Dorsey James Michael *v* World Sport Group Pte Ltd
[2013] SGCA 31

Case Number	: Civil Appeal No 167 of 2012/M (Summons No 71 of 2013)
Decision Date	: 25 April 2013
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Chao Hick Tin JA; V K Rajah JA
Counsel Name(s)	: N Sreenivasan SC and Sujatha Selvakumar (Straits Law Practice LLC) for the appellant; Deborah Barker SC and Ushan Premaratne (KhattarWong LLP) for the respondent.
Parties	: Dorsey James Michael — World Sport Group Pte Ltd

Civil Procedure

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2013] SGHC 78.]

25 April 2013

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Introduction

1 This is an application by the respondent to strike out Civil Appeal No 167 of 2012/M ("CA 167/2012"). CA 167/2012 is an appeal from the decision of the High Court Judge ("the Judge") in Registrar's Appeal No 404 of 2012/C ("RA 404/2012"). By her decision, the Judge ordered that the respondent be at liberty to serve on the appellant the pre-action interrogatories set out in Schedule 1 of the Order of Court and that the appellant answer the same.

2 The principal ground relied upon by the respondent in its striking out application was that the order of the Judge in RA 404/2012 was not appealable to this court by reason of s 34(1)(*a*) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the SCJA"), read with paragraph (i) of the Fourth Schedule to the SCJA.

3 At the close of the hearing, we dismissed the respondent's application to strike out CA 167/2012. We gave a short oral judgment expressing the view that the legislative intent underlying the 2010 amendments to the SCJA was to restrict the right of appeal from orders made at the hearing of interlocutory applications. We also found that an application for leave to administer pre-action interrogatories was not an interlocutory application. Accordingly, we held that paragraph (i) of the Fourth Schedule to the SCJA did not exclude the right of appeal to the Court of Appeal where a judge made an order giving or refusing pre-action interrogatories. We now set out the grounds for our decision in full.

The background to the application

4 The respondent (*ie*, the plaintiff in the action below), World Sport Group Pte Ltd, commenced Originating Summons No 839 of 2012/H ("OS 839/2012) on 1 October 2012 seeking to administer pre-action interrogatories on, and obtain pre-action discovery of documents from, the appellant (*ie*, the defendant in the action below), pursuant to O 26A r 1 and O 24 r 6 of the Rules of Court (Cap 322, R

5, 2006 Rev Ed) ("the Rules of Court") respectively.

5 OS 839/2012 was first heard before an assistant registrar on 28 September 2012. The assistant registrar allowed the application in part and ordered that the respondent be at liberty to administer on the appellant the interrogatories set out in Schedule 1 of OS 839/2012. No order was made on the respondent's application for discovery of documents.

6 The appellant then filed RA 404/2012, appealing against the assistant registrar's decision to a judge in chambers. The appeal was heard on 30 October 2012 and 19 November 2012. After hearing counsel for the appellant and respondent, the Judge ordered that the respondent be at liberty to administer on the appellant the interrogatories set out in Schedule 1 of the Order of Court. However, RA 404/2012 was allowed in part insofar as the Judge limited the scope of the interrogatories to be administered on the appellant.

7 On 18 December 2012, the appellant filed its Notice of Appeal in CA 167/2012. On 28 December 2012, the respondent filed Summons No 71 of 2013 ("SUM 71/2013") to strike out the appellant's Notice of Appeal on the ground that the order of the Judge giving pre-action interrogatories was not appealable to the Court of Appeal. SUM 71/2013 was heard by us on 25 February 2013.

Issue before this court

8 The only issue before this court was whether the order of the Judge giving leave to serve pre-action interrogatories was not appealable to the Court of Appeal by reason of s 34(1)(*a*) of the SCJA read with paragraph (i) of the Fourth Schedule to the SCJA.

9 For the avoidance of doubt, it bears emphasising at the outset that we made no finding as to the substantive merits of CA 167/2012 which, in any case, was not before us.

Our decision

The respondent's contentions

10 Before turning to consider the arguments made by the respondent in SUM 71/2013, we should briefly explain the jurisdiction of this court to hear appeals on civil matters. As the Court of Appeal is a creature of statute, it is only seised of the jurisdiction conferred upon it by the statute which creates it: *Blenwel Agencies Pte Ltd v Tan Lee King* [2008] 2 SLR(R) 529 at [23]. In this regard, s 29A(1) of the SCJA provides:

> **29A.**—(1) The civil jurisdiction of the Court of Appeal shall consist of appeals from any judgement or order of the High Court in any civil cause or matter whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to the provisions of this Act or any other written law regulating the terms and conditions upon which such appeal may be brought.

11 The effect of s 29A(1) of the SCJA is that any judgment or order of the High Court is ordinarily appealable as of right. This however, is subject to any contrary provisions in the SCJA or any other written law. In this respect, the respondent in its striking out application relied on s 34(1)(*a*) of the SCJA, which provides:

> **34.**—(1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) Where a Judge makes an order specified in the Fourth Schedule, except in such

circumstances as may be specified in that Schedule.

…

12 The relevant paragraph in the Fourth Schedule to the SCJA 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:

...

(i) where a Judge makes an order giving or refusing interrogatories.

13 Counsel for the respondent, Ms Deborah Barker SC ("Ms Barker") urged us to give the term "interrogatories" in paragraph (i) of the Fourth Schedule its plain and ordinary meaning. Ms Barker contended that the term was of very wide import and capable of encompassing interrogatories ordered under O 26 rr 1 and 2 of the Rules of Court after proceedings have commenced, as well as those ordered under O 26A r 1 of the Rules of Court before proceedings for any substantive relief have been commenced.

