Nim Minimaart (suing as a firm) *v* Management Corporation Strata Title Plan No 1079 and others
[2013] SGCA 54

Case Number	: Originating Summons No 228 of 2013
Decision Date	: 11 October 2013
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: The plaintiff in person through Sambasivam s/o Kunju; and Teh Ee-Von (Infinitus Law Corporation) for the defendants.
Parties	: Nim Minimaart (suing as a firm) — Management Corporation Strata Title Plan No 1079 and others

Civil procedure – Jurisdiction – Leave to Appeal

11 October 2013

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

1 This matter came before us having followed a convoluted and tortuous course of litigation through various tiers of our courts over a period of more than five years. There have been many appearances before different judges and registrars. The originating summons before us concerned a number of points in relation to an appeal that the plaintiff had brought before a Judicial Commissioner of the High Court ("the JC"), seeking to reverse the decision of a district judge. We dismissed the application on the ground that we had no jurisdiction to entertain it. The plaintiff then requested us to hear further arguments. Having considered its request, we remained of the view that we had originally formed and so declined it. However, we decided we would give our grounds in order to clarify any perceived ambiguity in the law and also in the hope that this might help put an end to this litigation.

Facts

Parties to the dispute

2 Nim Minimaart ("the Plaintiff") is a partnership that had operated a mini-supermarket store in a condominium known as Nim Gardens ("the Development"). The Plaintiff is represented in this action, as it was in the proceedings below, by Mr Sambasivam s/o Kunju ("Mr Sambasivam"), a partner of the Plaintiff. Although Mr Sambasivam is not a lawyer, it appeared from his submissions and his letters that he either had some knowledge, albeit incomplete, about civil procedure and about the legal issues generally, or that he was receiving advice and assistance from a sympathetic lawyer working behind the scenes.

3 The Management Corporation Strata Title Plan No. 1079 ("the MCST") is the management corporation of the Development. The other defendants were the council members of the MCST at the material time (collectively, "the Defendants").

Background facts

4 On 15 January 2006, the Plaintiff and the MCST entered into a licence agreement. The Plaintiff was to take some premises at the Development for its business for a period of two years. The crucial clause in the licence agreement for the purposes of the entire proceedings is cl 3(d) which reads as follows:

> 3 In consideration of the payment by the Licensee monthly and proportionately for any part of a month for the duration of the Licence, a monthly fee of Dollars Five Hundred Only ($500.00) (hereinafter referred to as 'the Licence Fee') payable on the first day of each month, the Management Corporation hereby grants to the Licensee the Licence:
>
> …
>
> (d) to *extend the contract for another year* (15th January 2008 to 14th January 2009) *subject to revision of rental*.
>
> [emphasis added]

5 At the end of the initial term of two years, the Plaintiff was keen to obtain an extension but was not ultimately successful. Accordingly, on 21 April 2008, the Plaintiff commenced proceedings against the Defendants, by District Court Suit No. 1263 of 2008, for an alleged breach of the licence agreement by failing to extend the licence for a further year upon its expiry in January 2008. It appeared that there had been a change in the composition of the MCST council at about the time the renewal was due for consideration and the extension was initially agreed on a *monthly* basis. An exchange of letters between the Plaintiff and the Defendants ensued over a separate issue of alleged encroachment by the Plaintiff. Eventually, the managing agent appointed by the MCST proposed an extension of the licence agreement at the revised rate of $1,000 per month, which was double the rate under the original licence agreement, subject to the Plaintiff remedying the (alleged) encroachments by a certain date. This was unacceptable to the Plaintiff, who brought the action alleging a breach by the Defendants of their asserted renewal obligation under the lease and also a conspiracy among the eight council members to cause him loss. In the event the proceedings were commenced against seven of the council members and the MCST itself. The Defendants in turn claimed that Notice of Termination had been validly served on the Plaintiff on 11 April 2008 based on the latter's failure to pay rent promptly and also for encroaching onto the common property.

