IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 73

Civil Appeal No 138 of 2017

Between

Telecom Credit Inc

… *Appellant*

And

Midas United Group Pte Ltd

… *Respondent*

JUDGMENT

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

Telecom Credit Inc
v
Midas United Group Ltd

[2018] SGCA 73

Court of Appeal — Civil Appeal No 138 of 2017
Judith Prakash JA and Quentin Loh J
5 July 2018

26 October 2018 Judgment reserved.

Judith Prakash JA (delivering the judgment of the court):

Introduction

1 This appeal arises from a decision by a High Court Judge to order a trial to determine a garnishee's liability to pay a debt claimed to be due to the judgment debtor. The appellant is a judgment creditor who obtained a provisional garnishee order against the respondent, who was then required to show cause why the order should not be made absolute. Affirming the assistant registrar's decision, the Judge was persuaded by the equivocal state of the evidence at the show cause hearing not to make the order absolute and instead to order a trial to determine whether the respondent owed a debt to the judgment debtor: see *Telecom Credit Inc v Star Commerce Pte Ltd (Midas United Group Pte Ltd, garnishee)* [2017] SGHC 300. The appellant now appeals against that decision.

2 Before the appeal came on for hearing, the respondent who was then represented filed a Respondent's Case in which it raised the preliminary objection that this court has no jurisdiction to hear the appeal because the appellant needed, but failed to obtain, leave to appeal. Although the respondent failed to appear at the appeal hearing to pursue the points made in its Case, we considered that the issue of jurisdiction required further examination. We therefore heard full submissions on the same from the appellant in addition to submissions on the substantive merits of the appeal.

3 The appellant would require leave to appeal if the Judge's order is an "order at the hearing of any interlocutory application" under para (*e*) of the Fifth Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the Act"). Although garnishee proceedings are common, there appears to be no direct authority on this issue of whether the order falls within para (*e*). Therefore, to explain our views, we will first consider the general role of para (*e*) in the leave to appeal regime. Next, we will examine how the authorities have interpreted the words "order" and "interlocutory application" in para (*e*), with a focus on the latter expression, which is crucial to this appeal, as will be seen. Finally, we will examine the nature of garnishee proceedings, and consider whether an order by a High Court Judge that a garnishee's liability be determined at trial is caught by para (*e*). In short, our view is that it is. The appeal must therefore be dismissed, the appellant having failed to obtain leave to appeal.

Role of para (*e*) in the leave to appeal regime

4 Under the Act, appeals to the Court of Appeal are restricted, basically, according to the type of matter from which the order sought to be appealed

against arises. The Act does this by specifying expressly where leave to appeal is required and where decisions are non-appealable: see s 34, the Fourth Schedule and the Fifth Schedule. However, due to the limitations of language and the variety of orders that can be made in differing types of matters, not everything can be spelt out in advance. Therefore, some general provision is required to deal with situations that have not been mentioned explicitly.

5 Para (*e*) of the Fifth Schedule of the Act is such a general provision. It is the provision that this case is concerned with because the scope of the right to appeal against orders made by a High Court Judge in garnishee proceedings is not expressly delineated in the Act. Para (*e*) reads:

> Except with the leave of the High Court or the Court of Appeal, no appeal shall be brought to the Court of Appeal in any of the following cases:
>
> …
>
> (*e*) where a Judge makes an order at the hearing of any interlocutory application other than an application for any of the following matters:
>
> …

6 To understand how para (*e*) is intended to operate, it is useful first to consider the Act's basic approach to leave to appeal. In essence, the general philosophy that is reflected in these provisions is that a party's ability to appeal an interlocutory matter ought to depend on the importance of that matter to the substantive outcome of the case. Hence, matters that are non-appealable include decisions to grant unconditional leave to defend or to set aside unconditionally a default judgment, which send the matter back along the ordinary route to trial, where the parties' substantive rights will be decided after undertaking the forensic process: see paras (*a*) and (*c*) of the Fourth Schedule. Matters that are appealable with leave concern matters which, although they do not directly

determine the substantive outcome of the case, may nevertheless have some material impact on it, for example, an order granting or refusing discovery or inspection of documents, or an order granting or refusing a stay of proceedings: see paras (*c*) and (*d*) of the Fifth Schedule.