14 Ms Barker further contended that the statutory text is to be regarded as the primary indicator of legislative intent. On that view, recourse to the purpose of the enactment, as well as to extrinsic material capable of assisting in the ascertainment of that purpose would be unnecessary and indeed inappropriate save where the plain and ordinary meaning of the statutory text was ambiguous or would lead to results which could not reasonably be supposed to have been Parliament's intention. According to Ms Barker, this was not so in the case before us as the term "interrogatories" in paragraph (i) of the Fourth Schedule was capable of one meaning only.

15 In the alternative, Ms Barker contended that even on a purposive interpretation of s 34 read with paragraph (i) of the Fourth Schedule to the SCJA, the order of the Judge giving leave to serve pre-action interrogatories was not appealable to this Court.

Statutory Interpretation in Singapore

16 We first consider the respondent's contentions as to the principles to be applied in the interpretation of the relevant statutory provisions. To the extent that the respondent's contentions are rooted in the "plain meaning rule" of statutory interpretation at common law, we disagree with them. In Singapore, any discussion on statutory interpretation must take place against the backdrop of s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) ("the Interpretation Act"): see *Constitutional Reference No 1 of 1995* [1995] 1 SLR(R) 803 ("*Constitutional Reference No 1 of 1995*") at [44]; *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 1 SLR(R) 669 ("*Planmarine AG*") at [22]; *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 ("*Low Kok Heng*") at [39].

17 Section 9A of the Interpretation Act provides as follows:

9A.—(1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.

(2) Subject to subsection (4), in the interpretation of a provision of a written law, if any material

not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material –

(a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; or

(b) to ascertain the meaning of the provision when–

(i) the provision is ambiguous or obscure; or

(ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or unreasonable.

...

18 Insofar as s 9A(1) of the Interpretation Act provides that an interpretation promoting the purpose or object underlying the statute "shall be preferred" to an interpretation which does not, it mandates that a purposive approach be taken in statutory interpretation. In *Low Kok Heng* at [56]–[57] V K Rajah JA stated that the purposive approach mandated by s 9A(1) of the Interpretation Act is paramount and must take precedence over any other common law principles of statutory interpretation including, as in the case before us, the plain meaning rule. We agree.

19 Moreover, and contrary to the respondent's contentions, under the purposive approach mandated by s 9A(1) of the Interpretation Act, reference may be made to extrinsic materials such as parliamentary debates even if, on a plain reading, the words of the statutory provision are unambiguous or do not produce unreasonable or absurd results. In *Constitutional Reference No 1 of 1995* at [47]–[48], Yong Pung How CJ, pronouncing the opinion of the Constitution of the Republic of Singapore Tribunal, cited with approval the following passage of Dawson J's judgment in *Mills v Meeking* (1990) 169 CLR 214. Dawson J, in discussing s 35 of the Interpretation of Legislation Act of Victoria (which corresponds with s 9A of the Interpretation Act), said:

… the approach required by s 35 needs no ambiguity or inconsistency; it allows a court to consider the purposes of an Act in determining whether there is more than one possible construction. Reference to the purposes may reveal that the draftsman has inadvertently overlooked something which he would have dealt with had his attention been drawn to it and if it is possible as a matter of construction to repair the defect, then this must be done.

20 This was subsequently affirmed by this court in *Planmarine AG* at [22], where it was held that:

22 ...[Section] 9A(2)(*a*) of the Interpretation Act expressly allows the court to take into consideration materials such as parliamentary debates to confirm that the meaning of the provision is the ordinary meaning conveyed by the text taking into account the purpose underlying the written law... [T]here is no blanket rule that a provision must be ambiguous or inconsistent before a purposive approach to statutory interpretation can be taken. …

21 Taking a purposive approach to statutory interpretation in the present case, the question to be answered by this court is whether paragraph (i) of the Fourth Schedule to the SCJA, when read harmoniously with the statutory context in which it is found as well as the objects and purposes underlying that statutory context, includes an order of a Judge giving or refusing pre-action

interrogatories.

The object and purpose of the SCJA

22 We turn to consider the objects and purposes underlying the enactment of s 34(1)(*a*) of the SCJA, as well as paragraph (i) of the Fourth Schedule to the SCJA. Section 34 of the SCJA in its present incarnation, together with the Fourth and Fifth Schedules to the SCJA, was introduced in 2010, by way of the Supreme Court of Judicature (Amendment) Act 2010 (Act 30 of 2010) ("the 2010 amendments").

23 The 2010 amendments came about in response to recommendations that were contained in two reports prepared under the leadership of the judiciary. The first was the Report on the Rationalisation of Legislation Relating to Leave to Appeal by the Law Reform Committee of the Singapore Academy of Law, chaired by Justice Judith Prakash. The second was the Report of the Committee to Review and Update the Supreme Court of Judicature Act and the Subordinate Courts Act, chaired by Justice Chao Hick Tin.

24 In the Second Reading of the Supreme Court of Judicature (Amendment) Bill (see Singapore Parliamentary Debates, Official Report (18 October 2010) vol 87 at col 1368) ("the Second Reading Speech"), the Senior Minister of State for Law, Associate Professor Ho Peng Kee ("the Minister") explained that the legislative intention underlying the 2010 amendments was twofold. The first was to streamline appeals to the Court of Appeal arising from interlocutory applications. The second was to expand the types of hearings which a two-judge bench of the Court of Appeal could hear. We need only be concerned with the former in the present case.

