IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 85

Civil Appeal No 1 of 2021 (Summons No 61 of 2021)

Between

(1) Golden Hill Capital Pte Ltd
(2) Phua Yong Pin
(3) Phua Yong Tat

… *Applicants*

And

(1) Yihua Lifestyle Technology Co, Ltd
(2) Ideal Homes International Limited

… *Respondents*

In the matter of Originating Summons 425 of 2020 (Summons No 3963 of 2020)

Between

(1) Yihua Lifestyle Technology Co, Ltd
(2) Ideal Homes International Limited

… *Applicants*

And

HTL International Holdings Pte Ltd

… *Respondent*

GROUNDS OF DECISION

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v
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Court of Appeal — Civil Appeal No 1 of 2021 (Summons No 61 of 2021)
Judith Prakash JCA and Steven Chong JCA
22 July 2021

30 August 2021

Steven Chong JCA (delivering the grounds of decision of the court):

Introduction

1 This application arose out of CA/CA 1/2021 ("CA 1"), which is an appeal by the shareholders ("Shareholders") of HTL International Holdings Pte Ltd ("the Company") against the decision of the High Court Judge ("Judge") in HC/SUM 3963/2020 ("SUM 3963").

2 In SUM 3963, the Shareholders applied under s 227R of the Companies Act (Cap 50, 2006 Rev Ed) ("CA") (now s 115 of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018)) for the court to declare null and void the sale of the Company's interests in its subsidiaries to Golden Hill Capital Pte Ltd ("Golden Hill Capital"). The named parties to SUM 3963 were the Shareholders and the judicial managers ("JMs") of the Company. Golden Hill

Capital and its beneficial owners (collectively, "the Phua Group") were also allowed to participate in the proceedings, albeit in their capacity as non-parties.

3 The Judge dismissed SUM 3963 and awarded costs in favour of the JMs and the Phua Group. Dissatisfied, the Shareholders filed CA 1 appealing against the Judge's decision but omitted to serve the notice of appeal ("NOA") on the Phua Group. The Phua Group thus brought the present application seeking the following:

(a) that the NOA be struck out on the basis that it was not served on the Phua Group;

(b) alternatively, that the Shareholders be barred from seeking orders in CA 1 which directly affect the Phua Group;

(c) in the further alternative, that the documents filed in CA 1 be served on the Phua Group, and that the Phua Group file a Respondent's Case and be allowed to participate in CA 1 as respondents to the proceedings.

4 This application raised several novel issues pertaining to the service of the NOA on a non-party. In particular, is it *mandatory* for an appellant to serve the NOA on a non-party who had participated in the proceedings below? If not, can the court nevertheless direct, *in the exercise of its discretion*, that the NOA (and other appeal papers) be served on that non-party?

5 On 22 July 2021, we allowed the Phua Group's application to the extent of their participation in CA 1 as respondents to the proceedings. We set out the detailed grounds for our decision below.

Facts

Background facts

6 The Company is the holding company of a group of companies involved in the furniture business (collectively, "the HTL Group"). The original founders and owners of the HTL Group were Mr Phua Yong Tat and Mr Phua Yong Pin ("the Phua Brothers"), who are the beneficial owners of Golden Hill Capital. In 2016, the Company was fully acquired by the Shareholders. Despite the acquisition, the Phua Brothers retained management of the Company and the HTL Group.

7 Subsequently, the Company ran into financial difficulties. On 5 May 2020, the Phua Brothers, through the Company, obtained an order for the interim judicial management of the Company. After the interim judicial management order was made, the Company's interim judicial managers, on behalf of the Company, entered into a share purchase agreement ("SPA") with Golden Hill Capital on 28 May 2020, under which Golden Hill Capital was to purchase the Company's interests in its subsidiaries ("the Asset") for US$80m. On 13 July 2020, the Company was placed under judicial management.

8 On 19 August 2020, another entity, namely Man Wah Holdings ("Man Wah"), made an offer to purchase the Asset. The JMs invited both Golden Hill Capital and Man Wah to provide "anything further" they wished to communicate in relation to their respective offers by 26 August 2020. Upon Man Wah's request, the JMs extended this deadline to 31 August 2020. On that date, Golden Hill Capital submitted a revised offer of US$100m. Man Wah also submitted an offer of US$100m, with an additional promise to pay US$10m

above any offer made by the Phua Group. The JMs subsequently sold the Asset to Golden Hill Capital for US$100m on 7 September 2020.