7 This general philosophy was summed up by the Minister introducing the bill containing the 2010 amendments to the Act in the following way (*Singapore Parliamentary Debates*, *Official Report* (18 October 2010) vol 87 at cols 1369–1370 (Associate Professor Ho Peng Kee, Senior Minister of State for Law)):

> 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 orders can only go to the Court of Appeal with the permission of the High Court. The decision of the High Court whether to grant permission is final. The right to appeal all the way to the Court of Appeal will … remain for interlocutory applications that *could affect the final outcome of the case*. [emphasis added]

8 The cases have recognised that para (*e*) of the Fifth Schedule of the Act should operate in a way that is consistent with this general philosophy which places the focus on whether the application in question is one that has an effect on the final outcome of the case. However, the way in which the cases have interpreted the words "order" and "interlocutory application" in para (*e*) appears to have given rise to some uncertainty. To take this case as an example, it is not immediately clear, on the face of para (*e*) and on the definitions adopted in the cases, whether garnishee show cause proceedings are a type of "interlocutory application". We shall therefore discuss these cases and clarify the approach to be taken.

Authorities on para (*e*)

OpenNet, Dorsey *and* The Nasco Gem

9 In *OpenNet Pte Ltd v Info-communications Development Authority of Singapore* [2013] 2 SLR 880 ("*OpenNet*"), the Court of Appeal had to consider whether an order refusing leave for judicial review was an order made at the hearing of an "interlocutory application" within the meaning of para (*e*) of the Fifth Schedule. The court noted that the Act provided no definition of that expression. The court also noted that its plain and ordinary meaning, based on definitions contained in various legal dictionaries, appeared to exclude an application for leave to commence judicial review from the "interlocutory" category because there was "no main hearing determining the outcome of the case" (at [14]).

10 The definition of "interlocutory application" which the court then adopted was "any application that is made before the substantive trial". But it adopted this definition only "[f]or the purpose of the discussion below" (at [14]). In that discussion, the court held that the appellant's application did not fit this definition because the appellant had initiated the application by originating summons, and the very relief sought in the originating summons was leave to commence proceedings for judicial review (at [21]). Once leave had been refused, the substantive issue in the summons was determined, and there was "nothing more to proceed on" (at [21]). The application was therefore not interlocutory in nature, and the appellant did not require leave to appeal.

11 Next, in *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 ("*Dorsey*"), the Court of Appeal was faced with the question whether an order granting leave to serve pre-action interrogatories was an "order giving

or refusing interrogatories" under para (*i*) of the Fourth Schedule, and therefore non-appealable. The court first explained the thinking behind the 2010 amendments to the Act in order to establish the legislative purpose against which the court would interpret para (*i*). In this regard, the court noted that one of the problems with the previous regime was that there was uncertainty as to the meaning of "interlocutory order" (at [27]). The amendments were passed partly to ensure that the extent of a party's right of appeal on interlocutory matters would be "no longer wholly dependent on the dichotomy between a final order and an interlocutory order" and that instead, the new Fourth and Fifth Schedules applied a "calibrated approach" under which orders made at the hearing of interlocutory applications were categorised based on their importance to the outcome (at [48]).

12 The court then agreed (at [51]–[52]) with the view expressed in *OpenNet* (at [21]) that the Fourth and the Fifth Schedule, in so far as they curtailed the right of appeal, were applicable only to orders made at the hearing of "interlocutory applications". The court in *Dorsey* therefore considered that whether an order granting leave to serve pre-action interrogatories fell under para (*i*) of the Fourth Schedule had to depend on whether it was, more generally, an order made at the hearing of an interlocutory application, which is essentially the test in para (*e*) of the Fifth Schedule (at [52]).