The position prior to the 2010 amendments

25 Prior to the 2010 amendments, a party's right of appeal to the Court of Appeal in respect of interlocutory matters was primarily governed by s 34(1)(*c*) of the Supreme Court of Judicature Act (Cap 68, 1985 Rev Ed) ("the old SCJA") which provided:

> **Matters that are non-appealable or appealable only with leave**
>
> **34.**—(1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> ...
>
> (c)subject to any other provision in this section, where a Judge makes an *interlocutory order* in chambers unless the Judge has certified, on application within 7 days after the making of the order by any party for further argument in court, that he requires no further argument.
>
> ...
>
> [emphasis added]

26 Under the statutory scheme that subsisted prior to the 2010 amendments, the salient issue that would arise in this context was whether an order made by a High Court judge in chambers was "interlocutory" or "final". If an order was final, an appeal could be brought to the Court of Appeal as of right. But even if the order was interlocutory, a party effectively retained a right of appeal to the Court of Appeal, subject only to the requirement that he first applied for leave to present further arguments to the High Court judge. The exception to that proposition was where s 34 of the old SCJA

expressly provided for particular interlocutory orders to be non-appealable or appealable only with leave.

27 There were essentially three problems with that statutory scheme. First, there was some uncertainty as to the meaning of "interlocutory order" under s 34(1)(*c*) of the old SCJA, such as would attract the requirement that an application be brought within seven days of the order for leave to present further arguments if a party were to preserve its rights of appeal. In *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 525 ("*Wellmix Organics*") at [10], this court observed that the question whether a given order is in fact interlocutory or final had troubled the courts in Singapore for some time. Historically, two tests had been propounded at common law to determine this. The first was the "application" test enunciated in *Salaman v Warner* [1891] 1 QB 734 at 736 where Fry LJ said:

> [A]n order is final only where it is made upon an application or other proceeding which must, whether such application or proceeding fail or succeed, determine the action. Conversely ... an order is "interlocutory" where it cannot be affirmed that in either event the action will be determined.

28 The second was the "order" test or "*Bozson*" test which was stated by Lord Alverstone CJ in *Bozson v Altrincham Urban District Council* [1903] 1 KB 547 at 548 as follows:

> 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.

29 In *Wellmix Organics* (at [14]), this court settled the position in favour of the *Bozson* test. While the concept of an "interlocutory order" was relatively well understood in light of our decision in *Wellmix Organics*, its precise meaning was left to be developed incrementally by the common law.

30 The second problem with the legislative scheme prior to the 2010 amendments concerned the requirement that the judge certify, pursuant to s 34(1)(*c*) of the old SCJA, that no further arguments were required. The rationale for this requirement was explained by this court in *Singapore Press Holdings Ltd v Brown Noel Trading Pte Ltd and others* [1994] 3 SLR(R) 114 at [40] in the following terms:

> 40 The intent and purpose of s 34(1)(*c*) of the re-enacted Supreme Court of Judicature Act... is to us abundantly clear and free from doubt. It is to prescribe a procedure for appeals in interlocutory matters heard by a judge in chambers being brought to this court, which may have arisen from full arguments not being presented to the judge in chambers due to the shortness of time available for the hearing of such applications or due to the judge in chambers having to decide on an issue without the time available to him for mature consideration. …

31 While there clearly was a sensible rationale for this requirement, it had also given rise to a number of difficulties in practice: see generally Law Reform Committee, Singapore Academy of Law, *Report of the Law Reform Committee on the Rationalisation of Legislation Relating to Leave to Appeal* (October 2008).

32 The Law Reform Committee ("the LRC") observed that the majority of applications for further arguments did not in fact raise fresh arguments. Rather, a request to make further arguments was typically made solely to comply with s 34(1)(*c*) of the old SCJA and by so doing, to preserve the applicant's right of appeal to the Court of Appeal.

33 The LRC also observed that the requirement of further arguments could have potentially draconian effects on a party seeking to appeal against an interlocutory order. Under s 34(1)(*c*) of the old SCJA, a party aggrieved by the making of an interlocutory order had only seven days to apply to the judge for further arguments. If he failed to do so, he would lose his right of appeal to the Court of Appeal. The LRC saw it as undesirable that a party could lose his right of appeal just by failing to take what would otherwise have been an inconsequential step in the proceedings. In this regard, the LRC recommended that the request to present further arguments ought not to be mandatory. Rather, it should be an option available to the parties and the judge.

34 The third problem that had arisen with the legislative scheme prior to the 2010 amendments was the upward trend that had been observed in the number of appeals to the Court of Appeal in respect of interlocutory orders. As explained earlier, a party dissatisfied with the making of an interlocutory order generally retained a right of appeal to the Court of Appeal, subject only to the requirement of getting a certification from the High Court judge that no further arguments were required pursuant to s 34(1)(*c*) of the old SCJA.

35 The question thus raised was whether a party's right of appeal in respect of interlocutory orders ought to be more limited. The competing policy arguments in this context were considered by the Committee to Review and Update the Supreme Court of Judicature Act and the Subordinate Courts Act ("the Committee") in its report. The Committee observed that factors in favour of retaining a right of appeal to the Court of Appeal included the fact that it would be in the interest of parties to be allowed access to all avenues of appeal, even from interlocutory orders. Moreover, restricting the right of appeal might adversely affect the jurisprudence emanating from the Court of Appeal in respect of interlocutory matters.

36 On the other hand, the Committee felt that these considerations had to be weighed against competing considerations which suggested that the extent of a party's right of appeal to the Court of Appeal in respect of interlocutory matters ought to be more limited. First, the increasing number of appeals from interlocutory matters placed a strain on the ability and resources of the Court of Appeal to hear other appeals against judgments and final orders of the High Court.

37 Second, where an appeal was made in respect of an interlocutory order, the entire pre-trial process would reach an impasse as the parties awaited the outcome of the appeal. From a case management perspective, such delay was seen as an impediment to the timely and efficient administration of justice, especially since many interlocutory matters could be revisited at trial.

