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

[2023] SGHC 161

Originating Application No 331 of 2023

In the matter of Section 29A of the Supreme Court of Judicature Act 1969

And

In the matter of Order 18 Rule 19(2) of the Rules of Court 2021

And

In the matter of DC/OC 369/2022

Between

Housing & Development Board

… *Applicant*

And

Cenobia Majella Chettiar

… *Respondent*

JUDGMENT

[Civil Procedure — Appeals — Leave — Whether District Court as the appellate court may consider new pleadings that were not before the Registrar]

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v
Cenobia Majella Chettiar

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11 May 2023

1 June 2023 Judgment reserved.

Goh Yihan JC:

1 This is the Housing & Development Board's ("the applicant") application, made pursuant to s 21(1) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA") and O 18 r 19(2) of the Rules of Court 2021 ("ROC 2021"), for permission to appeal against the decision of the learned Principal District Judge ("PDJ") in DC/RA 5/2023 ("RA 5"). RA 5 was the applicant's appeal against the decision of the learned Deputy Registrar ("DR") in DC/SUM 2916/2022 ("SUM 2916"). In SUM 2916, the DR had granted the respondent unconditional permission to defend against some aspects of the applicant's claim. More broadly, both RA 5 and SUM 2916 were interlocutory actions that the applicant had taken out in the main action, DC/OC 369/2022 ("OC 369"). The respondent in this application is Ms Cenobia Majella Chettiar ("the respondent").

2 The main issue in the present case is whether the PDJ erred in RA 5 by referring to documents that had not been filed before the DR in SUM 2916. In essence, the applicant says that the PDJ erred by considering the respondent's Defence and Counterclaim (Amendment No 1) ("Amended DCC"). This is because, so the applicant argues, O 18 r 16(4) of the ROC 2021 expressly states that an appeal to a District Judge against the decision of the Registrar must proceed "by way of a rehearing on the documents filed by the parties *before* the Registrar" [emphasis added]. Since the Amended DCC was filed *after* the DR heard SUM 2916, the applicant submits that it was not a document that the PDJ should have considered in RA 5.

3 Having considered the parties' submissions, I dismiss the applicant's application for permission to appeal. For reasons that I will explain below, I do not think that the applicant has shown that there is a *prima facie* case of error in the PDJ's decision. Furthermore, I do not think that this case raises a question of general principle to be decided for the first time. Finally, I also do not think that this case raises a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

Background facts

4 By way of background, OC 369 arose from a guarantee that the respondent had signed ("the Guarantee"). The Guarantee relates to a tenancy agreement that the applicant and Stansfield College Pte Ltd entered into in relation to a property ("the Property"). In essence, the applicant claims two primary sums from the respondent as a guarantor, namely, (a) $27,000, being the rental arrears from November 2018 to January 2019; and (b) $84,000, being double rent from 1 February 2019 to 20 June 2019 ("the Double Rent"). The respondent filed her Defence in OC 369 on 24 August 2022. The applicant then

filed an application for summary judgment via SUM 2916 on 14 September 2022.

5 The DR heard the parties in relation to SUM 2916 on 10 January 2023. He gave his decision on the same day, granting summary judgment for the sum of $29,208.75 in favour of the applicant. For all of the other aspects of the applicant's claim, including that which related to the Double Rent, the DR granted the respondent unconditional permission to defend. The issue in relation to the Double Rent was whether the respondent had returned vacant possession of the Property by 31 January 2019, which would be a defence against the applicant's claim for the Double Rent. On this point, the DR held that the respondent had adduced evidence that she had arranged for the keys to the Property to be returned to the applicant by 31 January 2019. In the DR's view, this meant that the respondent had established a *bona fide* defence.

6 But more significantly, the DR held that even if he were mistaken on this point, he was not convinced that the applicant was entitled to summary judgment for his claim for the Double Rent. This is because there was evidence that the applicant had rejected the respondent's attempt to return the keys a day earlier on 30 January 2019, on the basis that the respondent did not provide a proper company's resolution to authorise the courier to return the keys. As such, the DR allowed the respondent to amend her Defence to include the "prevention principle" based on the above facts. The upshot of this principle, as explained in the Appellate Division of the High Court ("Appellate Division") decision of *Ng Koon Yee Mickey v Mah Sau Cheong* [2022] 2 SLR 1296 at [80], was that the applicant could no longer insist on its contractual right to the Double Rent when it had prevented the respondent from returning the keys.

