IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 40

Originating Summons No 5 of 2022

In the matter of Sections 29A(1)(*c*), and 29A(2)(*b*), and the Fifth, and Sixth Schedules of the Supreme Court of Judicature Act 1969 (2020 Rev Ed)

And

In the matter of Order 57, Rule 2A, and Rule 16 of the Rules of Court (2014 Rev Ed)

Between

Seow Fook Sen Aloysius

… *Applicant*

And

Rajah & Tann Singapore LLP

… *Respondent*

JUDGMENT

[Courts and Jurisdiction — Appeals]

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1 March 2022

12 May 2022 Judgment reserved.

Andrew Phang Boon Leong JCA (delivering the judgment of the court):

Introduction

1 The coming into force of the Supreme Court of Judicature (Amendment) Act 2019 (Act 40 of 2019) ("the SCJA(A)") established the Appellate Division of the High Court and a statutory scheme in the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("the SCJA") governing the allocation of appeals between the Court of Appeal and the Appellate Division. Under the statutory scheme, appeals from decisions of the General Division of the High Court are to be made to the Appellate Division, unless they come within the Sixth Schedule to the SCJA (see ss 29C(1)–(2) of the SCJA). The present application, Originating Summons No 5 of 2022 ("OS 5"), presents us with an opportunity to provide guidance on how counsel should navigate this statutory scheme and how the categories in the Sixth Schedule ought to be interpreted.

Background

2 OS 5 is an application by Mr Seow Fook Sen Aloysius ("Mr Seow") for leave to appeal against the decision of a judge in the General Division ("the Judge") in *Seow Fook Sen Aloysius v Rajah & Tann Singapore LLP* HC/OS 1185/2021 (8 February 2022) ("OS 1185"). OS 1185 was an application by Mr Seow for an order for taxation of a bill of costs under s 120 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA").

3 The background to OS 1185 was as follows. Sometime in April 2020, Rajah & Tann Singapore LLP ("R&T") was engaged by Hin Leong Trading Pte Ltd ("HLT") to carry out some corporate restructuring work. R&T required HLT to provide funds of S$2m as a deposit for the engagement. HLT duly provided a cheque for the deposit. At the request of his wife (a director of HLT), Mr Seow also provided a cheque to R&T. The parties had intended for Mr Seow's cheque to be deposited in place of HLT's own cheque if the latter could not be cleared. In the event, HLT's own cheque did not clear and Mr Seow's cheque was deposited into HLT's client account with R&T. R&T then proceeded to carry out the restructuring work.

4 In November 2020, R&T issued an invoice to HLT (which by then had come under the care of judicial managers) for the sum of S$908,955.68 in respect of HLT's restructuring work done between 8 April 2020 and 27 April 2020. R&T then informed HLT's judicial managers that it proposed to set off those fees against the sum of S$2m in HLT's client account (representing the funds from Mr Seow's cheque) and return the balance to Mr Seow. It does not appear that HLT's judicial managers objected to the same. R&T then proceeded to debit S$908,955.68 from HLT's client account and returned the balance to

Mr Seow. Mr Seow was however dissatisfied with the quantum of the fees that had been debited and so he sought an order under s 120 of the LPA for R&T's bill of costs to HLT to be taxed. HLT has since been wound up.

5 A preliminary issue stands in the way of this court considering the leave application proper. Sections 29C(1) and (2) of the SCJA provide that an appeal against a decision of the General Division in the exercise of its original or appellate civil jurisdiction is to be made to the Appellate Division and *not* to the Court of Appeal, unless provided for by the Sixth Schedule to the SCJA or any other written law. Mr Seow considers the Court of Appeal as the appellate court to which an appeal from the Judge's decision is to be made, and accordingly with which OS 5 should be filed, on the basis that his intended appeal comes within para 1(*d*) of the Sixth Schedule, which provides as follows:

> 1. For the purposes of section 29C(2), an appeal against a decision of the General Division in the exercise of its original or appellate civil jurisdiction is to be made to the Court of Appeal in the following cases:
>
> …
>
> (*d*) the appeal arises from a case relating to the insolvency, restructuring or dissolution of a corporation … (even if the appeal does not raise any issue relating to the law concerning the insolvency, restructuring or dissolution of a corporation …);

6 It appears that Mr Seow has taken this position for two reasons. First, it is because R&T's engagement (which gave rise to the disputed bill for which Mr Seow seeks an order for taxation) had arisen in the *factual* context of HLT's judicial management and subsequent winding-up. Second, he found it significant that the words in parentheses in para 1(*d*) of the Sixth Schedule provide for an appeal which did not *itself* raise any issue relating to the law of

insolvency as nevertheless coming within the scope of para 1(*d*). Presumably, Mr Seow thought that buttressed the first reason because it meant that it did not matter that his intended appeal *itself* raised no issue relating to HLT's insolvency and the legal principles or rules which it engaged.