38 Third, under s 34(1)(*c*) of the old SCJA, there were effectively three tiers of hearing (or two levels of appeal) in respect of interlocutory orders. This was so because interlocutory applications were typically heard at first instance before an assistant registrar, with an appeal lying to a judge in chambers who reheard the application *de novo*. A party dissatisfied with the judge's decision could then appeal to the Court of Appeal, subject only to the requirement that he first go through the process of applying for further arguments to be heard.

39 In contrast, judgments or final dispositive orders made at first instance by the High Court only enjoyed two tiers of hearing (or one level of appeal). As interlocutory orders usually involve procedural points that do not affect the substantive rights of the parties, it was seen as incongruous that these should be subject to more extensive rights of appeal than judgments or orders with finality.

40 On the balance of the arguments, the Committee recommended that a party's right of appeal to the Court of Appeal in respect of interlocutory matters ought to be more limited.

The 2010 amendments

41 The effect of the 2010 amendments was to amend s 34 of the old SCJA. The new section s 34 provides, *inter alia*, as follows:

> **Matters that are non-appealable or appealable only with leave**
>
> **34.**—(1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) where a Judge makes an order specified in the Fourth Schedule, except in such circumstances as may be specified in that Schedule;
>
> ...
>
> (2) Except with the leave of a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:
>
> ...
>
> (d) where a Judge makes an order specified in the Fifth Schedule, except in such circumstances as may be specified in that Schedule; or
>
> ...

42 The new Fourth and Fifth Schedules to the SCJA must therefore be considered. 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 judgement 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 order 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.

43 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 a Judge, 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 judgement;

(ii) to set aside a default judgement;

(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 party 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.

44 The legislative scheme under the new s 34, read with the Fourth and Fifth Schedules to the SCJA, was explained by the Minister in the Second Reading Speech. The Minister said:

> Given that interlocutory applications involve procedural points that do not usually affect the substantive rights of the parties and are not likely to involve novel points of law, it is an unproductive use of resources for all such applications to go up to the Court of Appeal, especially when the High Court already serves as one level against the Registrar who first hears the application.
>
> Clause 9 therefore amends section 34 to streamline and restrict appeals to the Court of Appeal on interlocutory matters. *Interlocutory applications will now be categorised based on their importance to the substantive outcome of the case. With this calibrated approach, some interlocutory orders will not be allowed to go to the Court of Appeal, whilst others can only go to the Court of Appeal with the permission of the High Court... The right to appeal all the way to the Court of Appeal will, however, remain for interlocutory applications that could affect the final outcome of the case*. The types of orders in the three categories are set out in the Fourth and Fifth Schedules to the Bill.
>
> [emphasis added]

45 In our view, it is clear from both the legislative scheme and the relevant parliamentary material that Parliament's intention in passing the 2010 amendments was to remedy the problems associated with s 34(1)(*c*) of the old SCJA. This must inform the approach we take in interpreting the 2010 amendments.

46 First, the 2010 amendments were directed at the problems associated with the proliferation of appeals to the Court of Appeal in respect of interlocutory orders. Under the new s 34, read with the Fourth and Fifth Schedules to the SCJA, a party no longer enjoys the right to appeal to the Court of Appeal in respect of interlocutory orders. Rather, orders made at the hearing of interlocutory applications are now expressly stipulated as falling under one of three categories: (a) appealable as of right, (b) appealable with leave and (c) non-appealable. In the absence of express provision, paragraph (e) of the Fifth Schedule to the SCJA is a "catch-all provision", under which all orders made on the hearing of interlocutory applications are to be appealable only with leave.

47 Second, under the new s 34 of the SCJA, a party's right of appeal against interlocutory orders is no longer conditioned upon the technical and sometimes draconian requirement that he first apply for leave to present further arguments to the High Court judge. Instead, under the new s 28B of the SCJA, a party may but need not apply for further arguments. In any event, this no longer has any bearing on his right of appeal.

48 Third, the extent of a party's right of appeal on interlocutory matters is no longer wholly dependent on the dichotomy between a final order and an interlocutory order. Rather, the Fourth and Fifth Schedules to the SCJA, as the Minister explained, involves a "calibrated approach", under which orders made at the hearing of interlocutory applications are categorised based on their importance to the substantive outcome of the case.

49 Insofar as the Fourth and Fifth Schedules to the SCJA expressly provide for specific types of orders to be appealable as of right, appealable with leave, or non-appealable, the present legislative scheme was intended to be conducive to certainty and clarity.

The construction of paragraph (i) of the Fourth Schedule to the SCJA

50 Against that background, we turn to the construction of paragraph (i) of the Fourth Schedule to the SCJA. The issue before us was whether, on a purposive interpretation of the statutory provision, an order made under O 26A r 1 of the Rules of Court, is an "order giving or refusing interrogatories" under paragraph (i) of the Fourth Schedule to the SCJA. In our judgment, this issue turns on the anterior question of whether an application to administer pre-action interrogatories pursuant to O 26A r 1 of the Rules of Court is an "interlocutory application" for the purposes of the SCJA.

51 In *OpenNet Pte Ltd v Info-Communications Development Authority of Singapore* [2013] SGCA 24 ("*OpenNet*") at [21], this court observed that:

> 21 ...[T]he amendments brought about by Act 30 of 2010 introduced a new category-approach regime *based on the type of interlocutory application and the eventual order made thereon. The question as to which of the three categories an order made in an interlocutory application would fall is critical... As the Minister had explained in Parliament, the Fourth and Fifth Schedules of SCJA were concerned with interlocutory applications*.
>
> [emphasis added]

52 We agree with these observations in *OpenNet*. In our view, it is manifestly clear from the relevant extrinsic aids to statutory interpretation that the legislative scheme introduced by the 2010 amendments and set out in the new s 34 and the Fourth and Fifth Schedules to the SCJA, insofar as it curtailed the rights of appeal, was only intended to apply to orders *made at the hearing of interlocutory applications*.