7 After the DR's decision on 10 January 2023, the applicant filed a Notice of Appeal in RA 5 on 18 January 2023 against the DR's decision to grant the respondent unconditional permission to defend. The respondent filed her Amended DCC on 20 January 2023. The PDJ heard the parties in relation to RA 5 on 17 February 2023 and dismissed the applicant's appeal. After the PDJ indicated on 1 March 2023 that he did not require further arguments from the applicant in relation to RA 5, the applicant filed its application to the PDJ on 2 March 2023 seeking permission to appeal against his decision in RA 5. The PDJ dismissed this application on 20 March 2023. The applicant has therefore filed the present application to seek permission to appeal against the PDJ's decision in RA 5.

The parties' positions

The applicant's arguments

8 In the present application, the applicant seeks permission to appeal on the primary ground that it can establish a *prima facie* case of error in RA 5 as the PDJ relied on the Amended DCC in reaching his decision. According to the applicant, as the Amended DCC was filed by the respondent only *after* the conclusion of SUM 2916, it would not have been *before* the DR when he heard SUM 2916. As such, the applicant contends that O 18 r 16(4) of the ROC 2021 prevented the PDJ from considering the Amended DCC in these circumstances. He therefore erred by considering the Amended DCC. For completeness, O 18 r 16(4) provides as follows:

> **Documents to be filed (O. 18, r. 16)**
>
> …
>
> (4) The appeal must proceed before the District Judge by way of a rehearing on the documents filed by the parties before the Registrar.

9 The applicant also contends that the PDJ erred in finding that SUM 2916 would have had the same outcome if the DR had heard the respondent's application to amend her Defence before rendering a decision. In essence, the applicant says that the DR granted the respondent unconditional permission to defend on the basis of a defence that had not yet been pleaded and which was ultimately not pleaded. This, the applicant argues, is contrary to the Court of Appeal decision of *Olivine Capital Pte Ltd and another v Chia Chin Yan and another matter* [2014] 2 SLR 1371 ("*Olivine Capital*"), where it was held that a defendant cannot rely on a fresh defence that had not been pleaded in its defence to resist summary judgment, unless: (a) the defence is amended; or (b) the case is an exceptional one, *ie*, where the court concerned is of the view that there are good reasons to permit reliance on such a fresh defence (at [42]–[43]). Furthermore, in as much as the PDJ found that the general rule in *Olivine Capital* did not apply as this was an "exceptional case", the applicant argues that the PDJ erred in taking that view.

10 Relatedly, the applicant also argues that the PDJ erred in concluding that any procedural irregularity caused by allowing the respondent to rely on a fresh defence that had not been pleaded should not prejudice the respondent. The PDJ justified this conclusion on the basis that the respondent merely complied with the DR's directions that she could file the Amended DCC *after* the summary judgment proceedings in SUM 2916. The applicant challenges this basis by arguing that the respondent did *not* in fact comply with the DR's directions in

filing the Amended DCC. In this regard, the DR had directed the respondent to "amend her pleadings to rely on the prevention principle", which related to the events of 30 January 2019 when the applicant refused to accept the keys that the respondent tried to return. The applicant argues that the Amended DCC did not contain this specific amendment that the DR had allowed, but instead incorrectly pleaded the "prevention principle" with reference to the applicant allegedly refusing "to take over possession of the [Property] after the main door key was mailed with [the] certificate of posting". This was a separate incident occurring the following day on 31 January 2019 and which did not engage the prevention principle.

11 The applicant also seeks permission to appeal on the secondary grounds that there is a question of general principle to be decided for the first time and that this question is of public importance. This is because, as the applicant argues, the wording of O 18 r 16(4) of the ROC 2021 is new. It would therefore be beneficial to understand why this language was introduced in the ROC 2021 to limit appeals to documents filed before the court below. In a related vein, the applicant also contends that this question concerning the documents that a District Judge should consider on appeal is a question of importance upon which a decision of a higher tribunal would be to the public advantage.

The respondent's arguments

12 While the respondent did not file and serve written submissions for this application, she nevertheless attended the hearing before me and made oral submissions. Preliminarily, I clarified with her that the purpose of this application is not to determine the questions of: (a) whether the DR ought to have granted summary judgment in SUM 2916; (b) when the applicant received

the keys to the Property; or (c) on whom the burden of proof lay in showing that the applicant received such keys by 31 January 2019.