9 On 8 September 2020, Man Wah conveyed a further improved offer for the Asset, which was again rejected by the JMs. As Man Wah was the Shareholders' preferred buyer, the Shareholders commenced SUM 3963 on 18 September 2020 seeking the following relief pursuant to s 227R of the CA:

(a) an order to declare the Company's sale of the Asset to Golden Hill Capital null and void;

(b) an order to direct the JMs to accept Man Wah's offer dated 31 August 2020 or 8 September 2020; and

(c) an order to restrain the JMs from proceeding with any resolution and/or taking steps to wind up the Company.

Proceedings and decision in SUM 3963

10 On 18 September 2020, a Pre-Trial Conference ("PTC") for SUM 3963 was held before the Assistant Registrar Karen Tan ("AR Tan"). Counsel for the Phua Group appeared together with counsel for the Shareholders, the JMs and Man Wah. During the PTC, counsel for the Phua Group informed AR Tan that the Phua Group wished to file a reply affidavit in response to the Shareholders' affidavit. The Shareholders objected to the Phua Group participating in SUM 3963 but AR Tan disagreed and explicitly directed the JMs *and the Phua Group* to file reply affidavits and submissions in respect of SUM 3963. The Shareholders did not appeal against these orders.

11 Subsequently, the matter was heard before the Judge on 9 November 2020. During the hearing, counsel for the Phua Group made submissions on the Phua Group's behalf and, consistent with AR Tan's directions, the Judge allowed the Phua Group, the JMs and the Shareholders to participate and be heard. During the hearing itself, no objections were taken as regards the Phua Group's participation in the matter.

12 On 24 November 2020, the Judge dismissed the Shareholders' application. On 15 April 2021, the Judge delivered his detailed grounds of decision in *Re HTL International Holdings Pte Ltd* [2021] SGHC 86 ("GD"). For present purposes, we summarise only the aspects of the Judge's decision which are material to the present application:

(a) The court would not interfere with the JMs' decision under s 227R of the CA unless it could be shown that the JMs' conduct had been plainly wrongful, conspicuously unfair, or perverse (GD at [43]).

(b) The JMs' assessment that Golden Hill Capital's offer promised superior shareholder returns was justified on the evidence before the court (at [63]).

(c) The exigencies of the situation facing the Company were such that the JMs had to make a decision that would resolve the Company's problems sooner rather than later (at [67]). On the facts, Man Wah's offer would take a longer time to resolve the Company's problems than Golden Hill Capital's offer (at [74]).

(d) There was fair consideration by the JMs of the various alternative offers. The JMs provided equal opportunities to Man Wah

and Golden Hill Capital to put in "anything further" in respect of their original offers by 26 August 2020. Even when the Phua Group had emphasised the urgent need to complete the SPA, the JMs had agreed to Man Wah's request to extend the deadline to put in further matters to 31 August 2020 (at [75] and [77]).

(e) The Shareholders had not established that the JMs had caused them any prejudice, much less unfair prejudice. The JMs could not be faulted for any plainly wrongful, conspicuously unfair or perverse conduct (at [83]).

13 The Judge also ordered the Shareholders to pay S$18,000 in costs to the Phua Group ("Phua Group Costs Order") after hearing the parties on costs (GD at [84]).

Events leading up to present application

14 On 5 January 2021, the Shareholders filed the NOA against the "*whole* of the [Judge's decision on 24 November 2020] dismissing the [Shareholders'] application vide HC/SUM 3963/2020 and *against the cost orders made in relation thereto on 22 December 2020*" [emphasis added]. The NOA was served on the JMs but not on the Phua Group. The Phua Group only came to know that the NOA had been filed when the JM's solicitors wrote to the Phua Group's solicitors on the same day (*ie*, 5 January 2021) informing them that the NOA had been filed and that "the outcome of the appeal [might] potentially affect [the Phua Group's] rights under the [SPA]".

15 On 28 May 2021, the Shareholders filed the Appellant's Case, the Form of the Core Bundle, the Appeals Information Sheet, and the Form of the Record

of Appeal in CA 1. Again, none of these documents were served on or otherwise provided to the Phua Group by the Shareholders. The Phua Group only came to know of the existence of these documents when the JMs' solicitors sent them to the Phua Group's solicitors later that same day.

