costs of this appeal fixed at $15,000 (all in) to the respondent. This figure appropriately reflects the relative straightforward facts of the appeal and the overlap of arguments in OA 9 and on appeal.

34 The usual consequential orders will apply as regards any security provided by the appellant for OA 9 and for this appeal.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Ng Yeow Khoon, Ho Wei Liang Sherman and Leong Kit Weng (Shook Lin & Bok LLP) for the appellant;
Lee Sien Liang Joseph, Chan Kia Pheng, Ooi Huey Hien and Ng Li Yang Jervis (LVM Law Chambers LLC) for the respondent.