13 With this in mind, and for the purposes of this specific application, the respondent first denies that she only requested permission to amend her Defence after the DR had invited her to do so. In support of this, she points to her first affidavit dated 17 October 2022 in SUM 2916, which she says was where she requested for directions from the court and for permission to amend her Defence. She argues that it was on the basis of this affidavit that the DR then granted her permission in SUM 2916. Second, the respondent also argues that the applicant has not shown that the PDJ made his decision on the basis of the Amended DCC.

My decision: the application is dismissed

14 Having considered the parties' arguments, and for the reasons that I will explain, I dismiss the applicant's application.

The general law

15 I begin with the general law on permission to appeal. Section 21(1) of the SCJA provides as follows:

> **Appeals from District and Magistrates' Courts**
>
> **21.—**(1) Subject to the provisions of this Act and any other written law, an appeal lies to the General Division from a decision of a District Court or Magistrate's Court only with the permission of that District Court or Magistrate's Court or the General Division in the following cases:
>
> (*a*) any case where the amount in dispute, or the value of the subject matter, at the hearing before that District Court or Magistrate's Court (excluding interest and costs) does not exceed $60,000 or such

> other amount as may be specified by an order made under subsection (3);
>
> (*b*) any case specified in the Third Schedule.

16 It is clear that s 21(1)(*b*) of the SCJA applies in the present case as para (*a*) of the Third Schedule to the SCJA lists the situation "where a District Court … makes an order giving unconditional permission to defend any proceedings", which was essentially the PDJ's decision in RA 5. As such, the applicant will succeed in the present application if it can show a valid ground for the granting of permission to appeal. In this regard, the Court of Appeal has laid down the grounds for granting permission to appeal in *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 ("*Lee Kuan Yew*") to include: (a) a *prima facie* case of error; (b) a question of general principle decided for the first time; or (c) a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage (at [16]). The applicant relies on all three of these grounds, to which I will now turn.

The applicant has not established a **prima facie** *case of error*

The specifically applicable law

17 In my view, the applicant has not established a *prima facie* case of error. In *Zhou Wenjing v Shun Heng Credit Pte Ltd* [2022] SGHC 313 ("*Zhou Wenjing*"), I made two points about this ground for granting permission to appeal. Those points are that: (a) there must be an error of law (as opposed to an error of fact) made by the court below; and (b) this error is sufficiently serious to satisfy the requisite threshold that would justifying the granting of permission to appeal (at [25], [31]–[32] and [36]–[37]).

18 To elaborate on these two points, I first said in *Zhou Wenjing* at [31] that the binding position on the General Division of the High Court ("the General Division") should be derived from the Appellate Division's approach in *UD Trading Group Holding Pte Ltd v TA Private Capital Security Agent Limited and another* [2022] SGHC(A) 3 ("*UD Trading*"). The Appellate Division held in *UD Trading* at [33]–[34] that a "case of error" in the "*prima facie* case of error" ground can only refer to an error of *law*. Since the Appellate Division has "left open the question" of whether a *prima facie* case of error can include an obvious error of fact (at [37]; see also the decision of the Appellate Division of the High Court of *Engine Holdings Asia Pte Ltd v JTrust Asia Pte Ltd* [2022] 1 SLR 370 at [10]), I think that until the Appellate Division (or the Court of Appeal) revisits this issue, the current binding position on the General Division as discerned from *UD Trading* at [21] is that a "case of error" in the "*prima facie* case of error" ground in *Lee Kuan Yew* must be one of law and not of fact.

19 Further, I also said in *Zhou Wenjing* at [37] that the standard applicable to determine when an error of law amounts to a "*prima facie* case of error" for this ground is informed by two conjunctive considerations. These are: (a) whether the appeal is likely to succeed, which is a standard that goes beyond merely an arguable case; and (b) broadly, whether there is a likelihood of substantial injustice if permission were not granted (or a miscarriage of justice: see the High Court decision of *Anthony s/o Savarimiuthu v Soh Chuan Tin* [1989] 1 SLR(R) 588 at [2]). In my view, only when these two considerations are met would an error of law amount to a "*prima facie* case of error" so as to justify the granting of permission to appeal.

The PDJ did not make an error of law

20 Coming back to the present case, it is important to recognise that, regardless of whether the DR made any error of law in SUM 2916, the question at hand is whether the PDJ made any error of law in RA 5. In this regard, while I do not need to decide this point conclusively, I can see the force in the applicant's argument that the DR ought not to have granted the respondent unconditional permission to defend based on an unpleaded defence, even though the DR then allowed the respondent to amend her Defence *after* unconditional permission to defend was granted. This is because the applicant, as the claimant in OC 369, should be able to decide whether to file an application for summary judgment based on the respondent's defences as pleaded, and not based on a defence that had not been properly pleaded. As the Court of Appeal in *Olivine Capital* recognised, to consider an unpleaded defence for the purposes of a summary judgment application would take the claimant by surprise (at [42]). This results in prejudice to the claimant, who might not have chosen to incur costs in taking out the summary judgment application if it had known of the unpleaded defence.