6 The trial was fixed for hearing from 11 to 13 March 2009 before a district judge ("the first DJ"). The Plaintiff discharged its counsel on the first day of trial apparently because it could not afford to pay for continued representation. Thereafter, the Plaintiff's case was conducted by Mr Sambasivan. On 13 March 2009, being the third day of trial, the parties concluded a settlement agreement and recorded a consent order as follows:

> Settled on 3rd day of trial. With no admission of liability by either party. 1st Defendant to refund $1500 to Plaintiff being rent deposit. 1st Defendant to refund $250 being ½ month advance April rent to Plaintiff. Plaintiff granted access to minimart from 23-31 March, 0900-1700, Monday to Friday only. Upon Plaintiff vacating premises and leaving it vacant and empty, 1st Defendant shall pay the Plaintiff the aforesaid sum of $1750. Plaintiff to remove signboard. Parties to file NOD by 15.4.2008 once above terms have been abided by. Liberty to apply.

7 Subsequently, on 21 March 2009 the Plaintiff alleged that the first DJ had pressured it into concluding the settlement agreement by some remarks he had made during the proceedings. The Plaintiff wrote to the Registrar of the Subordinate Courts to complain about this. An official from the Subordinate Courts replied on 1 April 2009 informing the Plaintiff that it would have to apply to set

aside the settlement and the consent order before a retrial could be ordered. On 9 April 2009, the Plaintiff filed Summons No. 6059 of 2009 to this end. This was heard by a Deputy Registrar of the Subordinate Courts on 29 June 2009 and it was dismissed. The Plaintiff appealed and this was heard before a district judge who dismissed the appeal on the ground that the Plaintiff ought to have commenced a fresh action to set aside the consent order. The Plaintiff appealed against this decision to the High Court, and the matter was fixed before Steven Chong J (as he then was).

8 Chong J heard the appeal on 7 October 2009 and gave his decision on 6 November 2009 allowing the appeal, setting aside the consent order and ordering a retrial before another district judge. The reasons for his decision are set out in *Nim Minimaart (a firm) v Management Corporation Strata Title Plan No 1079* [2010] 2 SLR 1. In essence, Chong J took the view that on the basis of certain remarks that were attributed to the first DJ, it might have appeared that the first DJ had made up his mind and that there was accordingly a reasonable appearance that the Plaintiff's consent might have been the result of undue pressure (see at [27]-[28]).

9 The re-trial, which spanned eight days, was heard by another district judge ("the second DJ"), who eventually dismissed the Plaintiff's entire claim, and granted the Defendants an injunction against the Plaintiff requiring the removal of his goods from the premises as well as nominal damages of $500.00 for the Defendants' claim in trespass.

10 The Plaintiff then appealed against the second DJ's decision. The appeal (District Court Appeal No. 27 of 2011) ("DCA 27/2011") was heard by the JC on 23 October 2012. He dismissed the appeal with costs. The Plaintiff submitted a request for further arguments on 29 October 2012 which was rejected by the JC and this was conveyed through the Registry by its letter dated 2 November 2012. Apparently intending to appeal the JC's decision, the Plaintiff then wrote to the Registry on 7 November 2012 requesting that the requirement of security for costs which is set at $20,000.00 be waived "on compassionate grounds". The Plaintiff advanced various reasons for this request including ostensible financial difficulties. The Registry responded on 12 November 2012 stating that the Plaintiff's request could not be acceded to as the provision of security for costs "is a mandatory provision and cannot be waived". The Registry also informed the Plaintiff that it should ascertain whether leave to appeal was required pursuant to s 34(2)(a) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"). As will become apparent in due course, there was some significance in the Registry having drawn this specific provision to the Plaintiff's attention.

11 On 22 November 2012, the Plaintiff applied to the High Court for an extension of time to bring an application for leave to appeal to this court by Summons No. 5999 of 2012 ("SUM 5999/2012"). The JC dismissed this on 5 December 2012 with costs. It should be noted that the application for the extension of time was filed about a month after the JC had first dismissed DCA 27/2011. The relevant provision which regulates the time for making an application for leave is O 56 r 3 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("ROC") which provides as follows:

> **3. Leave to appeal against order or judgment of Judge (O.56, r.3)**
>
> (1) A party applying for leave under section 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 from the date of the order or judgment.
>
> (2) A party who has obtained leave to appeal under this Rule shall file and serve the notice of appeal within one month from the date on which such leave was given.

12 It will be apparent that the prescribed time frame for such an application is seven days from the

date of the judgment or order being appealed against.

