IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 93

Admiralty in Rem No 239 of 2014
(Summons No 1038 of 2016)

Between

Big Port Service DMCC

… *Plaintiff*

And

Owner of the vessel "XIN CHANG SHU"

… *Defendant*

JUDGMENT

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

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Introduction

1 Disgruntled litigants pondering over an appeal to the Court of Appeal against a decision made on an interlocutory application have long been plagued by the question of whether leave of court is necessary to do so. Tests have been developed by the courts to address this issue, and recent legislative amendments have been made to clarify this vexing area of civil procedure. Nevertheless, the question continues to come before the courts (as I previously noted in *Sinwa SS (HK) Co Ltd v Nordic International Ltd and another* [2015] 2 SLR 54 at [4]). This may be inevitable given the vagaries of litigation, and the unfeasibility of fashioning a set of rules to anticipate all possible scenarios. Yet the issue of whether leave is required to lodge an appeal on interlocutory matters is pivotal for at least three reasons. First, and obviously, it determines the legal rights of the party who wishes to appeal. Second, adopting a wrong position may expose the lawyer to allegations of professional negligence if the client is prejudiced by a failure to seek leave as required. Finally, any

uncertainty over whether leave is in fact required is likely to result in unproductive litigation over the issue and consequent delays, which is hardly conducive to the expedient resolution of disputes. So the question must be susceptible to a clear and readily ascertainable answer.

2 In the context of admiralty practice, the direction of the courts is especially necessary as the *Report of the Law Reform Committee to Review and Update the Supreme Court of Judicature Act and the Subordinate Courts Act* (31 July 2009) ("the Report") and the Singapore Parliamentary Debates on the new statutory framework governing rights of appeal to the Court of Appeal which came into force on 15 November 2010[1] ("the 2010 amendments") did not specifically address interlocutory applications peculiar to this area of litigation, particularly applications relating to the arrest of a ship. That being said, the Court of Appeal in *The Nasco Gem* [2014] 2 SLR 63 aptly observed at [17] that in respect of admiralty actions, "the court must carry out the usual exercise of statutory interpretation and decide the question on the basis of first principles", and provided some guidance in this regard. Notwithstanding this guidance, it appears that some degree of uncertainty continues to persist. This is perhaps the reason for this current application by the plaintiff seeking, *inter alia*, a declaration that it does not require leave to appeal against the order which I made on 4 December 2015 in Registrar's Appeal No 226 of 2015 ("RA 226/2015") for it to pay the defendant damages, to be assessed, for the wrongful arrest of *The Xin Chang Shu* ("the Vessel") ("the Wrongful Arrest order").

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1 *Singapore Parliamentary Debates, Official Report* (18 October 2010) vol 87 at cols 1368–1402.

Background

3 Given my full judgment in *The Xin Chang Shu* [2016] 1 SLR 1096 ("Judgment for RA 226/2015"), there is no need for me to restate the facts of the substantial dispute between the parties in detail. In summary, the plaintiff commenced the present proceedings against the defendant shipowner claiming US$1,768,000 for the supply of bunkers to the Vessel. Although the bunkers were supplied under a contract between the plaintiff and the now insolvent OW Bunker Far East (Singapore) Pte Ltd ("OW Singapore") ("the Contract"), the plaintiff's case was that OW Singapore was the defendant's agent and had entered into the Contract on the defendant's behalf. The Vessel was subsequently arrested by the plaintiff on 10 December 2014. It was released three days later, on 12 December 2014, after the defendant furnished security by way of payment into court in the sum of US$2.6m.[2]

Registrar's appeals

4 The parties then brought the following applications: (a) Summons No 6364 of 2014 ("SUM 6364/2014") by the defendant to strike out the writ, set aside the warrant of arrest, and for damages for wrongful arrest; and (b) Summons No 6218 of 2014 ("SUM 6218/2014") by the plaintiff for a stay of proceedings in favour of arbitration under ss 6 and 7 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("the IAA").[3] These applications led to the registrar's appeals which I heard together on 23 September 2015:[4]

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2 Judgment for RA 226/2015, [8].

3 Judgment for RA 226/2015, [9].

4 Judgment for RA 226/2015, [11].

(a) Registrar's Appeal No 224 of 2015 ("RA 224/2015") by the plaintiff against the decision of the assistant registrar ("the AR") striking out its writ;

(b) Registrar's Appeal No 225 of 2015 ("RA 225/2015") by the plaintiff against the AR's dismissal of its stay application; and

(c) RA 226/2015 by the defendant against the AR's decision in not awarding damages for wrongful arrest, and in not setting aside the warrant of arrest.

5 After the hearing on 23 September 2015, I dismissed the plaintiff's appeals in RA 224/2015 and RA 225/2015 while I reserved judgment in relation to RA 226/2015.[5] After considering the matter, I delivered my judgment for RA 226/2015 on 4 December 2015 in which I made two orders in favour of the defendant. First, I ordered the plaintiff to pay the defendant damages to be assessed for the wrongful arrest of the Vessel from 10 to 12 December 2014 (*ie*, the Wrongful Arrest order). In essence, these damages were awarded because:[6]

(a) the arrest had been pursued on a false and/or factually and legally misconceived premise, as the plaintiff must have known, based on its correspondence with the defendant prior to the arrest, that it neither had a factual nor legal basis to assert that OW Singapore had acted as the defendant's agent in respect of the supply of the bunkers; and

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5 Judgment for RA 226/2015, [12].

6 Judgment for RA 226/2015, [5] and [56]–[89].

(b) there has been non-disclosure of material facts by the plaintiff at the *ex parte* stage where the warrant of arrest was sought.

6 Second, I set aside the plaintiff's warrant of arrest. Although damages for wrongful arrest could be awarded even if the warrant of arrest was not set aside, a warrant of arrest could not exist without an issuance of a valid *in rem* writ. Hence, the setting aside of the warrant of arrest was consequent on the AR's order, which I upheld in RA 224/2015, striking out the *in rem* writ.[7]

Parties' subsequent applications

7 On 4 January 2016, the plaintiff filed its notice of appeal ("the NOA") in CA/CA No 2 of 2016 ("CA/CA 2/2016") against the Wrongful Arrest order in RA 226/2015 on the premise that no leave was required to do so. In response, the defendant applied, *vide* Summons No 7 of 2016 filed on 18 January 2016 ("CA/SUM 7/2016"), to set aside the NOA on the basis that the Wrongful Arrest order is an interlocutory order, for the purposes of para (*e*) of the Fifth Schedule to the Supreme Court of Judicature Act (Cap 332, 2007 Rev Ed) ("the SCJA"), for which leave to appeal is required.