21 As I alluded to earlier (see [5]–[6] above), the respondent was given unconditional permission to defend based on two unpleaded defences. The DR's decision to grant unconditional permission to defend was founded not only on the "prevention principle" but also on the basis that the respondent raised an arguable case that the keys had been received by the applicant. This much is clear from the DR's Notes of Evidence dated 10 January 2023 at paras 17 and 19:

> 17. *Be that as it may, given the certificate of posting, I am prepared to accept that the Defendant has raised reasonable prospects that the keys were delivered by post to HDB.* Indeed,

> the Defendant also affirmed a further affidavit on 7 December 2022 to exhibit a WhatsApp message from an employee of a law firm in respect of the same.
>
> …
>
> 19. *Even if I am mistaken on the above point*, I was not convinced that HDB was entitled [to] summary judgment for double rent on the evidence before me. On 14 Feb 2019, the Claimant's Hoi Ling Wong sent an email which made clear that the Defendant had sought to return the keys on 30 January 2019, but it was rejected. …
>
> [emphasis added]

However, the respondent did not plead *either* defence in her original Defence. While the respondent tried to explain at the hearing before me that she had indicated in her affidavit for SUM 2916 that she "wish[ed] to include … amendment of pleadings" in her Single Application Pending Trial,[1] I agree with the applicant that such wording does not inform one as to exactly what amendment she was seeking to make. More importantly, the respondent had not made an application to amend her Defence before SUM 2916 was heard. As such, I can understand the applicant's dissatisfaction that the respondent was given unconditional permission to defend based on not just one but two unpleaded defences.

22 More broadly, while the respondent is a self-represented party, and the Court of Appeal has said in *BNP Paribas SA v Jacob Agam and another* [2019] 1 SLR 83 at [103] that the courts may show greater indulgence to such a party, this indulgence is not to be expected as a matter of entitlement. Indeed, in considering the degree of indulgence to be shown, such as in relation to

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[1] Affidavit of Cenobia Majella Chettiar in DC/SUM 2916/2022 dated 17 October 2022 at para 4.

compliance with procedural rules, a key consideration must be that "the absence of legal representation on one side ought not to induce a court to deprive the other side of one jot of its lawful entitlement" (see the High Court of Australia decision of *Nobarani v Mariconte* (2018) 359 ALR 31 at [47]). To be fair, the DR had based the two unpleaded defences, on which he granted unconditional permission to defend, on the evidence contained in the respondent's affidavit. But even so, it may not have been entirely fair to the applicant if the two defences were not pleaded beforehand. Rather, the DR should have adjourned the matter for the respondent to amend her Defence before ruling on the application for summary judgment, subject to any adverse costs orders against the respondent for raising new defences only after a summary judgment application was taken out.

23 However, by the time SUM 2916 went on appeal before the PDJ in RA 5, the applicant would have had fair notice that the respondent was going to amend her Defence to at least include the defences which were in the Amended DCC. In my view, this is significant as it suggests that the aims of procedural justice were met, which might have ultimately guided the PDJ's decision.

24 Against this background, I turn now to the parties' respective arguments. Preliminarily, I consider the respondent's contention at the hearing that the PDJ did not even rely on the Amended DCC to begin with. However, it is clear to me that the PDJ did rely on the Amended DCC in RA 5. This much is evidenced in his oral judgment, where he said: "[*a*]*fter carefully considered* [*sic*] *Respondent's Amended Defence*, I am of the view that it encapsulates the defences which led the DR to find that the Respondent had established a *bona fide* defence" [emphasis added]. On this premise, I turn to the applicant's

argument that the PDJ was wrong to refer to the Amended DCC because O 18 r 16(4) of the ROC 2021 provides that the PDJ could only refer to documents that had been filed before the DR in SUM 2916, and the Amended DCC was not one of those documents. I disagree with this argument for the following reasons.