The Sixth Schedule to the SCJA

7 To determine if Mr Seow's position is justified, we need to consider the proper scope of the Sixth Schedule to the SCJA. The appeals which the Sixth Schedule provides are to be made to the Court of Appeal by default can be classified into three categories:

(a) First, where the appeal "arises from a case relating to" specified subject matter, such as constitutional or administrative law, contempt of court, the law of arbitration, insolvency or the law of patents. This is provided for in paras 1(*a*)–(*e*) of the Sixth Schedule. Importantly, as the words in parentheses in paras 1(*a*)–(*e*) make clear, even if the appeal *itself* does not raise issues relating to specified subject matter, so long as it "arises from a case relating to" that subject matter, it will nevertheless come within the Sixth Schedule.

(b) Second, where the appeal is against particular decisions of the General Division, such as a decision of the Singapore International Commercial Court ("SICC") (see para 1(*f*)), a decision made under the Parliamentary Elections Act 1954 (see para 1(*g*)), a judgment or order made in an action brought under s 47(8) of the Presidential Elections Act 1991 (see para 1(*h*)), or a decision made under the Mediation Act 2017 or the Singapore Convention on Mediation Act 2020 (see paras 1(*k*) and (*l*)).

(c) Third, where the appeal is to be made to the Court of Appeal under written laws (see paras 1(*i*) and (*j*)).

8 The establishment of the Appellate Division and the statutory scheme for the allocation of appeals in the SCJA was meant to relieve the Court of Appeal's growing caseload from a quantitative perspective, while simultaneously permitting it to focus its resources on matters which would benefit from its expertise as the apex court of the land from a qualitative perspective (see the decision of this court in *Noor Azlin bte Abdul Rahman and another v Changi General Hospital Pte Ltd* [2021] 2 SLR 440 at [5]). At the second reading of the SCJA(A), the Senior Minister of State for Law, Mr Edwin Tong, explained the general considerations which underlie the identification of appeals that came within the Sixth Schedule (see *Singapore Parliamentary Debates, Official Report* (5 November 2019) vol 94 (Edwin Tong Chun Fai, Senior Minister of State for Law)). The Minister explained that these appeals are generally those that:

> (a) are likely to have substantial consequences for individuals or society;
>
> (b) may involve questions of law of public interest which would benefit from guidance of the apex court in Singapore;
>
> (c) concern the general administration of justice;
>
> (d) may involve novel questions of law, or new areas of law which would benefit from guidance from the Court of Appeal;
>
> (e) may involve issues that are likely to be important and require earlier clarification from the Court of Appeal; or
>
> (f) relate to strategic areas that would benefit from the stature of the apex court, such as the areas of laws which seek to bolster Singapore's status as a dispute resolution hub or debt restructuring hub.

9 Returning to the Sixth Schedule itself, it may be observed that the criteria relating to the second and third category of appeals are relatively more straightforward in that they involve a purely factual inquiry. For instance, whether the decision appealed from is a decision of the SICC or whether any written law provides for the appeal to be made to the Court of Appeal, are questions which permit of only a yes or no answer that can be given immediately by reference to the facts relating to the subject appeal.

10 Turning to the criteria relating to the first category of appeals, namely, whether an appeal "arises from a case relating to" subject matter specified in paras 1(*a*)–(*e*) of the Sixth Schedule, it can obviously be read as involving a purely factual inquiry. In that case, a *factual* relationship between a case and any of the specified subject matters, ***however tangential***, would suffice. This appears to be the interpretation adopted by Mr Seow, as he considers the fact that HLT's insolvency featured in the factual background of OS 1185 sufficed to render it "a case relating to" insolvency and bring his intended appeal within para 1(*d*).

11 That analysis cannot be correct. Let us explain. By specifying that appeals which "[arise] from a case relating to" particular subject matter in paras 1(*a*)–(*e*) are to be made to the Court of Appeal, notwithstanding that the Appellate Division is to be the final appellate court for the vast majority of civil appeals (see s 29C(1) of the SCJA), Parliament has recognised the subject matter specified in paras 1(*a*)–(*e*) as that which will either involve *issues* of importance and so will require and benefit from consideration by the Court of Appeal, or which represent *areas of law* that concern questions of public interest or which serve other strategic purposes so that the appeal benefits from the guidance or the stature of the apex court (see [8] above). In other words, for an

appeal to come within paras 1(*a*)–(*e*), there must be something in the appeal which makes it necessary for the apex court of the land to hear it. In this regard, it must also be borne in mind that although decisions of the Appellate Division are binding on the General Division, unlike the Court of Appeal, the Appellate Division does not have the powers to *overturn* or *overrule* its previous decisions or depart from decisions of the Court of Appeal, although it can *depart* from the Appellate Division's own precedents (see the decision of this court in *UJM v UJL* [2021] SGCA 117 at [115]).