8 Further, on 4 January 2016, the plaintiff commenced CA/OS No 1 of 2016 ("CA/OS 1/2016") seeking an extension of time to file a notice of appeal against the order striking out its writ in RA 224/2015, as well as the order dismissing its stay application in RA 225/2015. As noted above, these orders were made some three months ago on 23 September 2015. It is common ground that no leave is required to appeal against the striking out order in RA 224/2015. But by filing the present application, the plaintiff has acknowledged that it requires leave of court to appeal against the order in

[7] Judgment for RA 226/2015, [18]–[25].

RA 225/2015 pursuant to para (*d*) of the Fifth Schedule to the SCJA.[8] Therefore, in respect of RA 225/2015, the plaintiff faces three hurdles – it needs to obtain first, an extension of time to apply for leave to appeal; second, the leave of this court to appeal; and finally an extension of time to file the notice of appeal.

9 The Court of Appeal then issued its judgment in *The Chem Orchid and other appeals and another matter* [2016] 2 SLR 50 ("*The Chem Orchid*") on 20 January 2016. Therein, the court suggested that in an appropriate case, where there is uncertainty over whether leave to appeal is 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 in good time. Certainly, the application should be made within the seven day deadline stipulated under O 56 r 3(1) of the Rules of Court (Cap 332, R 5, 2014 Rev Ed) ("ROC") for the appellant to apply for leave to appeal, if required. The same application should also include a fall back prayer seeking leave to appeal, so as to avoid a situation where the appellant finds itself with insufficient time to apply for leave if the court finds that such leave is required. Such an application should only be made if there is *genuine* uncertainty. This guidance should not be taken as a licence for litigants to rush to court for such rulings as a matter of course. After all, the duty remains on the lawyers to advise the client, based on the governing principles, whether leave of court is required.

10 Here, at the time when the NOA was filed, the plaintiff took the view that no leave was required. The present application was, however, prompted

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[8] Prayer 3 of Summons No 1038 of 2016.

by the defendant's application in CA/SUM 7/2016 to set aside the NOA and even then, it was only filed on 2 March 2016, well after the stipulated time. The plaintiff now seeks, *inter alia*, the following prayers:

(a) A declaration that the plaintiff does not require leave of court to appeal against the Wrongful Arrest order ("Prayer 1").

(b) Alternatively, if such leave is necessary, for the plaintiff to be granted an extension of time to apply for the said leave, and for the said leave to be granted ("Prayer 2").

(c) For the plaintiff to be granted an extension of time to apply for leave to bring an appeal against the order dismissing its application for a stay of proceedings in RA 225/2015, and for the said leave to be granted ("Prayer 3").

11 I dismissed Prayer 3 summarily following the hearing on 1 April 2016 as I found the substantial delay in applying for leave to appeal against the order in RA 225/2015 inexcusable. The principal reason offered for the delay was that the plaintiff's representative, who had instructed its solicitors not to appeal against the decision in RA 225/2015, purportedly did so without the authorisation of the plaintiff. It is patently clear that this, even if true, cannot possibly be a valid reason for an extension of time since the plaintiff is bound by the instructions of its representatives to its solicitors. The plaintiff was duly informed of the outcome in RA 225/2015 and elected not to appeal within the stipulated time. For Prayers 1 and 2, the parties clarified that although my decision in RA 226/2015 comprised two orders, the present application is limited only to the Wrongful Arrest order and excludes the order setting aside the warrant of arrest. This was on the common understanding that the plaintiff would be entitled to seek security from the defendant by way of re-arrest if it

succeeds in its appeal against the striking order upheld in RA 224/2015. The defendant also confirmed that it will no longer be proceeding with CA/SUM 7/2016 given this present application.

12 Both CA/CA 2/2016 and CA/OS 1/2016 are held in abeyance pending the determination of this application.

Issues before the Court

13 The parties' arguments will be examined in detail in the course of this judgment. The two broad issues which fall for determination are as follows:

(a) Is the Wrongful Arrest order an interlocutory order, for the purposes of para (*e*) of the Fifth Schedule of the SCJA, for which leave to appeal is required?

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

Is leave required to appeal against the Wrongful Arrest order?

Legal framework

14 The structure of s 34 of the SCJA following the 2010 amendments, in determining matters that are non-appealable or appealable only with leave, is clear. It provides that (a) orders specified in the Fourth Schedule are non-appealable, except as provided in that Schedule; and (b) orders specified in the Fifth Schedule are appealable only with leave, except as provided in that Schedule. Any other orders are appealable as of right: *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 ("*Dorsey James*") at [41]–[49].

15 The Fourth Schedule relates to orders which are non-appealable to the Court of Appeal. It provides:

> **ORDERS MADE BY JUDGE THAT ARE NON-APPEALABLE**
>
> No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) where a Judge makes an order giving unconditional leave to defend any proceedings;
>
> (b) where a Judge makes an order giving leave to defend any proceedings on condition that the party defending those proceedings pays into court or gives security for the sum claimed, except if the appellant is that party;
>
> (c) where a Judge makes an order setting aside unconditionally a default judgment, regardless of how the default judgment was obtained (including whether by reason of a breach of an order of court or otherwise);
>
> (d) where a Judge makes an order setting aside a default judgment on condition that the party against whom the judgment has been entered pays into court or gives security for the sum claimed, regardless of how the default judgment was obtained (including whether by reason of a breach of an order of court or otherwise), except if the appellant is that party;
>
> (e) where a Judge makes an order refusing to strike out–

> (i) an action or a matter commenced by a writ of summons or by any other originating process; or
>
> (ii) a pleading or a party of a pleading;
>
> (f) where a Judge makes an order giving or refusing further and better particulars;
>
> (g) where a Judge makes an order giving leave to amend a pleading, except if –
>
> (i) the application for leave is made after the expiry of any relevant period of limitation current at the date of issue of the writ of summons; and
>
> (ii) the amendment is an amendment to correct the name of a party or to alter the capacity in which a party sues, or the effect of the amendment will be to add or substitute a new cause of action;
>
> (h) where a Judge makes an order refusing security for costs;
>
> (i) where a Judge makes an order giving or refusing interrogatories.

It is common ground that the Wrongful Arrest order is outside the ambit of the Fourth Schedule.