25 First, it is important that O 18 r 16(4) is situated within a rule which concerns "Documents to be filed". The purpose of O 18 r 16 is thus to prescribe the key steps by which an appeal is to proceed but is not meant to constrain the District Court's broad powers to consider other documents. Indeed, even within the same rule, O 18 r 16(7) provides that "[n]o documents other than what has been set out in this Rule may be filed *unless the appellate Court otherwise orders*" [emphasis added]. This suggests that the appellate court, which is the District Court in this case, must have the power to consider further documents other than those that were filed before the Registrar. While counsel for the applicant, Mr Twang Kern Zern ("Mr Twang"), argued that the Amended DCC fell outside the scope of O 18 r 16(7) as it was filed pursuant to the directions of the DR and *not* the PDJ in the appellate court, I do not think that this means that the PDJ *could not* consider the Amended DCC. Indeed, there is nothing to prevent the PDJ from granting retrospective permission to include the Amended DCC as part of the documents in the appeal. To conclude otherwise would suggest that the respondent should have re-filed the *same* Amended DCC again for the purposes of the appeal before the PDJ, which is in my view an unjustifiably rigid reading of this rule. Accordingly, in light of O 18 r 16(7), I do not think that O 18 r 16(4) should be read as to constrain the documents that the District Court can consider on appeal from the Registrar.

26 Furthermore, the applicant's argument ignores O 18 r 8 of the ROC 2021, which provides generally for the "Powers of [the] appellate Court". In this regard, O 18 r 8(5) provides that the appellate court's power to decide the appeal is not restricted to the points raised on appeal. Similarly, O 18 r 8(6) provides that the appellate court can consider further evidence subject to any written law. In essence, O 18 r 8 contemplates that the appellate court, which is the District Court in RA 5, has a very broad latitude to consider relevant documents that are needed to achieve the ends of justice. Accordingly, I disagree with the applicant's submission, which relies on a single provision found in a rule about the process to lodge an appeal, that the appellate court's power to look at relevant documents is somehow restricted.

27 More broadly, at least in respect of the PDJ's decision in RA 5, I do not think that the ROC 2021 should be construed in so restrictive a manner: it has to be remembered that procedural rules, while important, should be interpreted and applied in a manner that furthers the interest of substantive justice whenever possible. Indeed, this is in keeping with the ROC 2021's aim of "giv[ing] judges sufficient flexibility to respond to the particular facts of each case, and manage individual cases in the most efficient manner possible" (see Ministry of Law, *Report of the Civil Justice Review Committee* (2018) (Chairperson: Indranee Rajah SC) at para 36). As such, in the final analysis, the interpretation and application of the ROC 2021 must be viewed through the lens of the ultimate ideal of having "a fair and just procedure that leads to a fair and just result". This is "the *very* basis of what the courts do – and ought to do" [emphasis in original] (see the High Court decision of *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 at [8]).

Even if the PDJ made an error of law, it does not rise to a level to justify the granting of permission to appeal

28 Further, even assuming that the PDJ made an error of law, I find that the error would not rise to the level of a "*prima facie*" standard that would justify granting permission to appeal. As I have explained above at [19], whether an error of law meets this standard depends on: (a) whether the appeal is likely to succeed; and (b) whether there is a likelihood of substantial injustice if permission were not granted.

29 Applying these factors to the present case, I first do not think that any resulting appeal is likely to succeed. This is because even if the PDJ were wrong to have considered the Amended DCC in RA 5, the simple solution on appeal would be for the appellate court to consider the Amended DCC. There does not appear to be anything in the ROC 2021 that prohibits the appellate court (*ie*, the General Division) from taking the Amended DCC into account. In fact, O 18 r 21(4) of the ROC 2021, which concerns an appeal from the District Judge to the General Division (and which is the corresponding provision to O 18 r 16(4) that the applicant relies on), provides for the opposite. O 18 r 21(4) states as follows:

> **Documents to be filed (O. 18, r. 21)**
>
> …
>
> (4) The appeal must proceed before the Judge sitting in the General Division by way of a rehearing on the documents filed by the parties before the District Judge or Magistrate.

Therefore, adopting the applicant's own argument as premised on O 18 r 16(4), O 18 r 21(4) provides that the appeal before the General Division, if permission to appeal is granted, must proceed by way of a rehearing on the documents "filed by the parties before the District Judge". It is not disputed that the

Amended DCC was before the PDJ. As such, the General Division would be able to consider the Amended DCC. If so, any resulting appeal, which is by way of a rehearing on the documents, will likely fail because the respondent would be able to rely on the Amended DCC as providing for a *bona fide* defence against summary judgment.