13 The court decided that it was not. The court noted that the *Oxford Dictionary of Law* (Oxford University Press, 7th Ed, 2009) specified that what is "interlocutory" should occur "between the initiation of the action and the final determination" (at [58]). Approving this definition, the court held that the application was not interlocutory in nature because it was not one made between the time a party filed a civil case in court and when the case was finally heard

for disposal (at [60]). Instead, it was made by originating summons, and its sole purpose was to obtain discovery through interrogatories on the defendant to the originating summons (at [72]). Once the application was determined, the entire subject matter of the originating summons was spent, and there was nothing further for the court to deal with.

14 The court went on to consider *obiter* the meaning of the word "order" in para (*e*). It observed that if "order" there were interpreted to mean all orders, interlocutory or final, then a final order made, for example, at the hearing of an application for a determination of any question of law under O 14 r 12 of the Rules of Court (Cap 322, R 5, 2014 Ed) would be appealable to the Court of Appeal only with leave of the High Court. But that would be "inconsistent with the legislative intent underlying the 2010 amendments to the [Act]", the court said, in 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" (at [81] and [84]). Consequently, "order" in para (*e*) must be read to mean "interlocutory order" (at [85]).

15 Regarding the meaning of "interlocutory order", the court endorsed the definition supplied in the English Court of Appeal's decision in *Bozson v Altrincham Urban District Council* [1903] 1 KB 547 ("*Bozson*"), which had been approved in a pre-2010 decision of this court, *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 525 ("*Wellmix Organics*") at [10] *per* Chao Hick Tin JA. In *Bozson*, Lord Alverstone CJ held (at 548) that a judgment or order is final if it finally disposes of the rights of the parties, and is interlocutory if it does not. The *Bozson* definition may be contrasted with the definition supplied in *Salaman v Warner* [1891] 1 QB 734

("*Salaman*") at 736, where Fry LJ said that an order is final only where it is made upon an application or other proceeding which must, "whether such application or proceeding fail[s] or succeed[s]", determine the action, and that conversely, an order is interlocutory where it cannot be affirmed that "in either event" the action will be determined. As the court in *Dorsey* noted (at [27]–[29]), historically, the *Bozson* and *Salaman* tests were competing, alternative approaches to the meaning of "interlocutory order", and in *Wellmix Organics*, the Court of Appeal settled the position in favour of the *Boszon* test in Singapore.

16 The final case to be discussed here is *The "Nasco Gem"* [2014] 2 SLR 63, where the court had to decide whether the dismissal of an application to set aside a warrant of arrest in an admiralty *in rem* action was an order made in an interlocutory application under para (*e*) of the Fifth Schedule. The court held that such a decision did fall within para (*e*) because an application for a warrant of arrest, whether allowed or denied, does not determine the substantive rights of the parties or the relief claimed in the originating process (at [16] *per* Chao Hick Tin JA). Instead, the outcome merely determines whether the arresting party will be entitled to arrest the ship and obtain security for its claim (at [16]). Accordingly, leave to appeal was required.

17 The court also rejected the applicant's submission that in determining whether an application is interlocutory, emphasis was to be placed on the relief that was sought, in the sense that if the sole purpose of the application was the relief sought, then the application was not interlocutory within the meaning of para (*e*) because once the application had been determined, the entire matter ended. This approach was wrong, in the court's view, because it "focuses on the application instead of the cause in the pending action" (at [16]). The result

would be that every order made by the court on an application made in a pending action would fall outside para (*e*), even an order refusing further and better particulars. This could not be correct. Instead, said the court, "it is the cause of the pending *proceedings* in which the application is being brought which is significant, not the specific purpose of the *application*" [emphasis in original] (at [16]).