16 On 1 June 2021, the Phua Group's solicitors wrote to the JMs' and Shareholders' solicitors seeking their confirmation that the Phua Group was entitled to file a Respondent's Case in CA 1. On the same day, the JMs' solicitors confirmed that the JMs had no objections to the Phua Group filing a Respondent's Case. On 3 June 2021, the Shareholders' solicitors replied to object to the Phua Group's participation on the basis that there was "no necessity and basis" for it to do so.

17 Following this, the Phua Group requested that a Case Management Conference ("CMC") be held for the parties to obtain directions on the Phua Group's entitlement to participate in CA 1. During the CMC, which was held before AR Gan Kam Yuin ("AR Gan") on 10 June 2021, the Shareholders reiterated their objection to the Phua Group's participation in the appeal. AR Gan considered that it was for this Court to give the directions sought by the Phua Group. Consequently, AR Gan gave timelines for the Phua Group to file the present application, in the event that the Shareholders continued to object to its participation in the appeal. To avoid holding up the timelines, AR Gan also directed the Phua Group to serve its Respondent's Case on the Shareholders and the JMs (without filing the Case on eLitigation) by 30 June 2021.

18 As the Shareholders continued to object to the Phua Group's participation in CA 1, the present application was filed on 18 June 2021.

The parties' cases

The Phua Group's arguments

19 The Phua Group relied primarily on O 57 r 3(6) of the Rules of Court (2014 Rev Ed) ("ROC") which, according to the Phua Group, stands for the proposition that a NOA must be served on any person whose status and legal rights would be "directly affected" by the orders in the appeal. The Phua Group asserted that CA 1 directly affects the Phua Group's legal rights in so far as the Shareholders seek, through the appeal, (a) a reversal of the costs orders made by the Judge, including the Phua Group Costs Order; and (b) a declaration that the sale of the Asset is null and void, which would affect, *inter alia*, the Phua Group's ownership of the Asset, the consideration which the Phua Group has given in exchange for the Asset, and the pledge of the shares in the Company's subsidiaries which the Phua Group executed in order to obtain financing. Consequently, the NOA ought to be struck out for procedural irregularity.

20 In the alternative, the Phua Group submitted that the Shareholders should not be allowed to pursue reliefs in the appeal which would directly affect the Phua Group. In the further alternative, the Phua Group argued that it should be allowed to participate in the appeal pursuant to O 57 r 10(1)–(2) of the ROC as (a) the appeal would directly impact the Phua Group's rights and interests, (b) the Phua Group was uniquely positioned to assist the court on certain matters; and (c) any prejudice which the parties might face as a result of the Phua Group's participation could easily be remedied by costs.

The Shareholders' arguments

21 For their part, the Shareholders contended that the issues that arise in CA 1 are (a) whether the JMs were justified in their assessment that Golden Hill

Capital's offer was "at least comparable or equal" to Man Wah's offer in terms of shareholder returns; (b) whether the JMs had incorrectly determined that Man Wah had agreed to waive certain inter-company debts; and (c) whether the JMs had, by refusing to accede to Man Wah's requests for certain financial accounts of the Company and its subsidiaries, adversely affected Man Wah's ability to put its best offer on the table. These issues had "nothing to do" with the Phua Group and the Phua Group's participation in the appeal would thus be "superfluous".

22 Furthermore, since the Phua Group had not been a respondent in SUM 3963, it followed, procedurally, that the Phua Group could not be a respondent in CA 1. The Phua Group's participation in SUM 3963 had been allowed pursuant to the exercise of a discretion by AR Tan and not pursuant to any legal rule.

23 Finally, while the Shareholders were seeking to appeal against the Phua Group Costs Order, this did not mean that the Phua Group was considered a respondent in CA 1, and therefore able to submit on the other aspects of the appeal.

Issues to be determined

24 The issues before this Court were as follows:

(a) Whether the Phua Group should have been served with the NOA pursuant to O 57 r 3(6) of the ROC?

(b) If the answer to (a) was "no", could and should this Court nevertheless make an order under O 57 r 10(1)–(2) of the ROC for the

Phua Group to be served with the NOA and other appeal papers, so that it may participate in the proceedings in CA 1?