13 The Plaintiff was ambivalent before the JC as to whether or not it in fact needed leave to appeal. In any event as the JC refused to extend the time for leave to be sought, the Plaintiff had no leave to appeal against the substantive order that the JC had made when he dismissed DCA 27/2011.

14 The Plaintiff then sought to appeal against the JC's decision in SUM 5999/2012 refusing the extension of time. The Plaintiff appeared before the Duty Registrar on 7 December 2012 to "enquire about the procedure" [note: 1] for appealing that decision, but apparently did not receive any legal advice. The Plaintiff then filed a Notice of Appeal against the JC's decision in SUM 5999/2012 on 4 January 2013.This was rejected by the Registry on 7 January 2013 as it was not accompanied by a certificate of security for costs. On the same day, the Plaintiff wrote to the Registry explaining that the appeal was in relation to the JC's decision in SUM 5999/2012 on 5 December 2012 (namely, for an extension of time to file a leave application) and not against the JC's decision in DCA 27/2011 on 23 October 2012. The Registry replied on 17 January 2013 stating that the provision of security for costs is a mandatory requirement and could not be waived. Convinced that there had been a misunderstanding on the Registry's part, the Plaintiff wrote to the Registry on 21 January 2013 seeking to clarify the matter. The Registry replied on 22 January 2013 reiterating its stand in its previous letter of 17 January 2013.

15 The present originating summons was then filed on 1 March 2013 and was accepted by the Registry on 13 March 2013 after security in the sum of $5,000.00 had been furnished by the Plaintiff. The lower amount of security was fixed by the Assistant Registrar having regard to the Plaintiff's stand that this was an application under the ROC rather than an appeal, and that the Defendants did not object.

The Plaintiff's prayers

16 The Plaintiff presented a number of prayers in the originating summons including the following:

(a) a declaration as to whether leave is required to appeal against the JC's decision on 23 October 2012 dismissing his appeal in DCA 27/2011;

(b) that if leave is so required, the Plaintiff be granted an extension of time to file an application to the High Court for leave to appeal to the Court of Appeal, reversing the JC's decision made on 5 December 2012 dismissing SUM 5999/2012;

(c) that if leave is not required, the Plaintiff be granted an extension of time to file the Notice of Appeal to the Court of Appeal against the JC's decision given on 23 October 2012 dismissing the Plaintiff's appeal in DCA 27/2011;

(i) that consequentially, in respect of the appeal against the decision in DCA 27/2011, the provision of security for costs of the appeal to be waived in the interests of justice;

(d) that further, and/or in the alternative, pursuant to the provisions of O 57 r 20, directions be given for an Expedited Appeal before the Court of Appeal in respect of the JC's decision on 23 October 2012 dismissing the Plaintiff's appeal in DCA 27/2011.

(i) that, consequentially, for the purposes of an Expedited Appeal, and for saving time and costs, directions be given for the Record of Appeal filed by the Plaintiff in DCA 27/2011 filed on 20 July 2012, and the relevant submissions and bundles for DCA 27/2011 to stand as

the Record of Appeal for the appeal before the Court of Appeal.

Plaintiff's case

17 In the affidavit filed in support of this application, the Plaintiff stated that its purpose was to seek "the guidance of the full Court of the Court of Appeal on matters of Court procedures and practice affecting access to justice, as well as on matters related to the substantive justice of the case" [note: 2]. In its written submissions, however, it took the position that that it was seeking "the leave of the Honourable Judges of the Court of Appeal to appeal against the substantive decision below, namely, the decision of then [*sic*] Judicial Commissioner, given on 23 October 2012 dismissing the Plaintiff's appeal in DCA 27/2011/M" [note: 3]. In short, although the matter had reached us by way of an originating summons seeking a declaration as to whether leave was required to appeal against the JC's decision in DCA 27/2011 and if it was, seeking that *we* extend the time for the Plaintiff to bring an application to the JC for such leave, in its written submissions the Plaintiff was seeking leave from this court to permit it to bring an appeal against the JC's decision in DCA 27/2011. To this end, the Plaintiff cited several reasons why the second DJ and the JC both erred in failing to have regard to certain "material facts" in dismissing the action and the appeal.