16 The Fifth Schedule relates to orders that are appealable to the Court of Appeal with leave. It provides:

> **ORDERS MADE BY JUDGE THAT ARE APPEALABLE ONLY WITH LEAVE**
>
> Except with the leave of the High Court or the Court of Appeal, no appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) where a Judge makes an order refusing leave to amend a pleading except if –
>
> (i) the application for leave is made after the expiry of any relevant period of limitation current at the date of issue of the writ of summons; and
>
> (ii) the amendment is an amendment to correct the name of a party or to alter the capacity in which a party sues, or the effect of the amendment will be to add or substitute a new cause of action

> (b) where a Judge makes an order giving security for costs;
>
> (c) where a Judge makes an order giving or refusing discovery or inspection of documents;
>
> (d) where a Judge makes an order refusing a stay of proceedings;
>
> (e) where a Judge makes an order at the hearing of any interlocutory application other than an application for any of the following matters:
>
> (i) for summary judgment;
>
> (ii) to set aside a default judgment;
>
> (iii) to strike out an action or a matter commenced by a writ of summons or by any other originating process, a pleading or a part of a pleading;
>
> (iv) to dismiss an action or a matter commenced by a writ of summons or by any other originating process;
>
> (v) for further and better particulars;
>
> (vi) for leave to amend a pleading;
>
> (vii) for security for costs;
>
> (viii) for discovery or inspection of documents;
>
> (ix) for interrogatories to be varied or withdrawn, or for leave to serve interrogatories;
>
> (x) for a stay of proceedings.

17 As the Wrongful Arrest order is clearly not an order falling under (*a*) to (*d*) of the Fifth Schedule, the only relevant paragraph for the purposes of the current application is para (*e*) of the Fifth Schedule. This is a "catch-all" provision requiring leave to appeal in relation to orders made in *any* "interlocutory application" unless specifically exempted in sub-paras (i)–(x). The "catch-all" provision was introduced because "[i]t is difficult to comprehensively encompass all possible forms of interlocutory applications that may be taken up by the parties": see para 81 of the Report. This provision has since been considered in detail by the Court of Appeal in a series of cases

including *OpenNet Pte Ltd v Info-Communications Development Authority of Singapore* [2013] 2 SLR 880 ("*Open Net*"), *Dorsey James* and *The Nasco Gem*. The applicable principles, distilled from these cases, can be summarised as follows.

(a) The plain and ordinary meaning of "interlocutory application" denotes an application which relates to a matter which arises in the course of the proceedings and which does not concern the eventual outcome of those proceedings (*ie*, where the application is peripheral to the main hearing determining the outcome of the case, or occurs during the course of proceedings between the initiation of the action and the final determination): *Open Net* at [14] and [17]*; The Nasco Gem* at [9] and [14].

(b) However, in passing the 2010 amendments, Parliament had intended that an appeal to the Court of Appeal should remain as of right in respect of an order made in an interlocutory application that could affect the final outcome of the action. In the circumstances, the reference to "order" in para (*e*) of the Fifth Schedule should be construed to mean an "interlocutory order" in the sense of one which does *not* finally dispose of the substantive rights of the parties: *Dorsey James* at [81]–[85]; *The Nasco Gem* at [11] and [14].

(c) In determining whether an order made in an application which would in the normal sense be regarded as an "interlocutory application" is *also* an "interlocutory order", the test to be applied (informed by the object and purpose of the 2010 amendments) is that set down in *Bozson v Altrincham Urban District Council* [1903] 1 KB 547 ("*Bozson*") and approved in *Wellmix Organics (International) Pte*

Ltd v Lau Yu Man [2006] 2 SLR(R) 525 ("*Wellmix Organics*") ("the *Bozson* test"): *Dorsey James* at [63]–[65]; *The Nasco Gem* at [14]. This test, as laid down by Lord Alverstone CJ in *Bozson* at 548–549, is:

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

(d) In applying the *Bozson* test, the focus is on the cause in the pending *proceedings* and not the specific purpose of the *application*: *The Nasco Gem* at [16].

18 So in order for the leave requirement under para (*e*) of the Fifth Schedule to apply, the Wrongful Arrest order must:

(a) be made at the hearing of an interlocutory application, which does not fall under any of the exempted categories in sub-paras (i)–(x); and

(b) also be an "interlocutory order" which does not finally dispose of the rights of the parties in relation to the cause in the pending proceedings, applying the *Bozson* test.

Application to the present case

19 It cannot be disputed that the Wrongful Arrest order was made at the hearing of an "interlocutory application" – the application related to a matter, namely damages for wrongful arrest, which "arises in the course of the proceedings and which does not concern the eventual outcome of those proceedings" (see [17(a)] above). The plaintiff's position is that no leave is required to appeal against the Wrongful Arrest order as it is a final order which determines the plaintiff's liability to pay damages to the defendant,

which was the ultimate relief sought in the relevant prayer in SUM 6218/2014. In the defendant's response, this is not the case: the quantum of damages has yet to be assessed and the Wrongful Arrest order is therefore interlocutory in nature, applying dicta to similar effect in *Wellmix Organics*. In the alternative, the defendant argues, relying on certain passages in *The Nasco Gem*, that the award of damages does not determine the substantive rights of the parties because it is merely a possible consequence of the wrongful arrest of a vessel.

Is the Wrongful Arrest order an interlocutory or final order?

20 This is the decisive issue. Though the parties were not able to cite any authority directly on point, they first seek to rely on cases dealing with the question in the context of interlocutory or partial judgments.

21 The plaintiff relies on a line of authority culminating in the cases of *White v Brunton* [1984] QB 570 ("*White*") and *Strathmore Group Ltd v AM Fraser and others* [1992] 2 AC 172 ("*Strathmore*"). These cases indicate that where the hearing of an action is split into two parts, the order made at the conclusion of the first part is a final order for the purposes of the parties' rights of appeal. The reason for this view was explained by Sir John Donaldson MR in *White*, a decision of the English Court of Appeal (at 573):

> It is plainly in the interests of the more efficient administration of justice that there should be split trials in appropriate cases, as even where the decision on the first part of a split trial is such that there will have to be a second part, it may be desirable that the decision shall be appealed before incurring the possibly unnecessary expense of the second part. If we were to hold that the division of a final hearing into parts deprived the parties of an unfettered right of appeal, we should be placing an indirect fetter upon the ability of the court to order split trials.

22 The court also cited the facts of *Bozson*, in which all the questions of liability were tried before and separately from any issue as to damages. In *Bozson*, it was held that the order *dismissing* the plaintiff's claim at the liability stage was a final order; but the reasoning of the court in *White* suggests that the outcome should be the same in a case, such as the present one, where the court makes a positive finding of liability, and the losing party appeals before damages are assessed. This conclusion also follows from the Privy Council's decision in *Strathmore*, in which the reasoning of Sir John Donaldson MR in *White* was adopted in full (at 178–179).