25 We examine these questions in turn.

Whether the Phua Group should have been served with the NOA pursuant to O 57 r 3(6) ROC

26 Order 57 r 3(6) of the ROC provides:

> (6) The notice of appeal *must* be served *on all parties to the proceedings in the Court below who are directly affected by the appeal* or their solicitors respectively at the time of filing the notice of appeal; and, subject to Rule 10, *it shall not be necessary to serve the notice on parties not so affected.* [emphasis added]

27 Parliamentary debates and other legislative materials do not shed light on the history behind O 57 r 3(6) of the ROC. However, the provision is *in pari materia* with O 59 r 3(5) of the Rules of the Supreme Court 1965 (UK) ("RSC 1965") (formerly O 58 r 2 of the Rules of the Supreme Court 1883 (UK) ("RSC 1883")), and is likely to have been adopted therefrom.

28 Notably, O 57 r 3(6) does not merely impose an obligation on the appellant to serve the NOA on "parties to the proceedings in the Court below who are directly affected by the appeal". It concomitantly emphasises that "it shall not be necessary", unless ordered by the Court of Appeal under O 57 r 10 of the ROC, for the appellant to serve the NOA on any other party: see *The Annual Practice 1967* (Sweet & Maxwell, Steven & Sons, Butterworth & Co, 1967) at para 59/3/8; *Singapore Civil Procedure 2020* vol 1 (Chua Lee Ming gen ed) (Sweet & Maxwell, 2019) ("*Singapore Civil Procedure 2020*") at para 57/3/13.

29 Therefore, the primary issue in so far as O 57 r 3(6) was concerned was whether the Phua Group constituted "parties to the proceedings in the Court below who [were] directly affected by the appeal". In answering this question, we found it helpful to refer to existing authorities on the interpretation and application of O 57 r 3(6) of the ROC, which we briefly summarise below.

Existing authorities

Local authorities

30 The only local case to have dealt with the interpretation of O 57 r 3(6) of the ROC in any meaningful manner is the High Court decision of *Goh Gin Chye and another v Peck Teck Kian Realty Pte Ltd* [1981–1982] SLR(R) 169 ("*Goh Gin Chye (HC)*"). In that case, the plaintiff, being the owner of some premises, sued the three defendants for possession of the premises on the basis that the first and second defendants had sublet the premises to the third defendant in breach of the Control of Rent Act (Cap 266, 1970 Rev Ed). The District Court allowed the claim against the first and second defendants, but dismissed the claim against the third defendant on the basis that he was a subtenant and therefore entitled to protection against recovery. The first and second defendants appealed to the High Court but failed to serve the NOA on the third defendant. Lai Kew Chai J held that the first and second defendants' failure to cite the third defendant as a party in the appeal was "a very serious omission" as "[the third defendant's] *status and legal rights* [would] be *directly affected by any substantive decision in this appeal*" (at [7] and [9]) [emphasis added]. Lai J considered that the first and second defendants should start the appeal *de novo* and thus dismissed the appeal without consideration of its substantive merits.

31 On appeal, this Court accepted that the third defendant ought to have been made a party to the proceedings, but held that Lai J had erred in dismissing the appeal outright instead of adjourning the matter for an application to be made to join the third defendant as a respondent: see *Goh Gin Chye and another v Peck Teck Kian Realty Pte Ltd* [1981–1982] SLR(R) 482 ("*Goh Gin Chye (CA)*"). Consequently, the matter was remitted to the High Court to complete the hearing of the District Court appeal. This Court did not comment on the correctness of Lai J's interpretation of O 57 r 3(6) of the ROC.

32 It is noted that, unlike the present case, the examination of the issue as to whether the third defendant was "directly affected by the appeal" in *Goh Gin Chye (HC)* was made in the context of a party who had *already* been made a party to the proceedings below.

UK authorities

33 The UK authorities, though not cited by either party, offer valuable guidance on the proper interpretation of O 57 r 3(6) of the ROC. In *In re Salmon; Priest v Uppleby* (1889) 42 Ch. D. 351 ("*Salmon*") (cited in *Singapore Civil Procedure 2020* at para 57/3/13), the plaintiff sued the defendant for breach of trust. At first instance, the defendant successfully applied under the UK equivalent of O 16 of the ROC for third parties to be joined to the proceedings, on the basis that they had undertaken to indemnify him for all costs which he might incur on account of any proceedings relating to the trust. The English High Court found that the defendant had not acted in breach of trust and dismissed the plaintiff's claim. On appeal, the defendant took the preliminary objection that the plaintiff had not served the NOA on the third parties to the proceedings below.