53 Moreover, the Fourth and Fifth Schedules to the SCJA ought to be understood contextually in the light of paragraph (e) of the Fifth Schedule which establishes the default requirement that leave of the High Court judge is required before an appeal can be brought to the Court of Appeal from orders made at the hearing of interlocutory applications. Where an *interlocutory* application is made for interrogatories to be varied or withdrawn, or for leave to serve interrogatories, paragraph (e)(ix) of the Fifth Schedule to the SCJA provides that the default requirement of leave does not apply. In that case, the extent of a party's right of appeal to the Court of Appeal is instead determined by paragraph (i) of the Fourth Schedule which provides that an order giving or refusing interrogatories is non-appealable to the Court of Appeal.

54 In short, applying a purposive as well as contextual approach to the interpretation of these provisions, and reading paragraph (i) of the Fourth Schedule in light of paragraph (e)(ix) of the Fifth Schedule to the SCJA, that provision (*ie*, paragraph (i) of the Fourth Schedule to the SCJA) refers to an order giving or refusing interrogatories that is *made at the hearing of an interlocutory application*

for interrogatories.

55 The respondent unsurprisingly contended for a different interpretation of paragraph (i) of the Fourth Schedule, [note: 1] namely that the legislative intent underlying paragraph (i) of the Fourth Schedule to the SCJA was that *all* orders for interrogatories be non-appealable to the Court of Appeal, whether or not the order was made of the hearing of an interlocutory application. According to Ms Barker, while paragraph (e)(ix) of the Fifth Schedule is self-evidently limited to interlocutory applications for interrogatories made under O 26 r 1 of the Rules of Court, paragraph (i) of the Fourth Schedule is a wider provision, and it should be interpreted to cover interrogatories administered in the course of proceedings under O 26 r 1 as well as pre-action interrogatories applied for pursuant to O 26A r 1.

56 We did not agree with Ms Barker in this respect. In our judgment, Parliament had only intended to deal with orders made in the course of interlocutory applications. The respondent's contentions in this respect were untenable in the circumstances because they were premised on a literal interpretation of paragraph (i) of the Fourth Schedule, divorced from its purpose and context.

Is an application to administer pre-action interrogatories an "interlocutory application"?

57 In oral argument, Ms Barker conceded that an application to administer pre-action interrogatories is not an "interlocutory application". On the view we took of the true interpretation of paragraph (i) of the Fourth Schedule to the SCJA, Ms Barker's concession was sufficient for us to dismiss the respondent's application to strike out CA 167/2012 and so to order that the appeal be heard on its substantive merits. However, we wish to emphasise that this was a concession that was properly made.

58 The term "interlocutory application" is not defined in the SCJA. According to *Jowitt's Dictionary of English Law* (Sweet & Maxwell, 3rd Ed, 2010), an application is interlocutory if "it is peripheral to the main hearing determining the outcome of the case". Similarly, the *Oxford Dictionary of Law* (Oxford University Press, 7th Ed, 2009) defines the term "interlocutory" as "[d]uring the course of proceedings ... occurring between the initiation of the action and the final determination".

59 These definitions are consonant with the meaning attributed to the term by the Minister in the Second Reading Speech. There, the Minister explained that:

> *Between the time when a party files a civil case in court and when the case is heard, lawyers may file what are known as "interlocutory applications" in court*. These applications deal with procedural matters that prepare the case for hearing; for example, requesting the court to order the other party to furnish information or documents that are relevant to the hearing.
>
> [emphasis added]

60 On this basis, it would be wrong to treat an application to administer pre-action interrogatories under O 26A r 1 of the Rules of Court as an interlocutory application. As a matter of principle, an application to administer pre-action interrogatories is not an application made *between* the time a party files a civil case in court and when that case is finally heard for disposal. Rather, it is an application made by way of originating summons and its only end is the particular relief sought in the originating summons. Once the application for such relief has been considered and ruled upon by the court, that matter ends and those proceedings are not followed by any other steps leading to any trial or further disposal of that matter.

61 The decision of this court in *Maldives Airport Co Ltd and another v GMR Malé International Airport Pte Ltd* [2013] SGCA 16 ("*Maldives Airport Co Ltd*") is directly on point and supports the proposition that an application to administer pre-action interrogatories is not an interlocutory application. There, the respondent applied by way of originating summons for an interim injunction under s 12 of the International Arbitration Act (Cap 143A, 2002 Rev Ed). The purpose of the injunction was to restrain the appellants from interfering with the respondent's performance of its obligations under a concession agreement, pending arbitration of the substantive dispute between the parties. The judge granted the injunction and the appellant appealed to the Court of Appeal.

62 Before this court, the respondent raised the preliminary objection that the decision of the judge to grant the injunction was an order made at the hearing of an interlocutory application, such that leave to appeal was required pursuant to s 34(2)(*d*) of the SCJA, read with paragraph (e) of the Fifth Schedule to the SCJA. As leave had not been obtained, the respondent argued that this court did not have jurisdiction to hear the appeal. In rejecting the respondent's jurisdictional challenge as being without merit, we held (at [15]):

> 15 … [I]t is incorrect to characterise the Judge's decision as one made on an interlocutory application. The application for the Injunction was made by [Originating Summons No 1128 of 2012 ("OS 1128")]; *the sole purpose of OS 1128 was to seek the Injunction. It would be odd if OS 1128 were to be characterised as an interlocutory application when there was nothing further for the court to deal with once the Injunction had been either granted or refused.* This was not a case where an interlocutory injunction was sought pending the resolution of the substantive dispute before the court. The sole and entire purpose of the originating process in this case was to obtain the Injunction. Once that application had been determined, the entire subject matter of the proceeding would have been spent.
>
> [emphasis added]