23 There is some force in the above analysis. As Woo Bih Li J acknowledged in *Downeredi Works Pte Ltd (formerly known as Works Infrastructure Pte Ltd) v Holcim (Singapore) Pte Ltd* [2009] 1 SLR(R) 1070 ("*Downeredi Works*") (at [14]), the view that an interlocutory judgment is final in nature if it finally disposes of the substantive rights of the parties in so far as *liability* is concerned is not unpersuasive. This was also the *obiter* opinion of Andrew Phang JC (as he was then) in *Lim Chi Szu Margaret and another v Risis Pte Ltd* [2006] 1 SLR(R) 300 ("*Lim Chi Szu*") (at [15] and [16]). It is *prima facie* in line with the reasons why an order for "damages to be assessed" is made, namely expediency and the possible saving of time and expense which would result if the parties reach a settlement based on the court's findings on liability. The difficulty, however, is that the *obiter* opinion of Phang JC in *Lim Chi Szu* was considered but not endorsed by the Court of Appeal in *Wellmix Organics* (at [26]). The decision was subsequently followed in *Downeredi Works* where Woo J specifically held at [14] that an interlocutory judgment with damages to be assessed is an "interlocutory order". Despite finding the contrary view persuasive, Woo J concluded that *Wellmix Organics* was binding on him.

24 *Wellmix Organics* concerned an interlocutory judgment ("the July order") entered in favour of the appellant in default of the exchange of affidavits-of-evidence in chief, with damages to be assessed, which was set aside by the High Court Judge after the hearing of further arguments at the request of the respondent. The question was whether the Judge was precluded from doing so because the July order was in the nature of a final order, which had been perfected by the time the further arguments were requested. In finding otherwise, Chao Hick Tin JA applied the *Bozson* test as follows:

> 14 … Obviously, the key words in the *Bozson* test are "finally", "disposes" and "rights". The word "rights" has been construed in *Rank Xerox* (at [8]) to mean the substantive "rights" in the action or proceeding. A little more problematic are the other two words. The word "dispose" has a spectrum of meanings ranging from "to throw away", "to make final arrangement", "to deal" to "to determine the outcome". It seems to us that in the context of the *Bozson* test, the word "dispose" must mean making a determination on the substantive rights and, as a matter of common sense, the court can only make a determination on the substantive rights after hearing the parties on the merits. Indeed, in *Bozson*, that was what happened – the first instance judge there had decided on the questions of liability and breach of contract. It was agreed that the rest of the case was to go before the official referee. Where an interlocutory judgment is entered into by default through failure to comply with either the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("the ROC") or an order of court, there has been no determination on the merits.
>
> 15 As regards the word "finally", its ordinary meaning is clear. It means either "the last" or "completely". But in the context of the *Bozson* test, there could be some problems because of split hearing. Where, in an action, interlocutory judgment is entered against the defendant after hearing in chambers on the merits, does that order finally dispose the rights of the parties? I should add that an interlocutory judgment obtained after hearing in open court is expressly excluded from the scope of s 34(1)(c). *There is much force in the argument that a determination as to liability does not finally or fully dispose of the rights of the parties where damages are also claimed in the action. That will only be a partial determination of the rights. The determination of liability is not an end in itself. Such a determination is not the only thing that the plaintiff is asking for. Damages are really what the plaintiff*

> *is seeking, and determining liability is a necessary step towards deciding whether damages or compensation are payable, and if so, what is the appropriate amount. On this view, an interlocutory judgment with damages to be assessed will not be an order which finally disposes of the rights of the parties in that action.*
>
> [emphasis added]

25 The court also expressly considered the decisions in *White* and *Strathmore*, but declined to follow them. The basis in which these cases were distinguished, the plaintiff says, is crucial. *Wellmix Organics* was decided under the pre-2010 regime under which there was no leave requirement for interlocutory orders. All that the provision in s 34(1)(*c*) of the Supreme Court of Judicature Act (Cap 332, 1999 Rev Ed) ("the old SCJA") required was that the party should, within seven days, write to the Judge to ask for further arguments in respect of an interlocutory order before it can appeal. By contrast, the relevant statutes in *White* and *Strathmore* provided that no appeal would lie to the English Court of Appeal and the Privy Council, respectively, from any interlocutory order without the leave of the court. Chao JA suggested that this fact perhaps "might have prompted the courts there to give the word 'final' and 'rights' an extended meaning." The requirement for an application for further arguments to be made under the old SCJA, on the other hand, was held to be distinct as it did not deprive a party of his right of appeal, and could "hardly be considered to be an onerous burden" (at [24]); see also *Aberdeen Asset Management Asia Ltd and another v Fraser & Neave Ltd and others* [2001] 3 SLR(R) 355 at [23], cited with approval in *Wellmix Organics* at [22]). For present purposes, the dicta in *Wellmix Organics* is clear – an interlocutory judgment with damages to be assessed is an interlocutory and not a final order.

26 It is self-evident that, following the 2010 amendments, there is now a leave requirement for interlocutory orders under para (*e*) of the Fifth Schedule, unless specifically exempted, just as there was in *White* and *Strathmore*. Thus, the plaintiff submits that the analysis in *Wellmix Organics* no longer applies. The question therefore is whether the dicta in *Wellmix Organics* has survived the 2010 amendments. Before I turn my analysis to this question, it is imperative to bear in mind that the dicta in *Wellmix Organics* at [15] that "[d]amages are really what the plaintiff is seeking, and determining liability is a necessary step towards deciding whether damages or compensation are payable, and if so, what is the appropriate amount" was the Court of Appeal's treatment of the word "finally" in the context of the *Bozson* test. Crucially, the *Bozson* test was developed in England to determine the question of whether leave of court was required before an appeal could be filed. Thus, the plaintiff's argument that the analysis in *Wellmix Organics* no longer applies given the introduction of the leave requirement under the 2010 amendments ignores the fact that *Wellmix Organics* adopted the *Bozson* test notwithstanding the absence of any leave requirement at that time in Singapore. In other words, as was entirely within its prerogative, the Court of Appeal in *Wellmix Organics* adopted the *Bozson* test for the purposes of Singapore law even though it was developed in England under different circumstances.

27 In my judgment, *Wellmix Organics* remains good law post the 2010 amendments for three reasons:

(a) A good starting point is the Report that led to the 2010 amendments, which expressly acknowledged the guidance of *Wellmix Organics* and its analysis of interlocutory judgments with damages to be assessed, at para 106:

> The decision in *Wellmix Organics* provided much guidance on the application of the "Bozson" test. … The Court of Appeal further concluded more generally that an interlocutory judgment with damages to be assessed is an interlocutory order and not a final order as it does not finally dispose of the rights of the parties in the action. It is only a partial determination of rights and the determination of liability is not an end in itself.