34 The majority of the English Court of Appeal ("ECA") held, referencing O 58 r 2 of the RSC 1883, that the NOA did not have to be served on the third parties as they could not be said to be "directly affected" by the appeal. Of particular note are the following remarks by Fry LJ (at 363):

> Two questions arise in this action: first, whether the Defendant is liable to the Plaintiff; secondly, if so, whether the third parties are liable to indemnify the Defendant. The first question affects the third parties, *only through the intervention of the right of indemnity*. Therefore, I think, the third parties are only indirectly affected by the appeal by reason of the Defendant's rights against them. The language of rule 2 is emphatic: *it not only says that the notice of appeal is to be served on all parties directly affected, but it adds that it shall not be necessary to serve parties not so affected.* [emphasis added]

35 Again, it is noteworthy that Fry LJ's remarks were made in the context of third parties who, unlike the Phua Group, had already been joined to the proceedings below.

36 *Salmon* was subsequently endorsed by the House of Lords in *Regina v Rent Officer Service and another, ex parte Muldoon* [1996] 1 WLR 1103 ("*Rent Officer Service*"). In that case, the issue before the court was whether the Secretary of State ought to have been served with a summons pursuant to O 53 r 5(3) of the RSC 1965, which provided that a notice of motion or summons for judicial review had to be served on "all persons directly affected" by the decision. The House of Lords considered that the principles expounded by Fry J in *Salmon* (albeit in the context of the service of a NOA) were equally applicable to the facts of the case before it. Lord Keith, with whom the other Lords agreed, elaborated on the meaning of the phrase "directly affected" as follows (at 1105):

> *That a person is directly affected by something connotes that he is affected* ***without the intervention of any intermediate***

> ***agency.*** In the present case if the applications for judicial review are successful the Secretary of State will not have to pay housing benefit to the applicants… The Secretary of State would certainly be affected by the decision, and it may be said that he would inevitably or necessarily be affected. But he would, in my opinion, only be indirectly affected, by reason of his collateral obligation to pay subsidy to the local authority. [emphasis added in italics and bold italics]

Malaysian authorities

37 The Phua Group also cited a Malaysian case, *Re Sateras Resources (M) Bhd* [2006] 3 MLJ 140 ("*Re Sateras*"). In that case, the appellant company had sought the Malaysian High Court's approval for a scheme of arrangement. Midway through the High Court proceedings, the High Court directed that 10 of the company's creditors (collectively, "the interveners") be made parties to the company's petition. The company's petition was eventually dismissed with costs and it filed an appeal against the High Court decision without serving the NOA on the interveners. The Malaysian Court of Appeal held at [18], citing *Goh Gin Chye (HC)*, that the company's omission to serve the interveners with the NOA amounted to a procedural irregularity because:

> … [i]n the present appeal before us by Sateras, by not citing the applicant as a respondent, *being one of the interveners in the court below, and necessarily a party in the proceeding*, his *status and legal rights would be directly affected by any substantive decision in the appeal*, if we were to go on hearing the appeal on merits… Also, the applicant in the course of the proceedings in the court below had incurred costs in opposing the petition. By not having been cited as a respondent in this appeal, it would be facing a problem when it comes to the question of its costs against the appellant. [emphasis added]

As with the UK authorities already cited, *Sateras* was also concerned with a situation where the interveners were already parties to the proceedings below and the only issue in dispute pertained to the other limb of the rule, *ie*, whether the interveners were "*directly affected by the appeal*".

Analysis

38 In our view, it is apparent, both from a plain reading of O 57 r 3(6) and from our examination of the abovementioned authorities, that the provision is intended to limit the necessity for service of the NOA on those who are "parties to the proceedings in the Court below", *and* whose rights are "directly affected by the appeal". These are *two separate* albeit conjunctive requirements and should not be conflated. We elaborate further on these requirements below.