12 What is clear is that Parliament could not have intended for the criteria in paras 1(*a*)–(*e*) to be satisfied so long as the specified subject matter features somewhat by way of factual background to the "case", even if this is by way of the most tenuous or tangential manner (it follows, of course, that the said criteria would clearly not be satisfied if the specified subject matter does not even feature in the factual background to the "case" itself). In our view, there must be ***something more***. Otherwise, the criteria in paras 1(*a*)–(*e*) would have an exceedingly low threshold that can be satisfied in almost every instance, and which may, as a result, no longer operate to draw a distinction between those appeals which necessarily must be heard by the Court of Appeal and those which fall outside of that category. Unlike the other subparagraphs within the Sixth Schedule, the criteria in paras 1(*a*)–(*e*) cannot be read as involving a purely factual inquiry because doing so would undermine the role of paras 1(*a*)–(*e*) in carving out specific categories or types of proceedings to be heard by the Court of Appeal (see the decision of this court in *Wei Fengpin v Raymond Low Tuck Loong and others* [2021] SGCA 115 at [32] *and* the statutory scheme for the allocation of appeals in the SCJA).

13 With these considerations in mind, we consider that "a case relating to" a specified subject matter in paras 1(*a*)–(*e*) is one where the latter is legally relevant to and/or has some bearing on the reliefs or orders which were sought at first instance. In hearing an appeal from a decision by the court of first instance to either grant or deny the reliefs or orders sought (as the case may be), an appellate court will very likely have to consider issues relating to the specified subject matter which, by their nature, are deemed by Parliament to be of importance and so will require and benefit from consideration by the apex court of the land (see [11] above). That in turn renders it necessary for the appeal to be heard by the Court of Appeal. Put simply, at the very *least*, some reasonable relationship must be established between the specified subject matter and the "case" from which the appeal arises, whether with regard to the *legal issues* therein or the *application* of the law to its facts, ***in the court below***, so that either or both of which may arise for consideration ***in the appeal***. For example, in the context of para 1(*d*), with which we are presently concerned, the "case" from which the appeal arises must concern a fact situation which involved *the rules and principles relating to the law of* ***insolvency***, so that in the appeal, the Court of Appeal is ***also*** either called upon to *decide a principle or rule* relating to the law of insolvency (thereafter applying it to the facts concerned), or at the very least, *apply* an established principle or rule relating to the law of insolvency to the facts.

14 We recognise that there can be situations in which the appeal, notwithstanding having arisen from a "case" bearing the requisite relation to a specified subject matter, turns on issues entirely unrelated to the specified subject matter. In the context of para 1(*d*) of the Sixth Schedule, an example will be an appeal involving the question of whether a winding-up order should be set aside on grounds entirely unrelated to the law of insolvency, such as non-

disclosure of material facts or abuse of process. Notwithstanding that, the appeal will ultimately still entail the appellate court *applying* the established principles or rules of winding-up to the facts in determining if the winding-up order sought at first instance had been correctly made. Hence, in these situations, despite the complexion of the precise issues arising in the appeal, the appellate court will still be required to *apply to the facts* established principles or rules relating to the specified subject matter, in the same way that the court below had to when it granted or denied (as the case may be) the reliefs or orders sought in the "case" at first instance. Put simply, issues of importance will nonetheless arise in the appeal, and it is not any less necessary for such an appeal to be heard by the apex court of the land.

15 However, as the Minister explained during the second reading of the SCJA(A), appeals have also been prescribed as coming within the Sixth Schedule by virtue of their relationship to particular areas of law so that the appeal benefits from the guidance or stature of the apex court because of the importance associated with these areas of law, namely, because they are likely to involve questions of public interest, or because they relate to strategic purposes (see [11] above). Indeed, this finds expression in the specified subject matter identified in paras 1(*a*)–(*e*): matters of constitutional and administrative law or the law of contempt necessarily raise questions of public interest, while arbitration and insolvency law are crucial to bolstering Singapore's status as a dispute resolution or debt restructuring hub. In our view, this backdrop provides the explanation for the words in parentheses in paras 1(*a*)–(*e*), which provide that an appeal arising from "a case relating to" specified subject matter will nevertheless fall within the ambit of the relevant paragraph "even if the appeal does not raise any issue relating to [the specified subject matter]". It is only consistent with the importance associated with these areas of law identified by