The plaintiff accepts that the Report did cite the dicta in *Wellmix Organics*, but argues that it no longer applies as "the Committee did not see fit to put into law [the case's] interpretation of interlocutory judgments being interlocutory in nature."[9] With respect, this is a *non-sequitur*. In the absence of any express provision in the 2010 amendments to the contrary, the dicta in *Wellmix Organics* on interlocutory judgments with damages to be assessed must remain good law unless reversed or clarified by subsequent Court of Appeal cases. Any doubt that this was the intention behind the 2010 Amendments is dispelled by the observations, at para 111 of the Report, that "[t]he better approach would be to leave the meaning of 'interlocutory order' to be developed incrementally by case law" and that "the *Wellmix Organics* decision provides sufficient clarification and guidance as to its meaning for most purposes." Although these observations were made in relation to the meaning of "interlocutory order" under s 34(1)(*c)* of the old SCJA, which has since been deleted, they are entirely in line with the approach which the Court of Appeal has taken in relation to para (*e*) of the Fifth Schedule to the SCJA (see sub-para (b) below).

(b) Second, as a matter of authority, there is little doubt that the dicta in *Wellmix Organics* is in fact still good law. As the defendant

9 Plaintiff's Further Outline Submissions dated 7 April 2016, para 42.

has pointed out, the case, and its treatment of the *Bozson* test, has been cited with approval in numerous Court of Appeal decisions handed down after the 2010 amendments including *Dorsey James*, *The Nasco Gem* and *Citiwall Safety Glass Pte Ltd v Mansource Interior Pte Ltd* [2015] 1 SLR 797 ("*Citiwall Safety*"). Indeed, the very same passage examined above (*ie*, *Wellmix Organics* at [15]) was cited with approval by Sundaresh Menon CJ in *Citiwall Safety* at [92] in determining the meaning of "finally" for the purposes of the *Bozson* test. Thus, on this issue, I am bound by the analysis in *Wellmix Organics*. This conclusion puts paid to the plaintiff's submission that the Court of Appeal's analysis of interlocutory judgments in *Wellmix Organics* has not survived the 2010 amendments.

(c) Finally, the plaintiff submits that *Wellmix Organics* would be decided differently today with the introduction of the leave requirement in Singapore, which was also present on the facts of *White* and *Strathmore*. This submission is quite beside the point. Even if true, it does not assist the plaintiff given my finding that the analysis in *Wellmix Organics* relating to interlocutory judgments with damages to be assessed remains good law. The fact remains that the Report and the subsequent cases discussed above endorsed the continued application of *Wellmix Organics as it was then decided*, and *not how it might otherwise have been decided.* There is nothing to disapprove the clear dicta that an interlocutory judgment with damages to be assessed is and continues to be an "interlocutory order" under the 2010 amendments. In any event, I do not think the Court of Appeal in *Wellmix Organics* would have decided the issue any differently had there been a leave requirement for interlocutory orders under the old SCJA. As the passage from the judgment set out above (at [24]) indicates, the

> conclusion that an interlocutory judgment with damages to be assessed is an "interlocutory order" essentially turned on the practical logic that the determination of liability is not an end in itself as damages are really what the plaintiff wants. This reasoning is as unassailable today as it was prior to the 2010 amendments. Here, the proceedings for the assessment of damages are still very much alive, and imposing a leave requirement allows the case to proceed very quickly to the next stage for assessment if no application for leave to appeal is brought within the seven day deadline stipulated under O 56 r 3(1) of the ROC: see *Wellmix Organics* at [24].

28 Is this analysis, made in the context of interlocutory judgments with damages to be assessed, equally applicable to the Wrongful Arrest order? The answer, in my view, is clearly yes. There is nothing in the relevant passages from *Wellmix Organics* which is peculiar to interlocutory judgments obtained under any specific order of the ROC. The analysis was always intended to be of general application. In fact, this was expressly recognised in the Report, at para 106, which states that the court "concluded *more generally* that an interlocutory judgment with damages to be assessed is an interlocutory order and not a final order" [emphasis added]. In this case, the *Bozson test*, the definition of "finally" therein, and the reasoning that what the applicant really wants is damages all apply equally to an order of wrongful arrest with damages to be assessed. It should not be overlooked that *nothing* is payable by the plaintiff to the defendant as yet. I had directed the assessment of damages to take place before me, and it is entirely open to the plaintiff to argue at the assessment hearing that the defendant has suffered no loss arising from the wrongful arrest of the vessel.

29 In the alternative, the defendant submits that the Wrongful Arrest order is interlocutory in nature since an award of damages is merely a possible consequence of wrongful arrest and is not a "substantive right" that had been determined in the proceedings. This argument is premised on certain observations made in *The Nasco Gem* at [26] and [27]:

> 26 The final strand of argument canvassed by the Applicant is that the dismissal of its application in SUM 3640/2012, *ie*, the Setting Aside Application, had determined its substantive right to claim for damages for wrongful arrest, the latter being an ancillary prayer in the application. While the Applicant acknowledged that to succeed in this claim for damages it must show that there had been actual malice or gross negligence amounting to malice on the part of the Respondent, it argues that serious material non-disclosure may lead to such a claim being allowed. The Applicant highlighted that the pursuit of the claim for damages for wrongful arrest would not be a matter that will feature again in the substantive determination of the action in ADM 249/2012, and that the Applicant would not be able to resurrect its claim for wrongful damages even if it were to successfully resist the Respondent's claim in ADM 249/2012 for misdelivery under the B/Ls. For this additional reason, the Applicant submits that the Judge's order was not in the nature of an interlocutory order made in an interlocutory application within the scope of para (e) of the Fifth Schedule.
>
> 27 This argument is a non-starter. As noted by the Respondent, a claim for damages for wrongful arrest only arises as a consequence of an order setting aside the warrant of arrest. *A claim for damages for wrongful arrest is not an application that could have stood by itself. It is therefore not a "substantive right" of the Applicant that has been determined in the proceedings, but merely a possible consequence of wrongful arrest.*
>
> [emphasis added]

30 In my view, the passages cited from *The Nasco Gem* do not support the broad proposition which the defendant is seeking to advance. It is important to bear in mind that the appeal before the Court of Appeal was against the decision of the Judge *refusing* to set aside the warrant of arrest and in refusing the order for damages for wrongful arrest. Further, the decision made at first

instance refusing to strike out the action was non-appealable so the proceedings remained alive (see *The Nasco Gem* at [20]). In those circumstances, the order *refusing* to set aside the warrant of arrest was indisputably an interlocutory order. It is in this context, where the primary proceedings commenced by the plaintiff were still pending before the court, that the court's analysis that the claim for damages could not have stood by itself and was not a "substantive right" of the applicant must be understood. By contrast, the defendant's submission, if taken to its logical conclusion, would mean that the order for damages for wrongful arrest in this case would still be treated as an interlocutory order even after the damages are assessed. This does not seem right to me since plaintiff's *in rem* writ has already been set aside, and after the assessment of the damages, the rights of the parties would be finally disposed of with nothing further for the court to deal with. In any case, I do not need to make a conclusive determination on this alternative argument given that I have accepted the defendant's primary submission that the Wrongful Arrest order is an interlocutory order because "damages are really what the plaintiff is seeking and determining liability is a necessary step towards deciding whether damages or compensation are payable, and if so, what is the appropriate amount" (*Wellmix Organics* at [15]).