"Parties to the proceedings in the Court below"

39 First, O 57 r 3(6) provides that the NOA need only be served on persons who were *already* parties to the proceedings below. It is not intended to require service of the NOA on persons who are affected by the appeal, notwithstanding their status as non-parties to the proceedings.

40 In this context, the term "non-parties" encompasses all persons who were not named as parties to the proceedings below, regardless of whether they were permitted to *participate* in those proceedings. It is not uncommon for courts to allow persons to file affidavits, make submissions or even bring applications in proceedings to which they are not party: see for example *Oro Negro Drilling Pte Ltd and others v Integradora de Servicios Petroleros Oro Negro SAPI de CV and others and another appeal (Jesus Angel Guerra Mendez, non-party)* [2020] 1 SLR 226; and *Beluga Chartering GmbH (in liquidation) and others v Beluga Projects (Singapore) Pte Ltd (in liquidation) and another (deugro (Singapore) Pte Ltd, non-party)* [2014] 2 SLR 815. However, such non-parties do not acquire the legal status of "parties" by virtue of their participation *per se*. If they wish to become parties, they must undertake the necessary procedures and satisfy the requisite legal conditions to join themselves to the

proceedings in question. In the context of civil proceedings, this would ordinarily require an application under O 15 r 6 of the ROC, which empowers the court to, "on such terms as it thinks just and either of its own motion or on application", order a party to be added to the proceedings provided that either of the limbs under O 15 r 6(2)(*b*) of the ROC is made out.

41 The distinction between a party and a non-party is not purely a matter of form, as parties and non-parties are subject to different procedural and substantive rules. For instance, O 57 r 18 of the ROC sets out the consequences of an appellant's or respondent's non-appearance at the appeal. In contrast, the consequences of a non-party's non-appearance are not statutorily provided for. Another example pertains to the principles governing the determination of costs. Two factors must ordinarily be present before the court decides to award costs against a non-party: first, there must be a close connection between the non-party and the proceedings; and second, the non-party must have caused the incurring of costs (*DB Trustees (Hong Kong) Ltd v Consult Asia Pte Ltd and another appeal* [2010] 3 SLR 542 at [36]). These factors would, for obvious reasons, carry less or no weight when a court is deciding whether to order costs against a party to the proceedings.

42 In the present case, it is common ground that the Phua Group had not been named as parties to SUM 3963. As the Shareholders correctly pointed out, the Phua Group's participation in SUM 3963 had been allowed via a decision made by AR Tan in her discretion, and not pursuant to any order for joinder under O 15 r 6 of the ROC. It followed, based on our reasoning at [40] above, that the Phua Group could not be regarded as "parties to the proceedings in the court below".

43 Recognising this difficulty, the Phua Group asserted that its status as a "non-party" was irrelevant since the Shareholders were themselves non-parties to HC/OS 425/2020 ("OS 425"), being the main action from which SUM 3963 arose. As OS 425 was the Company's application for judicial management, the only named party to OS 425 was the Company itself. With respect, however, this argument was without merit as the Shareholders had initiated SUM 3963, being the relevant "proceeding" from which CA 1 arose, and were named as the applicants therein. Furthermore, and in any event, the Phua Group's status as parties or non-parties was wholly independent of the Shareholders' status as such.

44 Consequently, the Phua Group's application under O 57 r 3(6) of the ROC failed on this basis alone. Nevertheless, we briefly considered the second requirement since the Phua Group had made submissions on the same.

"Directly affected by the appeal"

45 The second requirement under O 57 r 3(6) stipulates that the party in question must be "directly affected by the appeal". Therefore, in a situation where an appeal is filed against a decision *vis-à-vis* some but not all of the parties below, there would be no need to serve such a notice on parties who would not be directly affected by the appeal.

46 As for the meaning of "directly affected by the appeal", we agree with the High Court in *Goh Gin Chye (HC)* (see [30] above) that the word "affected" entails some kind of impact on the *status and legal rights* of the party in question. We further endorse Lord Keith's view in *Rent Officer Service* that being "directly" affected refers to being affected "without the intervention of any intermediate agency". In our view, therefore, a party can only be said to be

"directly affected by the appeal" if his status and legal rights would be affected by the substantive decision in the appeal, without the intervention of any intermediate agency. Such an approach is consistent with the ECA's holding in *Salmon* that the third party who had provided an indemnity to the defendant could not be said to be "directly affected by the appeal", since his legal obligation to indemnify the defendant would only arise "through the intervention of the right of indemnity" (see [36] above).