63 We should also refer to the *dicta* of this court in *Wellmix Organics*. There, in discussing the meaning of "interlocutory order" under s 34(1)(*c*) of the old SCJA, this court said (at [16]):

> 16 We recognise that on [the *Bozson* test], it is possible that an order granted in one proceeding may be interlocutory and yet the same nature of order granted in another proceeding may be final. The point may again best be illustrated by an example. Taking the case of an action for breach of contract, where an application is made for discovery of documents, the order for discovery will be an interlocutory order. *But it does not follow that every discovery order will necessarily be an interlocutory order. It will depend on the nature of the originating process and the relief(s) prayed for. A proceeding may be instituted purely to obtain pre-action discovery. In that situation, upon the granting of the order prayed for, that order will be a final order because it disposes of everything in the proceeding*.
>
> [emphasis added]

64 It is pertinent that an application to administer pre-action interrogatories is made by way of originating summons under O 26A r 1 of the Rules of Court. We reiterate that the sole purpose of the originating summons is to obtain discovery of information through the administration of interrogatories on the defendant to the originating summons. Once the application is determined, the entire subject matter of that originating summons is spent and there is nothing further for the court to deal with.

65 In these circumstances, applying our reasoning in *Maldives Airport Co Ltd* and in *Wellmix Organics*, it would have been erroneous to characterise an order giving leave to administer pre-action

interrogatories as an order made at the hearing of an interlocutory application. Accordingly, we consider that Ms Barker's concession was properly made.

66 We recognise that against this view, it might be argued that an application for pre-action interrogatories is in substance one that is preliminary and incidental to proceedings which may subsequently be commenced by the party seeking to administer those interrogatories. Moreover, it might be said that the application is made by originating summons, rather than by way of a summons in the proceedings, out of sheer necessity, as substantive proceedings are not yet afoot. On that view, it might be said that an application for pre-action interrogatories is in fact and in substance interlocutory in nature.

67 While such an argument might be superficially attractive, we find it untenable upon closer scrutiny. First, it is not always the case that substantive proceedings *will* be commenced by the party seeking to administer pre-action interrogatories. This could be so for a number of reasons. It may be that the answers given in the interrogatories are insufficient for him to determine whether he has a viable cause of action against the potential defendant(s) to that cause of action; or that after administering interrogatories, he remains unaware who the defendant(s) ought to be; or it might even be that for whatever reason, he elects not to commence proceedings at all.

68 Second, under O 26A r 1(5) of the Rules of Court, the court may, before the commencement of proceedings, order that interrogatories be administered *on a person who is not a party to those proceedings* for the purpose of identifying the likely parties to those proceedings. In this respect, O 26A r 1(5) is thought to codify the principle established by the seminal decision of the House of Lords in *Norwich Pharmacal Co and Others v Customs and Excise Commissioners* [1974] AC 133 ("*Norwich Pharmacal*"): see *Singapore Civil Procedure 2013* (GP Selvam gen ed) (Sweet & Maxwell Asia, 2013) at p 536.

69 In *Norwich Pharmacal*, the plaintiffs were the patent owners and licensees of a chemical compound whose rights were being infringed by the illegal importation of the compound from abroad. Not knowing the identity of the wrongdoers, the plaintiffs brought an action for discovery against the Customs and Excise Commissioners ("the Commissioners") who had this information. This was coupled with a substantive claim for infringement.

70 Before the House of Lords, the plaintiffs abandoned their claim for infringement of its patent against the Commissioners. Rather, the plaintiffs conceded that in allowing the movement of the goods in performance of their statutory duty, the Commissioners had merely facilitated the wrongdoing. The action before the House of Lords was therefore one that was purely for discovery. Lord Reid held (at 175) that:

> … [I]f through no fault of his own a person gets mixed up in the tortious acts of others as to facilitate their wrong-doing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers. …

71 On the principle enunciated by Lord Reid, it is sufficient that the person against whom pre-action interrogatories are sought has, even unknowingly, facilitated the wrongdoing of others. He need not otherwise have incurred personal liability to the person wronged in respect of that wrongdoing. It is thus evident that pre-action interrogatories may have a significant, if not draconian, impact upon persons who are in truth innocent bystanders to the substantive suit. The facts in *Norwich Pharmacal* aptly illustrate this. This is also not dissimilar to the case of a journalist, on whom pre-action interrogatories are administered to compel him to disclose the identity of confidential

sources.

72 In such cases, *the only obligation imposed by the court on the defendant to the originating summons, vis-à-vis the plaintiff, is to make discovery of information*. The action brought against such a defendant is one purely for the discovery of information. This is separate and distinct from proceedings which may subsequently be commenced by the party having obtained the information. In these circumstances, it would be incorrect to treat an application to administer pre-action interrogatories as an interlocutory step in proceedings which the party seeking to administer those interrogatories may subsequently commence.

73 In our judgment, the balance of authority, principle and policy compels the conclusion that an application to administer pre-action interrogatories does not fall within the meaning of "interlocutory application" under the SCJA – which, as we have noted, Ms Barker conceded was the position.

74 It follows from this that the reference to "interrogatories" in paragraph (i) of the Fourth Schedule to the SCJA does not include pre-action interrogatories. Accordingly, we conclude that an appeal against an order made on an application for leave to administer pre-action interrogatories does not come within any of the limitations prescribed in s 34 of the SCJA or the Fourth and Fifth Schedules to the SCJA. The appellant had a right of appeal to the Court of Appeal against the order of the Judge in RA 404/2012 giving pre-action interrogatories. We therefore dismissed the application to strike out CA 167/2012.