31 For the above reasons, I am constrained to find that the Wrongful Arrest order is an "interlocutory order" for the purposes of para (*e)* of the Fifth Schedule of the SCJA for which leave of court to appeal is required.

Is the Wrongful Arrest order excluded from para (e) of the Fifth Schedule?

32 I also reject the plaintiff's claim that "under the 2010 amendments to the SCJA, Parliament intended that all orders determining parties' substantive rights whether as to liability only or as to both liability and quantum of

damages would be appealable as of right."[10] This proposition is not borne out by the clear words of the Fourth and Fifth Schedules. As explained above, Parliament only deemed it fit to carve-out the applications listed in sub-paras (i)–(x) from the general leave requirement under para (*e*) of the Fifth Schedule. These provisions clearly do not encompass "all orders determining parties' substantive rights" whether as to liability or quantum howsoever arising.

33 It is true, as both parties have observed, that orders made in an application for summary judgment are now expressly excluded from the leave requirement under para (*e)*(i) of the Fifth Schedule. Thus, orders granting summary judgment are appealable as of right: see para 80 of the Report. As this exclusion is unqualified, it is arguable that no leave is required to appeal against an order for summary judgment even with damages to be assessed under the new regime. This point has not been decided, *but assuming it to be true*, the effect of the 2010 amendments would be that no leave is required to appeal against all orders for summary judgment, whether final or interlocutory. The same reasoning would apply, *ex hypothesi*, to interlocutory judgments with damages to be assessed arising from applications to set aside a default judgment (para (*e*)(ii)). The plaintiff relies on this premise to submit that "in the case of other types of interlocutory judgments, there should also be no distinction between judgments on liability only and judgments on liability and quantum of damages."[11] Para (*e*)(i), however, is a specific statutory exclusion and must be confined to the express words therein. The exclusion only applies specifically to orders for summary judgment, and cannot be extended to orders not excluded under the Fifth Schedule such as the

10 Plaintiff's Further Outline Submissions, para 3.

11 Plaintiff's Further Outline Submissions, para 40.

Wrongful Arrest order. This conclusion is irresistible since "summary judgment" in the context of the Fifth Schedule is a term of art governed by O 14 of the ROC, and there is simply no room to argue that the carve-out for orders made in an application for summary judgment from the leave requirement can be extended to an award of damages to be assessed for wrongful arrest. Even if the Wrongful Arrest order is *similar* to an order for summary judgment, the fact remains that it is nonetheless *not* an order for summary judgment. It is therefore necessarily caught by the "catch-all" provision in para (*e*) of the Fifth Schedule and accordingly is still governed by the general principles laid down in *Wellmix Organics*, as held above. I should highlight that the premise that all orders for summary judgment are now appealable as of right, even with damages to be assessed, is one which remains to be examined by the courts. But should it subsequently be decided that no leave is required, this will be because the carve-out for summary judgment under para (*e)*(i) covers both final and interlocutory judgments and not because the *Bozson* test as applied in *Wellmix Organics* has changed or is no longer applicable.

Should leave to appeal be granted?

Extension of time to apply for leave to appeal

34 As I have found that leave to appeal is required, I turn to the question of whether the plaintiff should be granted an extension of time to apply for such leave.

35 It is uncontroversial that the applicable principles are the same as those which govern an application to file a notice of appeal out of time (see *BLQ v BLR* [2011] SGHC 228 at [33]–[34]). The relevant factors are laid down in *Sun Jin Engineering Pte Ltd v Hwang Jae Woo* [2011] 2 SLR 196 at [29]:

> The factors which our courts have regard to in determining whether an extension of time to file a notice of appeal should be granted are fourfold, namely: (a) the length of the delay; (b) the reasons for the delay; (c) the chances of the defaulting party (*ie*, the would-be appellant) succeeding on appeal if the time for appealing were extended; and (d) the degree of prejudice to the would-be respondent if the extension of time were granted

Length of delay

36 The Wrongful Arrest order was made on 4 December 2015. But the present application was filed only on 2 March 2016, almost three months after the seven day deadline stipulated in O 56 r 3(1) of the ROC had expired. Given the short period of seven days set down in the ROC for the plaintiff to apply for leave, I agree with the defendant that the delay is indeed substantial.

Reason for the delay

37 According to the plaintiff, the substantial delay in applying for leave can be attributed to its position that no leave was required for the filing of the NOA on 4 January 2016. In other words, the plaintiff acknowledges that it made the wrong call. This explanation is self-serving and plainly unsatisfactory, given the circumstances of the case. *Wellmix Organics, Dorsey James, OpenNet* and *The Nasco Gem* are well-known and very recent authorities, and the plaintiff ought to have been properly advised that the issue of whether leave is required would be at least contentious. As the defendant argues, it was always open to the plaintiff to file a protective application within the stipulated window, particularly as it is clear under s 35 of the SCJA that an application for leave must be brought before the Judge in the first instance (see *The Nasco Gem* at [29]).

38 In any case, even if the plaintiff's assumption that no leave was required to appeal was reasonable, it must have known that this was a contested issue following the filing of the defendant's application to set aside the NOA, *vide* CA/SUM 7/2016 in CA/CA 2/2016, on 18 January 2016. Indeed, the plaintiff acknowledges that its counsel had informed the court at a case management conference on 19 January 2016 that it would be taking out an application for leave.[12] However, no adequate reason has been offered for the delay of more than a month from that date to the eventual filing of this application on 2 March 2016. Thus, I am satisfied that there is no satisfactory explanation for the substantial delay in this case.

Chances of success on appeal

39 The chances of the appeal succeeding are also low as the arguments cited by the plaintiff, namely that the court should have applied US or New York law to determine if the plaintiff's conduct was frivolous or vexatious, and that the allegation that there was suppression of evidence on the defendant's part, are without merit.