18 Also of significance is the court's explanation (at [14]) of the meaning of "interlocutory application" in para (*e*) of the Fifth Schedule in the light of *OpenNet* and *Dorsey*:

> …
>
> (b) Where an application would in the normal sense be regarded as "interlocutory" (that is, where the application is peripheral to the main hearing determining the outcome of the case, or occurs during the course of proceedings between the initiation of the action and the final determination), one will have to apply the tests in *OpenNet* … and *Dorsey* … (informed by the object and purpose of the 2010 amendments) to determine if the order made in that application is "interlocutory" in nature within the meaning of the SCJA.
>
> …
>
> Admittedly, in practice, the difficulties lie in ascertaining whether orders made at the hearing of particular applications are "interlocutory" in nature. The approach in *Dorsey* (effectively endorsing and applying the test in *Bozson* and *Wellmix Organics*) provides a workable test.

This passage clarifies that the concept of an interlocutory application is separate from the concept of an interlocutory order, which was a point implicit in *Dorsey*. That is why the passage says that where an application is interlocutory, the court must look further at whether the order is also interlocutory. If it is, then would para (*e*) apply.

Analysis of the cases

19 The effect of these three decisions on the meaning of the words "order" and "interlocutory application" in para (*e*) is as follows:

(a) An "order" in para (*e*) means "interlocutory order": *Dorsey* at [85]; *The Nasco Gem* at [14(b)].

(b) An order is interlocutory if it does not finally dispose of the rights of the parties: *Dorsey* at [28]; *The Nasco Gem* at [14].

(c) An "interlocutory application" is one where:

(i) the application is peripheral to the main hearing determining the outcome of the case: *Dorsey* at [58]–[59]; *The Nasco Gem* at [14(b)]; or

(ii) the application occurs during the course of proceedings between the initiation of the action and the final determination: *Dorsey* at [58]–[59]; *The Nasco Gem* at [14(b)].

20 Some commentators have expressed concern that *Dorsey* reintroduced the difficult dichotomy between final and interlocutory orders to the leave to appeal regime by reading "order" in para (*e*) as "interlocutory order": see Eunice Chua Hui Han and Chen Siyuan, "The right to appeal against a decision made on an interlocutory application" (2013) 25 SAcLJ 424 ("*Chua and Chen*") at paras 105–108. We are not troubled by this criticism, principally because we think that the difficulty of defining an "interlocutory order" is somewhat overstated. As the Court of Appeal in *Wellmix Organics* observed (at [14]), the *Boszon* test has been applied in Singapore without difficulty for many years. There is no basis to depart from *Dorsey*'s reading of "order" in para (*e*) as

"interlocutory order" because it promotes Parliament's intention that a party should not be denied a right of appeal against an order that affects the substantive outcome of the case: see *The Nasco Gem* at [11] and [14(b)].

21 More difficult is the meaning of "interlocutory application". Currently, what we have are the two definitions mentioned at [19(c)] above, both of which were taken by the court in *Dorsey* from legal dictionaries: *Dorsey* at [58]. The court expressed no preference for either, and said instead that they were both "consonant" with the way in which the Minister introducing the 2010 amendments to the Act used the word "interlocutory": *Dorsey* at [59].

22 It is possible for an application to fit one definition and not the other, and in such a case, it is not clear whether the application would still be an "interlocutory application" within the meaning of para (*e*). For example, an application to enforce judgment would be peripheral to the main hearing, but it would not be an application that occurs between the initiation of an action and trial. Such an application was held not to be interlocutory in the High Court's decision in *Chen Chun Kang v Zhao Meirong* [2012] 1 SLR 817 ("*Chen Chun Kang*"). Andrew Ang J reasoned that an interlocutory application was "typically sought in the course of obtaining a final judgment" (at [33]). Since an application to enforce a judgment fell outside that definition, an appeal against an order on such an application lay as of right. Ang J thus held that leave was not needed to appeal an order to adjourn the hearing of an application to enforce a default judgment. Unsurprisingly, the appellant in the present case relies on *Chen Chun Kang* to argue that since garnishee proceedings take place after judgment is secured, they are not interlocutory.