The appellant's alternative argument

75 In written submissions, [note: 2] the appellant contended for an interpretation of paragraph (i) of the Fourth Schedule to the SCJA which goes further than the reasons we have just given for our decision. The gist of the appellant's alternative contention was as follows. Under the 2010 amendments, Parliament had only intended to restrict the right of appeal against interlocutory orders. There was no intention to restrict the right of appeal against final orders. Based on the *dicta* in *Wellmix Organics*, the appellant argued that an order giving or refusing pre-action interrogatories is a final order. Accordingly, the appellant contended that paragraph (i) of the Fourth Schedule to the SCJA was not intended to, and does not, include an order permitting the service of pre-action interrogatories.

76 The appellant's contention was inconsequential to the outcome of the present case. As we explained at [50]–[54] above, the Fourth and Fifth Schedules to the SCJA only apply to orders made at the hearing of *interlocutory applications*. They do not apply to orders giving or refusing leave to administer pre-action interrogatories because the *application* for leave to administer pre-action interrogatories is not interlocutory in nature.

The interpretation of paragraph (e) of the Fifth Schedule to the SCJA

77 The appellant's contention however raises fundamental questions concerning the interpretation of paragraph (e) of the Fifth Schedule to the SCJA. It is perhaps unsurprising that the interpretation of the Fourth and Fifth Schedules to the SCJA, at this still early stage in the aftermath of the enactment, has engendered some difficulty in practice, even though the legislative reform was initiated to clarify and streamline the circumstances in which an appeal could be brought to the Court of Appeal. For the avoidance of doubt in future cases, we ought to provide some guidance on this issue.

78 To recapitulate, the Fourth and Fifth Schedules to the SCJA expressly treat orders made at the

hearing of interlocutory applications as being non-appealable to the Court of Appeal or appealable only with leave. In the absence of express provision, paragraph (e) of the Fifth Schedule to the SCJA is a catch-all provision which provides that orders made at the hearing of interlocutory applications, save for those expressly excluded from the ambit of the paragraph, are appealable to the Court of Appeal only with leave.

79 The question then is: does the requirement of leave under paragraph (e) of the Fifth Schedule to the SCJA apply regardless of the type of order that is made? This question is best considered with an example – the case of an application made under O 14 r 12 of the Rules of Court for the determination of any question of law. Upon such a determination, the court may dismiss the action or make such order or judgment as the court thinks fit.

80 Three features of an application made under O 14 r 12 of the Rules of Court are pertinent. First, such an application, being made in the course of proceedings, would be an interlocutory application for the purposes of paragraph (e) of the Fifth Schedule to the SCJA. Second, the application could result in the making of a final order, in that insofar as the court may dismiss the action or cause judgment to be entered, such an order would be one that finally disposes of the substantive rights of the parties. Third, applications under O 14 r 12 of the Rules of Court are not expressly excepted from the requirement of leave under paragraph (e) of the Fifth Schedule to the SCJA.

81 If "order" under paragraph (e) of the Fifth Schedule to the SCJA is interpreted to mean all orders, whether interlocutory or final, the effect of the foregoing would be that a final order made at the hearing of an application under O 14 r 12 of the Rules of Court would be appealable to the Court of Appeal only with leave of the High Court judge. However, the difficulty with such an interpretation is that it would be inconsistent with the legislative intent underlying the 2010 amendments to the SCJA. As the Minister explained in the Second Reading Speech:

> Interlocutory applications will now be categorised based on their importance to the substantive outcome of the case. *With this calibrated approach, some interlocutory orders will not be allowed to go to the Court of Appeal, whilst others can only go to the Court of Appeal with the permission of the High Court...* ***The right of appeal all the way to the Court of Appeal will, however, remain for interlocutory applications that could affect the final outcome of the case.***
>
> [emphasis added in bold and italics]

82 Moreover, in *OpenNet* (at [18]), this court observed that:

> 18 … In short, the purpose underlying the SCJA regarding the right to appeal is that *an appeal to the Court of Appeal will generally be as of right for orders made at interlocutory applications which have the effect of finally disposing of the substantive rights of the parties*; while an appeal to the Court of Appeal will ordinarily be denied for orders made at interlocutory applications which do not finally dispose of the substantive rights of the parties. …
>
> [emphasis added]

83 We agree with these observations in *OpenNet*. As we explained at [45] above, under the 2010 amendments to the SCJA, Parliament had intended to address the deficiencies of the previous legislative regime set out in s 34(1)(*c*) of the old SCJA, where interlocutory orders had been generally appealable as of right to the Court of Appeal, subject only to the requirement of further arguments before the High Court.

84 The very purpose of the 2010 amendments was to restrict appeals to the Court of Appeal from interlocutory *orders.* Moreover, it is evident that Parliament had intended that an appeal to the Court of Appeal ought to remain as of right where a final order which disposes of the substantive rights of the parties is made by a High Court judge, even if this was done at the hearing of an interlocutory application. In this regard, it is also pertinent that each of the orders expressly stipulated by the Fourth and Fifth Schedules to the SCJA as being non-appealable or appealable only with leave are interlocutory as opposed to final in nature.

85 In these circumstances, we hold that the reference to "order" in paragraph (e) of the Fifth Schedule to the SCJA should be read in the light of its purpose and context, to mean "interlocutory order".

86 The foregoing analysis is consistent with our recent decision in *OpenNet*. In *OpenNet*, the appellant applied under O 53 r 1 of the Rules of Court for leave to seek judicial review of a decision made by the respondent. The application for leave was refused by the High Court judge and the appellant appealed to the Court of Appeal.

87 Before this court, the respondent applied for the appeal to be struck out. The respondent contended that the order of the judge refusing leave to commence judicial review proceedings was an "order made at the hearing of an interlocutory application". Accordingly, the respondent contended that leave to appeal was required under s 34(2)(*d*) of the SCJA, read with paragraph (e) of the Fifth Schedule, and that the appellant had not obtained the same.