40 First, the plaintiff contends that the court erred in failing to appreciate that there was no evidence before it that the claim is frivolous, vexatious or an abuse of process under US or New York law. It says that these laws apply as the Contract provides that disputes arising therein are referable to arbitration in New York under US or New York law. I find this a surprising and somewhat disingenuous submission. How can it be legitimately contended that the court had erred in failing to consider the applicability of US or New York law when the issue was not even raised by either party, in particular the

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12 Affidavit of Said Aliev for ADM 239/2014 dated 2 March 2016 ("SA affidavit for ADM 239/2014"), para 8.

plaintiff, during the appeals? In any event, it is well-established that the content of foreign law is a question of fact which must be pleaded and proved (see *The Chem Orchid* [2015] 2 SLR 1020 ("*The Chem Orchid (HC)*" at [157]). The plaintiff, before me and at the hearing below, was content to proceed on the basis that Singapore law was to be applied. Consequently no issues of US law were pleaded or proved.[13] So the basis on which the plaintiff now says that I should have applied US or New York law in determining if it should have been liable for damages for wrongful arrest is puzzling to say the least. The plaintiff's further argument that the burden was on the defendant to adduce such evidence of foreign law is also unsupported by any authority, and is in fact contrary to the established position that, in general, parties are not obliged to do so even if, according to the rules of private international law, the issue at hand is governed by foreign law (*The Chem Orchid (HC)* at [157]). Thus I find this argument to be hopeless, applying the test laid down in *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 ("*Lee Hsien Loong*") at [20].

41 Next, the plaintiff alleges that the defendant had supressed crucial evidence by not disclosing a copy of the OW Bunker Group's Terms and Conditions of Sale for Marine Bunkers ("the OW GTC"). It is undisputed that these terms were incorporated into the contract between the defendant and OW Bunker China Limited ("OW China") ("the OW China Contract"). There are several problems with this serious allegation. First, in the defendant's affidavit in support of its striking out application in SUM 6364/2014 filed on 2 January 2015, the existence of the OW GTC was expressly disclosed, and it was acknowledged that the contract between the defendant and OW China

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13 SUM 6218/2014 and SUM 6364/2014, Notes of Evidence ("NOE") for 24 March 2015, p 6:22.

"expressly incorporated the OW Bunker Group's Terms and Conditions of Sale".[14] Thus the plaintiff was clearly aware of the existence of the OW GTC. Next, as the defendant has pointed out, the OW GTC was publically available online at all material times, and that was precisely how the defendant itself obtained a copy.[15] Third, and most importantly, the plaintiff's case at the hearing before me and below was based entirely on the Contract, which was between itself and OW Singapore. The Contract incorporated the plaintiff's own General Terms and Conditions for Sale and Delivery of Marine Bunkers from Big Port Service DMCC ("the GTC"). Thus, the terms of the OW China Contract were not in issue at the hearing.[16] Given this position, it is difficult to see how the defendant could be said to have supressed crucial evidence by failing to disclose a copy of the OW GTC, and how the alleged non-disclosure can be remotely relevant to the plaintiff's claim which is premised on the GTC.

42 Even if it is found that the defendant ought to have disclosed the OW GTC, the terms contained therein do not assist the plaintiff's case that OW Singapore was the defendant's agent and had entered into the Contract on the defendant's behalf. The relevant clause which the plaintiff purports to rely upon is cl L.4 of the OW GTC:[17]

> L.4 (a) These Terms and Conditions are subject to variation in circumstances where the physical supply of the Bunkers is being undertaken by a third party which insists that the Buyer is also bound by its own terms and conditions. In such circumstances, these Terms and Conditions shall be varied

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14 Affidavit of Qiao Qiming dated 30 December 2014, para 12.

15 Affidavit of Wang Fan dated 24 March 2016, para 43.

16 Judgment for RA 226/2015, [14]–[17].

17 Affidavit of Said Aliev for CA/OS 1/2016 dated 17 January 2016 ("SA affidavit for CA/OS 1/2016"), p 1109.

> accordingly, and the Buyer shall be deemed to have read and accepted the terms and conditions imposed by the said third party.
>
> (b) Without prejudice or limitation to the generality of the foregoing, in the event that the third party terms include:
>
> (i) A shorter time limit for the doing of any act, or the making of any claim, then such shorter time limit shall be incorporated into these terms and conditions.
>
> (ii) Any additional exclusion of liability clause, then same shall be incorporated mutatis mutandis into these.
>
> (ii) A different law and/or forum selection for disputes to be determined, then such law selection and/or forum shall be incorporated into these terms and conditions.
>
> (c) It is acknowledged and agreed that the buyer shall not have any rights against the Seller which are greater or more extensive than the rights of the supplier against the aforesaid Third Party."

43 On its face, the clause provides that the contract between OW China and the defendant was subject to variation when the physical supply of the fuel was undertaken by a third party supplier. In the context of the contract between OW China and the defendant, the third party was OW Singapore and not the plaintiff. Further, it seeks to permit OW Singapore as the third party to impose its own terms on OW China. However, it is difficult to see how cl L.4 can possibly assist the plaintiff in proving that the defendant had *authorised* OW Singapore to enter into the Contract on its behalf. For one, there is no reference to authorisation in the clause. Rather, cl L.4 contemplates the incorporation of typical exclusion and limitation clauses of the type which a third party supplier would wish to avail itself of in a situation where there are back to back contracts. These terms, listed at sub-cl (b), include provisions for shorter time limits for bringing claims, the exclusion of liability and choice of law and/or forum. In any case, even assuming that the clause was an authorisation clause, the relevant agent would have been OW China rather

than OW Singapore. Here, the plaintiff's arguments to deal with this obvious gap in analysis, namely that OW China and OW Singapore should be treated as the same economic unit and/or that there was some kind of "chain of authorisation" which eventually operated to vary the OW China Contract such that the defendant was directly liable to the plaintiff, are all tortuous, implausible and plainly unmeritorious. Thus I find that the allegation as to non-disclosure is without any merit as well.

Prejudice to the defendant

44 Finally, I accept that there is no tangible evidence that the defendant will suffer prejudice if an extension of time is granted which cannot be compensated by costs (*Lee Hsien Loong* at [25]). However, this factor on its own is insufficient for me to grant the extension of time sought by the plaintiff given it has been held that all four factors are of equal importance, and must be taken into account (*Lee Hsien Loong* at [28]).

Conclusion on extension of time for leave to appeal

45 Considering all of the above, particularly the substantial and inexcusable delay on the plaintiff's part in bringing this application as well the hopeless nature of the arguments which it seeks to put before the Court of Appeal, I reject the plaintiff's application for an extension of time to apply for leave to appeal against the Wrongful Arrest order.