23 However, there is authority to suggest that interlocutory applications include post-trial proceedings. In the Court of Appeal's decision in *PT Bakrie Investindo v Global Distressed Alpha Fund 1 Ltd Partnership* [2013] 4 SLR 1116 ("*PT Bakrie*"), the respondent obtained an order registering an English judgment in Singapore, and sought to enforce the judgment against the appellant. The respondent then obtained an order to examine the appellant's assets. The appellant applied unsuccessfully before the High Court to adjourn the execution of the examination order. The appellant then appealed without leave to the Court of Appeal. The court dismissed the appeal on the basis that the order refusing the adjournment was an order made at the hearing of an interlocutory application within the meaning of para (*e*) of the Fifth Schedule of the Act (at [13] *per* Andrew Phang Boon Leong JA) so that the appellant required leave to appeal.

24 In our view, there is no reason why the same conclusion would not be reached if the respondent in *PT Bakrie* had been seeking to enforce a judgment obtained in Singapore. This shows that applications in the course of enforcement proceedings, although occurring after the main hearing, may properly be regarded as interlocutory. More importantly, there is no good reason why it should matter, for the purposes of leave to appeal, whether an order to adjourn proceedings was made before or after judgment. Indeed, it seems arbitrary that an adjournment application made before judgment should be considered interlocutory whereas an adjournment application made after judgment is given should not. As Ang J himself accepted in *Chen Chun Kang* (at [32]), "[a] decision to adjourn the hearing of an application would generally not affect the parties' substantive rights and, as such, it would be consistent with the legislative intent behind the amendments to require that leave to appeal an

adjournment must be sought." In our view, in so far as *Chen Chun Kang* suggests otherwise, it ought to be overruled.

25 The upshot is that while an interlocutory application is one that usually occurs during the course of proceedings between the initiation of the action and the final determination, that need not always be the case. What, then, defines an interlocutory application?

The meaning of "interlocutory application" in para 5(e)

26 In our judgment, an "interlocutory application" is simply an application whose determination may or may not finally determine the parties' rights "in the cause of the pending proceedings in which the application is being brought": see *The Nasco Gem* at [16]. That is why it is necessary to look at whether the order which is made on such an application determines the parties' rights on the *Bozson* test. If it does, then leave to appeal will not be required, and if it does not, it will be an interlocutory order caught by para (*e*) and leave to appeal will be required. An interlocutory application may be peripheral to the main hearing, or it may occur between the initiation of an action and trial, or it may occur after judgment has been given. As it appears from *The Nasco Gem* at [14(b)], and as suggested in *Chua and Chen* ([20] *supra*) at para 116, these definitions are "merely factors or indicia to be considered rather than tests" for the purpose of determining whether an application is interlocutory within the meaning of para (*e*) of the Fifth Schedule.

27 Such an approach is consistent with the purpose of the Act, which places the focus on whether the application in question is one that has an effect on the final outcome of the case. It will be recalled that para (*e*) is a general provision that deals with matters not stated in the Fourth and Fifth Schedules. In

occupying this role, para (*e*) promotes the purpose of the Act in this regard by requiring leave to appeal based on the effect of the application in question on the substantive rights of the parties. It seems to us that para (*e*) does this best through the definition of "interlocutory application" set out in the preceding paragraph and in combination with a consequence-focused definition of "order", which para (*e*) already has by virtue of *Dorsey*'s interpretation of that word to mean "interlocutory order" in the *Bozson* sense.