30 Second, I am not convinced that there would be a likelihood of substantial injustice to the applicant if permission to appeal were not granted. By now, the applicant would have had fair notice of the defences in the Amended DCC. In my view, these are not implausible defences for which there are no triable issues. Thus, even if I find that there was some procedural irregularity and that the General Division cannot consider the Amended DCC without a formal amendment application, the result would be the same as that in SUM 2916. This is because the General Division would, in all likelihood, following *Olivine Capital* and O 3 r 2(2) of the ROC 2021, have formally allowed the defendant to amend her Defence to reflect the "prevention principle". In this regard, while the Court of Appeal in *Olivine Capital* cautioned against relying on an unpleaded defence in a summary judgment application, the court also readily allowed the defendant there to amend the defence for the purposes of considering the application because it would be a denial of justice to disallow an amendment at such an early stage of proceedings (at [46]–[47]). Similarly, in the present case, there can be little prejudice to the applicant that cannot be compensated by costs for such an amendment to be allowed at this stage of the proceedings. On the contrary, not allowing the respondent to amend her Defence would be to prevent her from exploring all plausible defences.

31 Finally, in so far as the applicant suggests that the respondent did not correctly plead the "prevention principle" in relation to the events of 30 January 2019 in the Amended DCC, I disagree. While the Amended DCC is not drafted in the clearest manner, I find that the respondent did plead the "prevention principle" in relation to the events of 30 January 2019. This is clear from the following sentences in the Amended DCC, which can be read as linking the "prevention principle" to the events of 30 *and* 31 January 2019 (at para 2):

> Save that the Claimant's Notice to Quit terminated the tenancy on 31 January 2019, Paragraph 2 is denied as the renewal was terminated lawfully when all the keys to the premises were handed-to [*sic*] the Claimant's Senior Commercial Properties Manager, Ms. Wong Hoi Ling, on 31 January 2019 and in the alternative, Defendant avers the application of the prevention principle as the Claimant wrongfully refused to take over possession of the Tenanted premises after the main door key was mailed with [the] certificate of posting. Further and in the alternative, the Defendant avers that neither the deed nor the Tenancy agreements entitled Mr. Wong Hoi Ling [*sic*], as employee of the Claimant, to impose arbitrary or capricious terms not contractually agreed upon in the tenancy or the deed by rejecting the keys to the premises and the Claimant is put to strict proof of any arbitrary or implied terms not found in the deed and Tenancy terms. …

Read plainly, the "prevention principle" which the respondent pleaded includes not only the events of 31 January 2019, when the "main door key was mailed", but is also broad enough to encompass the events of 30 January 2019. Therefore, I find that the respondent correctly pleaded the "prevention principle" in relation to the events of 30 January 2019.

32 Ultimately, the applicant's argument on O 18 r 16(4) of the ROC 2021 ignores the rationale behind the need to seek permission to appeal in certain cases. That rationale is to avoid unnecessary appeals. This is why, as part of the analysis on whether to grant permission to appeal, it is important to consider whether the appeal is likely to succeed, and whether there would be substantial

injustice occasioned to the applicant. If these considerations are answered in the negative, then the proposed appeal would be unnecessary, as is the case here.

33 For these reasons, I conclude that the applicant has not shown a *prima facie* case of error in the PDJ's decision that would justify the granting of permission to appeal. The applicant fails on this ground for permission to appeal.

There is no question of general principle or of public importance

34 I further find that there is no question of general principle to be decided for the first time, or of importance upon which further argument and a decision of a higher tribunal would be to the public advantage. The only question of law that is engaged in the present application relates to the District Court's power to consider documents, including pleadings, that were not before the lower court. But as I have stated, it is clear that the District Court has the power to do so (see [25]–[27] above). As such, the questions raised in the present case turn very much on established principles. Accordingly, the applicant also fails on these two grounds.

Conclusion

35 In conclusion, I do not think the PDJ made an error of law by considering the Amended DCC in RA 5 and that, even if he did, that error does not rise to a level to justify the granting of permission to appeal. Furthermore, I do not think that this case raises a question of general principle to be decided for the first time. Finally, I also do not think that this case raises a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage. I accordingly dismiss the applicant's

application for permission to appeal against the PDJ's decision in RA 5 to the General Division.

36 Unless the parties are able to agree on the appropriate costs order, they are to file brief submissions of not more than 5 pages within two weeks of this decision.

Goh Yihan
Judicial Commissioner

Twang Kern Zern and Low Wei Wen Justin (Central Chambers Law Corporation) for the applicant;
The respondent in person.