Leave to appeal

46 There is thus no need for me to deal with the question of whether such leave to appeal ought to be given. But even if I was minded to grant the extension of time, there is no indication that this is a case where there is a) a *prima facie* case of error; b) a question of general principle decided for the

first time; or c) any question of importance upon which further argument and a decision of the Court of Appeal would be to the public advantage (see *Lee Kuan Yew v Tang Liang Hong* [1997] 2 SLR(R) 862 at [16]):

(a) On the issue of *prima facie* error, the arguments cited by the plaintiff are without merit, as stated above.

(b) The plaintiff does not argue that this is a case where a question of general principle was decided for the first time. It is contended, however, that there is a question of importance of "the standard of proof required of, and the necessity for a separate inquiry into the existence of malice, bad faith, recklessness or crass negligence before a party is held liable for damages in wrongful arrest".[18] I am unpersuaded.

(i) The test and standard required for an award of damages for wrongful arrest are not controversial, and the leading decision thereon, *The Vasiliy Golovnin* [2008] 4 SLR(R) 994, is recent. The case has also been further examined in authorities such as *The Eagle Prestige* [2010] 3 SLR 294, and *The Bunga Melati 5* [2012] 4 SLR 546. What the plaintiff in fact appears to be arguing is that the court reached a wrong conclusion on the evidence. But this is insufficient to establish a *prima facie* error of law, let alone raise a question of general importance: *Abdul Rahman bin Shariff v Abdul Salim bin Syed* [1999] 3 SLR(R) 138 at [30].

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[18] SA affidavit for ADM 239/2014, para 10.

(ii) It is also unclear why there is a need for a "separate inquiry" into the existence of malice, given that this was precisely the subject matter of RA 226/2015. As the defendant has highlighted, the Singapore courts have awarded damages for wrongful arrest in a number of cases in which the warrant of arrest was set aside in an interlocutory application including the leading case of *The Vasiliy Golovnin*.

47 Therefore, I dismiss both Prayer 1 and Prayer 2 of the application. Taking into account the earlier dismissal of Prayer 3, I order the plaintiff to pay the defendant's costs which I fix at $10,000 inclusive of disbursements.

Postscript: Further application by plaintiff

48 Subsequent to the hearing of this current application, the plaintiff filed a further application, Summons No 1772 of 2016, seeking a declaration that no leave was required to appeal against my decision dismissing Prayer 3 (see [11] above) or, in the alternative, the grant of such leave to appeal, if required. I found this application to be ill advised. Under s 34(2) of the SCJA, it is clear that leave to appeal can be granted either by the High Court *or* the Court of Appeal. Therefore, the High Court and the Court of Appeal exercise *concurrent jurisdiction* in this regard, subject to the requirement under s 35 of the SCJA that the application must be made in the first instance to the High Court: see, on the analogous position under O 57 r 16(3) of the ROC, *Au Wai Pang v AG and another* [2014] 3 SLR 357 at [61]–[68]. The application to the Court of Appeal for leave to appeal is governed by O 57 r 2A of the ROC. It must be made within seven days after the refusal of the High Court to grant leave, and supported by an affidavit.

49 So, quite simply, there is no room for an appellant to bring an *appeal* against the refusal of the High Court to grant leave. The proper procedure to be followed, after the High Court refuses leave, is for the appellant to bring a *subsequent application* to the Court of Appeal as clearly set out in O 57 r 2A of the ROC. This makes eminent sense as allowing an appeal against the refusal of the High Court to grant leave, despite the procedure in O 57 r 2A of the ROC, would result in an unnecessary waste of time and court resources. It would also allow the appellant to circumvent the strict seven day deadline under O 57 r 2A given the substantially longer timeline of one month for bringing an appeal (O 57 r 4 of the ROC). Thus if an appellant ignores the procedure laid down in O 57 r 2A of the ROC and instead attempts to bring an appeal against the refusal of the High Court to grant leave, this would amount to an abuse of process.

50 The plaintiff's application in Prayer 3, which I dismissed, was as follows:

> That the Plaintiff be granted an extension of time to apply for leave to bring an appeal against the order of the Honourable Justice Steven Chong made on 23 September 2015 in Registrar's Appeal No. 225 of 2015, refusing a stay of proceedings in Admiralty in Rem No. 239 of 2014 (the "**Refusal to Stay order**") *and* for such leave of Court to appeal the Refusal to Stay order to be granted.
>
> [emphasis in original in bold; emphasis added in italics]

51 In the course of the hearing of Summons No 1772 of 2016, the plaintiff's counsel, while accepting that the *substance* of Prayer 3 was to seek leave of court to appeal, sought to persuade me that *in form*, it was an application for extension of time to apply for leave which did not fall within O 57 r 2A of the ROC. The application for leave to appeal, he argued, was merely *contingent* on obtaining an extension of time. However, Prayer 3

expressly sought *both* an extension of time to apply for leave to appeal, *and* the grant of such leave. The application was couched in this manner because, ultimately, the relief sought was for leave to appeal – it would be futile to obtain an extension of time on its own. So, in dismissing Prayer 3 in *full*, it is clear that leave of court to appeal was also denied. Thus, after the dismissal of Prayer 3 on 1 April 2016, the appellant was free to bring a subsequent application to the Court of Appeal of a similar nature for both an extension of time to apply for leave, and the grant of such leave within seven days from that date. The Court of Appeal has the power to grant the extension of time under O 3 r 4 of the ROC, and can then exercise its concurrent jurisdiction to grant leave to appeal, if it is so minded. This is the proper procedure which the plaintiff ought to have adopted in the present case. But it failed to do so. Instead, it brought a flawed further application which wrongly assumed that an appeal against my dismissal of Prayer 3 was available despite the clear procedure set out in O 57 r 2A of the ROC.

52 Further, on the face of Prayer 1 of its further application, the plaintiff's position was that no leave is required, and there is no indication that it entertained genuine doubts on this point. That being the case, the plaintiff should have proceeded on that basis and made an application to the Court of Appeal, rather than seeking a declaration from me on this issue. The plaintiff's application in Summons No 1772 of 2016 is precisely the sort of conduct which I cautioned against at [9] above; I should once again emphasise that such declarations should only be sought if there is *genuine* uncertainty whether leave of court is required. I accordingly dismissed the plaintiff's further application, with costs fixed at $3,000 inclusive of disbursements. In my view, this further application was misconceived and amounted to an abuse of court process.

Steven Chong
Judge

Lawrence Teh and Khoo Eu Shen (Rodyk & Davidson LLP) for the plaintiff;
Toh Kian Sing, SC, Koh See Bin and Jonathan Tan (Rajah & Tann Singapore LLP) for the defendant.