28 Moreover, there are clear boundaries on the definition of an interlocutory application. *OpenNet*, which concerned an application for leave to apply for judicial review, and *Dorsey*, which concerned an application for pre-action interrogatories, are examples of applications that are clearly not interlocutory. Such applications are entirely self-contained, in that there is no pending proceeding in which the application may be said to have been made. They will also not lead to any trial on their merits regardless of which way the court decides the application. The hearing of the application is itself the only main hearing, and once the application is disposed of, there is "nothing more to proceed on", in the words of the court in *OpenNet* at [21].

Application to garnishee show cause proceedings

29 Next, to determine whether an order that a garnishee's liability to the judgment debtor be determined at trial falls under para 5(*e*), it is necessary to consider the nature of garnishee proceedings in general and garnishee show cause proceedings in particular. In essence, the garnishee process is a mode of enforcing a judgment or order for the payment of money which allows the judgment creditor to seek recovery of a judgment sum owed to him by the judgment debtor from a third party, the garnishee, who is himself indebted to

the judgment debtor: Jeffrey Pinsler SC, *Principles of Civil Procedure* (Academy Publishing 2013) at para 22.035. As Lord Bingham of Cornhill observed in *Societe Eram Shipping Co Ltd v Compagnie Internationale de Navigation* [2003] 3 WLR 21 ("*Société Eram*") at [10]–[12], the garnishee procedure has remained essentially unchanged in England since it was first introduced in 1854. The same is true of Singapore, given that O 49 of the Rules of Court, which governs garnishee proceedings, was derived from the equivalent provision in the English Rules of the Supreme Court: *cf Société Eram* at [11].

30 Order 49 makes it clear that there are two stages in proceedings for a garnishee order. The first stage involves an application by the judgment creditor for an "order to show cause" by *ex parte* summons supported by affidavit: see O 49 r 1(2) and Form 101 at Appendix A of the Rules of Court. This order, commonly called a provisional garnishee order or an order *nisi*, is an order to the garnishee to show cause why the order should not be made final. It provisionally attaches the debt due from the garnishee to the judgment debtor so that it cannot be paid to the judgment debtor: *William Henry Rogers and Maria Henrietta Riches, trading as Rogers & Son v William Whiteley* [1892] AC 118 at 121 *per* Lord Halsbury LC. The second stage involves the outcome of the show cause hearing. If the garnishee does not attend or attends but is unsuccessful in disputing his liability, the provisional order will be converted into a final order: O 49 r 4(1). If the garnishee disputes his liability to pay the debt, the court may determine the matter summarily or order that it be "tried in any manner in which any question or issue in an action may be tried", before deciding the appropriate order to be made: O 49 r 5. For the purpose of this judgment, it is this second stage – prior to any trial that may be ordered – which

we are concerned with, and which we have in mind when we use the expression "garnishee show cause proceedings".

31 In this case, the question is whether an order made under O 49 r 5 that a garnishee's liability to the judgment debtor be determined at trial is an order made at the hearing of an interlocutory application within the meaning of para (*e*) of the Fifth Schedule of the Act. In our judgment, it is. The reason for this is that determination of the garnishee show cause proceedings will not necessarily determine the parties' rights. The court may discharge the provisional order, make it absolute or order a trial. If it chooses the last of these three options, the substantive rights of the judgment creditor and the garnishee will not have been finally determined, and the garnishee proceedings will move on into the forensic stage.

32 Against this position lies the contention, raised by the appellant in oral argument, that by the time the parties get to the show cause proceedings, there is no longer any "application". The *ex parte* application for a provisional garnishee order, it is contended, concluded with the assistant registrar's granting of the order for the garnishee to show cause. Thus, when the matter proceeded to a show cause hearing, there was no "application" to speak of, and therefore the order that the garnishee's debt be tried cannot be an order made at the hearing of an interlocutory "application".