88 In rejecting the respondent's contention, this court said (at [21]):

> 21 … As for the present application which the Appellant had initiated by way of an originating summons ("OS"), the very relief sought in the OS was to obtain leave to commence proceedings for judicial review. This was all that was sought in the OS, which had been refused. In refusing leave to commence judicial review, the substantive issue in the OS had been decided upon by the Judge. There was nothing more to proceed on. The substantive rights of the parties had come to an absolute end unless there could be an appeal. Therefore, the application made by the Appellant in the OS did not come within the meaning of "interlocutory application" under paragraph (e) of the Fifth Schedule of the SCJA. …

89 This court went on to say (at [29]):

> 29 … If we bear in mind the rationale for the three category approach, then for the reasons which we have alluded to earlier at [18] and [21], the Appellant here should be entitled to lodge an appeal as of right. The refusal by the Judge to grant leave to the Appellant to commence judicial review had brought the proceedings to an abrupt and absolute end. A historical informed view of O 53 r 8, including the reference to "interlocutory order" therein, does not undermine the strong parliamentary intention that an appeal to the Court of Appeal will remain as of right for orders made at interlocutory applications which finally dispose of the substantive rights of the parties.

90 In *OpenNet*, this court was taking precisely the same approach as we have articulated here. Put simply, *OpenNet* held in effect that the 2010 amendments did not apply to an *order* that was final in the sense that it effectively disposed of a party's substantive claim to relief, even if that order was made in the course of an application that might have been interlocutory in nature.

91 It should be noted that an application for leave to seek judicial review is commenced by

originating summons; but unlike say an originating summons seeking leave to administer pre-action interrogatories, if leave to apply for judicial review is granted, the originating summons is not spent. Instead, the substantive application for judicial review is made by a summons issued within the *same* originating summons. Yet, this did not prevent this court in *OpenNet* from holding that the *order* refusing leave to apply for judicial review was appealable as of right because its effect was to finally dispose of the applicant's claim to substantive relief.

Applications for leave to appeal

92 Finally, we wish to state that the 2010 amendments to the SCJA represent a material departure from the previous statutory scheme in one other aspect. Under the previous statutory scheme, leave to appeal, where required, could be obtained from either the High Court judge or the Court of Appeal; provided the application was first made to the High Court judge.

93 In contrast, where leave to appeal is required pursuant to the present s 34(2) of the SCJA, this may only be obtained from the High Court judge who made the order being appealed against. O 56 r 3(1) of the Rules of Court provides:

> A party applying for leave under s 34 of the Supreme Court of Judicature Act *to appeal against an order made, or a judgment given, by a Judge must file his application to the Judge* within 7 days of the order or judgment.
>
> [emphasis added]

94 Moreover, s 34(2B) of the SCJA provides that the order of the High Court judge giving or refusing leave to appeal is final.

95 However, there appears to be one apparently anomalous exception to the propositions we have set out at [93] and [94] above, namely where an *ex parte* application is refused at first instance. In that case, under O 57 r 16(3) of the Rules of Court, the applicant can renew the application before the Court of Appeal within seven days after the date of hearing.

96 Strictly speaking, an application to the Court of Appeal in these circumstances is not an appeal. In substance, however, it means that a party making an *ex parte* application is entitled to two tiers of hearings including one before the Court of Appeal as of right. If, on the other hand, an interlocutory order is made on an interlocutory application that is heard *inter partes*, the default position under the Fourth and Fifth Schedule to the SCJA is that leave of the High Court judge is required before an appeal can be brought to the Court of Appeal.

97 As *ex parte* applications are virtually always interlocutory in nature, it is anomalous that a party making an application *ex parte* is able to renew the application before the Court of Appeal while a party making an application *inter partes* is not. Should leave be refused by the High Court judge, that would be the end of the matter as the aggrieved party would then have no avenue to obtain leave from the Court of Appeal. In our judgment, legislative intervention would be desirable in this regard. Where a party is refused leave to appeal by the High Court judge who heard the application, we see no reason why he should not be allowed to renew his application for leave before the Court of Appeal on such terms and in such manner as that court may decide.

Summary of principles

98 For the avoidance of doubt in future cases, we summarise the principles to be adopted in the

interpretation of s 34, read with the Fourth and Fifth Schedules to the SCJA.

(a) Ordinarily, pursuant to s 29A of the SCJA, any judgment or order of the High Court is appealable as of right to the Court of Appeal. This, however, is subject to any provision in the SCJA or any other written law to the contrary.

(b) Where interlocutory applications are concerned, ss 34(1)(*a*) and 34(2)(*d*) of the SCJA, read with the Fourth and Fifth Schedules respectively, are examples of such provisions to the contrary. These provisions prescribe that particular orders are either non-appealable or appealable to the Court of Appeal only with leave.

(c) Where specific provision has been made in s 34 of the SCJA and in the Fourth and Fifth Schedules, that will apply on its terms, save that paragraph (i) of the Fourth Schedule and paragraph (c) of the Fifth Schedule apply only to orders made upon interlocutory applications.

(d) In relation to the opening words of paragraph (e) of the Fifth Schedule to the SCJA, the reference to "order" is to be read as a reference to an interlocutory order.

(e) Where an order is not stipulated as being *non-appealable* or *appealable only with leave*, an appeal to the Court of Appeal will lie as of right.

Conclusion

99 For these reasons, we dismissed the respondent's application to strike out CA 167/2012 and ordered that the appeal proceed to be heard on its substantive merits. We also ordered that the respondent pay the appellant the costs of the application, fixed at $5,000 inclusive of disbursements.

[note: 1] Respondent's Written Submissions at paras [53]-[56].

[note: 2] Appellant's Written Submissions at paras [47]-[50].