47 Turning to the facts of the present case, we agreed with counsel for the Phua Group that the Phua Group may well be "directly affected" by CA 1 in two respects. First, the outcome of the Shareholders' appeal against the Phua Group Costs Order would certainly affect the Phua Group's legal rights to the costs that were awarded in their favour, even without the intervention of any intermediate agency. Secondly, the outcome of the substantive appeal would also "directly affect" the Phua Group. The primary relief that the Shareholders seek through CA 1 is a declaration that the sale of the Asset to Golden Hill Capital is null and void. Such a declaration would, at the very least, have a direct impact on the Phua Group's legal ownership of the Asset.

48 However, this was insufficient for the Phua Group to invoke O 57 r 3(6) since, as mentioned above, the members of the Phua Group were *never parties to SUM 3963 in the first place*. Consequently, O 57 r 3(6) was not engaged and it followed that there was no basis for the Court to strike out the NOA. The second alternative remedy sought by the Phua Group, *viz*. that the Shareholders be barred from seeking the remedies that would "directly affect" the Phua Group, was equally inappropriate because that remedy was likewise predicated on the Shareholders' non-compliance with O 57 r 3(6).

Whether the Phua Group should be allowed to participate in CA 1 in any event

49 This left us with the question as to whether the Phua Group ought to be allowed to participate in CA 1 in any event. The basis for making such an order is O 57 r 10(1)–(2) of the ROC, which provides:

> **Directions of Court as to service (O. 57, r. 10)**
>
> **10.**—(1) The Court of Appeal may in any case direct that the record of appeal or supplemental record of appeal, the core bundle, any supplemental core bundle and the Cases be served on any party to the proceedings in the Court below on whom it has not been served, or on any person not party to those proceedings.
>
> (2) In any case in which the Court of Appeal directs the record of appeal or supplemental record of appeal, the core bundle, any supplemental core bundle and the Cases to be served on any party or person, the Court may also direct that a Case be filed by such party or person.

50 While there are no local cases interpreting the abovementioned provisions, the UK authorities offer some guidance as to the relevant factors which a court may consider in deciding whether to make an order under O 57 r 10(1). In *Hasselblad (GB) Limited v Kenneth Orbinson* (English Court of Appeal, 2 July 1984, unreported) ("*Hasselblad*"), the ECA held that O 59 r 8(1) of the RSC 1965, which is *in pari materia* with O 57 r 10(1) of the ROC, did not confer on the court jurisdiction to order an appellant to serve a NOA on any person "without qualification". However, the court was entitled to consider, in its discretion, various factors such as "the nature of the interest of the person to be served, what contribution [he was] likely to be able to make to the achievement of justice, and what adverse effect… the parties [would suffer] by the intervener being put into the position of a party to the extent that the notice of appeal was served on him".

51 *Hasselblad* was subsequently followed in *Berg v Glentworth Bulb Company Ltd* (English Court of Appeal, 30 September 1988, unreported) which concerned, *inter alia*, an application by a non-party to be joined to the appeal proceedings. Woolf LJ opined that the non-party's application would be "most conveniently dealt with" under O 59 r 8(1) of the RSC 1965 and remarked that the following considerations would apply in the context of that provision:

> In particular I ask myself here what contribution is likely to be made to the achievement of justice by giving effect to the applications which are before the court? In approaching that question I bear in mind that *it is undesirable as matter of principle for more parties to be before the court than is necessary for doing justice. If unnecessary parties are before the court, they add to the expense of proceedings; they can also cause delay, and of course can unnecessarily prolong the argument[s]…*
>
> …
>
> … This court always has a discretion to hear anyone in support of an appeal. It is a discretion, however, which is very sparingly exercised and would not normally be exercised in favour of a person in the position of [the non-party in this case] unless there were exceptional circumstances. In the ordinary situation a person in the position of [the non-party] who had a *shared interest with a defendant, as here, or any other party in the proceedings*, can usually protect his position perfectly satisfactorily by *informing the legal advisers of the person who is already a party to the appeal of the nature of any argument which they would like to be advanced*, and in that way the argument is brought to the attention of the court. …
>
> [emphasis added]

52 Having regard to the principles set out above, we were of the view that the Phua Group ought to be allowed to participate in CA 1 pursuant to O 57 r 10(1) of the ROC.