33 We reject this argument. The appellant does not want just a provisional garnishee order. It wants an absolute garnishee order, and part of the process of obtaining such an order is to obtain a provisional order attaching the debts of the garnishee and requiring the garnishee to show cause. In the show cause proceedings, the legal (as opposed to tactical) burden remains on the appellant

to prove that the garnishee owes the respondent a debt: *The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR) v Westacre Investments Inc and other appeals* [2016] 5 SLR 372 ("*Westacre*") at [52] *per* Sundaresh Menon CJ. Hence, the appellant's application cannot sensibly be said to have come to an end just because it has obtained a provisional order. The application subsists at the show cause proceedings, and given that those proceedings may or may not lead to a final determination of the parties' rights, the application has to be interlocutory in nature.

34 The appellant's second argument is that as garnishee proceedings take place after judgment has been secured, they are not interlocutory, applying *Chen Chun Kang*. We reject this argument for two reasons. First, for the reasons given at [22]–[24] above, the fact that an application is made after judgment is no reason not to consider it an interlocutory application. Second and more importantly, we do not consider that the interlocutory nature of garnishee show cause proceedings derives from the fact that garnishee proceedings are ancillary to the main proceedings in which the judgment creditor obtained judgment. While the judgment creditor's right to start garnishee proceedings arise from the judgment he obtained in earlier proceedings between himself and the judgment debtor, garnishee proceedings are new proceedings between the judgment creditor and the garnishee. The two sets of proceedings are distinct, and the fact that the first set has concluded has no impact on the consideration of whether the application for a garnishee order is an interlocutory application.

35 Finally, the view that garnishee show cause proceedings are interlocutory in nature is supported also by the fact that they are closely analogous to summary judgment proceedings, which are undoubtedly interlocutory. In both cases, there is the possibility of a final order: in the case

of garnishee show cause proceedings, that would be an absolute garnishee order or a discharge of a provisional garnishee order, and in the case of summary judgment, that would be summary judgment. Also, in both cases, there is the possibility of a future trial: in the case of garnishee show cause proceedings, the court may order that the garnishee's liability to the judgment debtor be determined at trial; and in the case of summary judgment proceedings, the court may grant conditional or unconditional leave to defend.

36 As with summary judgment, it does not matter that the applicant in garnishee show cause proceedings is not in fact preparing for the trial that might lie ahead, in the sense that he wishes to avoid it and simply be awarded a final order in his favour summarily. However, just as that has not stopped the courts from regarding summary judgment proceedings as interlocutory, so too it should not prevent the courts from regarding garnishee proceedings as interlocutory. As this court observed in *OpenNet* at [17]:

> … the Minister's statement underscored the fact that normally, "interlocutory applications" relate to procedural matters with the view to preparing the case for trial. However, it does not follow that an "interlocutory application" in the context of the SCJA will always be for that purpose, *viz*, preparing a case for trial. This is because an application for summary judgment, or for the striking out of an action, is no less an interlocutory application, as can be seen from para (*e*) of the Fifth Schedule, even though such applications do not "prepare the case for hearing".

37 The remaining question is whether the Judge's order that respondent's liability to the judgment debtor be determined at trial is an interlocutory order. On the *Bozson* test, there is no doubt that it is interlocutory, because it does not finally determine the appellant's and the respondent's rights. Instead, the order convenes a trial at which those rights may be finally determined. Therefore, the order made by the Judge is an interlocutory order on an interlocutory

application, and by para (*e*) of the Fifth Schedule, an appeal by either the appellant or respondent against that order may proceed only with leave. Since the appellant did not obtain leave, the court has no jurisdiction to consider the merits of the appeal.

Conclusion

38 For the reasons above, the appeal is dismissed. The respondent did not appear at the hearing of the appeal and was by that time unrepresented, its solicitors having been discharged some two months earlier. We therefore make no order as to costs.

Judith Prakash
Judge of Appeal

Quentin Loh
Judge

Moiz Haider Sithawalla and Lau Yu Don (Tan Rajah & Cheah) for the appellant;
The respondent unrepresented and absent.