the specified subject matter in paras 1(*a*)–(*e*) for any appeal satisfying the criteria therein to be made to the Court of Appeal by *default*, irrespective of the issues raised in the appeal. By the words in parentheses, Parliament meant to clarify that the satisfaction of the criteria in paras 1(*a*)–(*e*) of the Sixth Schedule should not be contingent on the identity of the issues raised in the appeal. This ensures that the parties will be certain from the time when a notice of appeal is to be filed as to the court in which the appeal would lie, and that this determination does not turn on a matter as fortuitous as the identity of the specific issues that will be contested in the appeal. Such an interpretation is also consistent with the overall purpose of paras 1(*a*)–(*e*) in identifying a *distinct* category of proceedings to be heard by the Court of Appeal (see the decision of this court in *Wei Fengpin* at [32]). That having been said, it would probably be an extremely rare case where the appeal does not raise any issue relating to the specified subject matter in paras 1(*a*)–(*e*) if the proceedings in the court below did indeed engage the specified subject matter in the manner that we have referred to earlier (see [13] above).

16 Finally, it should also be emphasised that the words in parentheses do not broaden the scope of paras 1(*a*)–(*e*). The effect of those words is to make it clear that the *only* criteria determinative of whether an appeal comes within paras 1(*a*)–(*e*) is whether it arises from "a case relating to" specified subject matter, and *not* the identity of the issues raised in the appeal itself (see [15] above). If, in the first place (*ie*, in the court of first instance), the fact situation in the "case" does *not* involve (in the manner set out at [13] above) any application of the rules and principles relating to the specified subject matter at all, then the "case" does not relate to specified subject matter in the manner

envisioned by paras 1(*a*)–(*e*), and the criteria therein necessarily cannot be satisfied.

Our decision

17 Accordingly, for Mr Seow's intended appeal to come within para 1(*d*) of the Sixth Schedule, it must be shown that the insolvency, restructuring or dissolution of HLT (being the "corporation" for the purposes of para 1(*d*)) is relevant to or has some bearing on the reliefs or orders which were sought in OS 1185. Quite clearly, that must be answered in the negative. Although the insolvency of HLT provides the factual background to R&T's engagement and was also the context in which Mr Seow provided his personal cheque (from which R&T's fees for HLT's restructuring were debited), HLT's insolvency had no bearing whatsoever on the reliefs sought by Mr Seow in OS 1185. As the parties' arguments and the Judge's brief grounds of decision in OS 1185 suggest, whether an order for taxation under s 120 of the LPA was to be granted in that case turned solely on matters which exist as between Mr Seow and R&T, namely, whether he had agreed with R&T to undertake liability for HLT's fees to the extent of S$2m. The fact of HLT's insolvency and the principles and rules of the law of insolvency which it potentially engaged had *no* bearing on what ***Mr Seow sought*** *as against R&T*. No reasonable relationship can be established between OS 1185 on the one hand and the rules and principles relating to the law of insolvency or their application to the facts on the other. The "case" from which Mr Seow's intended appeal arises is therefore not one "relating to the insolvency, restructuring or dissolution of a corporation" and that necessarily leads us to conclude that his intended appeal does not come within para 1(*d*) of the Sixth Schedule.

18 In the circumstances, Mr Seow's intended appeal ought to have been made to the Appellate Division and so OS 5 ought also to have been filed with the Appellate Division, and not the Court of Appeal. The Court of Appeal has no jurisdiction to grant leave to appeal in respect of an appeal which is to be made to the Appellate Division under the SCJA. The Appellate Division has exclusive jurisdiction over that appeal, including the questions of whether leave to appeal ought to be granted.

19 For the foregoing reasons, we dismiss OS 5 on the basis that this court has no jurisdiction to consider Mr Seow's leave application, which ought to have been filed with the Appellate Division. In the circumstances, we also make no order as to costs. Given the relative infancy of the statutory scheme for the allocation of appeals under the SCJA and the consequential relative absence of guidance from the courts on the circumstances in which an appeal can come within the Sixth Schedule, we accept that it is understandable that Mr Seow filed OS 5 in the Court of Appeal, and for R&T not to have opposed the application on jurisdictional grounds. Thus, notwithstanding the dismissal of OS 5, we also grant Mr Seow leave to file the necessary papers with the Appellate Division within two weeks of the date of this judgment, if he wishes to pursue his intended appeal.

20 However, we emphasise that, given the guidance which we have set out in this judgment, moving forward, counsel should scrutinise any leave to appeal applications which they seek to bring and carefully consider whether it is to be made to the Court of Appeal or the Appellate Division. If an application is pursued to the Court of Appeal in spite of it unambiguously and unarguably failing to come within any of the categories in the Sixth Schedule, the

application will be visited with adverse cost consequences unless the applicant is otherwise justified in doing so.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Christopher Anand s/o Daniel, Harjean Kaur, Yeo Yi Ling Eileen, Keith Valentine Lee Jia Jin and Shalini Rajasegar (Advocatus Law LLP) for the applicant;
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