53 In relation to the first factor envisaged in *Hasselblad* (*ie*, the "nature of the interest of the person to be served"), it was evident that the Phua Group has

an interest in CA 1 since a reversal of the Judge's decision would invariably have a *direct* impact on the Phua Group's entitlement to costs under the Phua Group Costs Order, as well as its legal ownership of the Asset (see [47] above). Furthermore, it was apparent to us that the Phua Group's interest in the outcome of the appeal was not directly aligned with that of the JMs. This was evident from how the JMs had handled Man Wah's offers and had even granted Man Wah an opportunity to provide "anything further" it wished to communicate in relation to its offer, despite Golden Hill Capital's objections to the same. We therefore agreed with the Phua Group's submission that it could not simply depend upon the JMs' solicitors to represent its interests in the appeal.

54 In terms of the way in which the Phua Group's contributions could assist the court in CA 1, the Phua Group contended that it was best-placed to explain how a reversal of the sale would be undesirable because of the "significant impact" it would have on the employees, creditors and other stakeholders of the HTL Group. This was refuted by the Shareholders, who argued that any information which the Phua Group could provide in relation to the consequences of reversing the sale pertained to events, such as the pledging of the shares in the Company's subsidiaries, which had occurred *after* the Judge's decision in November 2020. We disagreed with the Shareholders as it was not for the Shareholders to pre-empt the specific arguments which the Phua Group intended to make at the appeal (assuming that it was allowed to participate in the same). Since the remedy that the Shareholders seek in CA 1 is a declaration that the sale was null and void, it appeared to us that any arguments that the Phua Group could make on the desirability of such a remedy would *potentially* be relevant to the appeal. It was not necessary for us to examine the merits of those submissions at this juncture as they would be addressed at the hearing of the appeal.

55 Finally, we did not think that the other parties to CA 1 would suffer any irremediable prejudice by virtue of the Phua Group's participation in the same. The JMs had indicated that they had no objections to the Phua Group's participation. As for the Shareholders, although they had asserted that the Phua Group's participation would give rise to "unnecessary costs", we noted that they did not appeal against AR Tan's decision in allowing the Phua Group to participate in SUM 3963. Nor did they take any objection to the Phua Group's participation when the matter was heard before the Judge on 9 November 2020. This being the case, it did not lie in the Shareholders' mouths to complain of prejudice arising from the Phua Group's earlier participation. Should the Phua Group make superfluous arguments in respect of the appeal, that is a matter that can readily be addressed by an appropriate costs order against the Phua Group.

56 We also considered it unlikely that the Phua Group's participation would cause the appeal proceedings to become unnecessarily protracted, as AR Gan had directed that the timelines for CA 1 would continue to run pending this Court's decision on this summons. In accordance with AR Gan's directions, the Phua Group had already served its Respondent's Case on the Shareholders and the JMs on 30 June 2021, *prior* to our decision on this summons.

57 Accordingly, although case law dictates that the Court's power to allow a non-party to participate in an appeal under O 57 r 10(1)–(2) of the ROC is to be "sparingly exercised", the circumstances of this case were such that we decided that the Phua Group's participation ought to be allowed.

Conclusion

58 For the reasons set out above, SUM 61 was allowed to the extent that the Phua Group was allowed to participate in CA 1 as respondents to the

proceedings. The Shareholders were granted an extension of time to serve the Notice of Appeal, Record of Appeal and the Appellant's Case on the Phua Group, and were directed to do so within seven days from the date of our decision. Costs of this application were reserved to be dealt with at the hearing of the appeal proper.

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Harpreet Singh Nehal *SC*, Jordan Tan and Victor Leong (Audent Chambers LLC) (instructed), Cheng Wai Yuen Mark, Chew Xiang, Ho Zi Wei and Tan Tian Hui (Rajah & Tann Singapore LLP) for the applicants;
Tan Tee Jim *SC*, Gan Theng Chong, Melissa Ng and Tan Sher Meen (Lee & Lee) (instructed), Sharon Chong Chin Yee, Amanda Chen, Nandhu, Sim Ling Renee and Vivian Yeong (RHT Law Asia LLP) for the respondents.