18 It struck us that there was a chameleon-like character to the way the nature of the Plaintiff's action developed to suit the circumstances. At the heart of the matter, it simply wanted to appeal the substantive decision of the JC in DCA 27/2011. The Plaintiff seemingly recognised that it might need leave to do so, but also realised that it was out of time to apply for leave. Perhaps thinking that it could manage this particular risk, when the Plaintiff came before the JC to apply for the extension of time, it reserved its position as to whether leave was required at all. Nonetheless, it sought, but was refused, an extension of time to seek leave –and then wanted to appeal that. If and when the Plaintiff got its day before this court, it evidently intended and hoped it would have a chance to ventilate *all* its grievances. At a certain stage, it seemingly stumbled upon the prospect of invoking the original jurisdiction of this court by way of the present application. Whichever guise this case took, it was evident to us for reasons that follow that the Plaintiff's was ultimately a hopeless cause.

Defendants' case

19 The Defendants' arguments were generally unhelpful. It was argued that the Plaintiff's first prayer for determination whether leave was required to appeal against the JC's decision in DCA 27/2011 amounted to the Plaintiff seeking legal advice from this court and hence was inappropriate. On the second prayer, the Defendants noted that as it concerned an extension of time to apply for leave, and not an extension of time to file the Notice of Appeal, the Plaintiff's application was misconceived as there was *no need* for an extension of time to file an application for leave to appeal. We should state that this seems patently wrong. The Defendants also submitted that there was no basis for waiving the provision of security for costs. Several other arguments were made but it is unnecessary for the purposes of this matter to set them out as many of them, with respect, missed the mark.

Issues before this court

20 Two issues arose:

(a) Did the Plaintiff require leave to appeal the JC's decision in DCA 27/2011?

(b) If leave was required, could and if so should this court grant an extension of time for the Plaintiff to file an application to the JC for leave to bring an appeal to this court against the JC's

decision in DCA 27/2011?

The requirement of leave

21 There can be no serious doubt whatsoever that the Plaintiff did require leave in order to appeal against the JC's decision in DCA 27/2011. Section 29A of the SCJA provides for the civil jurisdiction of this court to hear appeals from orders of the High Court made in its appellate jurisdiction as follows:

> 29A.—(1) The civil jurisdiction of the Court of Appeal shall consist of appeals from any judgment 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 appeals may be brought.
>
> [emphasis added]

22 Section 34(2)(a) of the SCJA provides that leave is required for matters where the subject matter of the dispute amounts to less than $250,000 as follows:

> (2) 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 the amount in dispute, or the value of the subject-matter, at the hearing before the High Court (excluding interest and costs) *does not exceed $250,000* or such other amount as may be specified by an order made under subsection (3);
>
> [emphasis added]

23 In this case, the Plaintiff's pleaded case is for the sum of $137,281.11 made up of the following items:

(a) during renovation period in October 2007:	
- loss incurred from payment of salaries	$2,500
- loss of income	$5,000
(b) loss of income due to monthly tenure commencing 15 January 2008 to 15 April 2009	$15,000
(c) loss of income from 16 April 2008 to 14 January 2009 and therefore for further loss to date	$45,000
(d) misappropriation of Plaintiffs' belongings and stocks (as particularised by way of Invoices and list of Inventory in the Plaintiffs' Bundle of Documents Vol. II)	$26,660
	$43,12111
Total	$137,281.11

24 Hence, even assuming these were all admissible heads of claim for the purposes of this argument, the value of the claim was well below the threshold prescribed under s 34(2) of the SCJA. To circumvent this, the Plaintiff claimed that the total value of his entire claim in fact would exceed

$250,000 by the time of the hearing as he was "claiming continuing losses" such that "by the time of the hearing of the appeal, the subject matter of my claims, by then accrued, were beyond the jurisdiction of the Subordinate Courts" [note: 4] . This, however, is not permitted. In *Virtual Map (Singapore) Pte Ltd v Singapore Land Authority and another application* [2009] 2 SLR(R) 558, Andrew Phang JA made the following observations (at [24]):

> In any event, we are of the view that it is *not open to VM to now argue that the monetary value of the subject matter of the trial in the present case exceeded $250,000 since it had proceeded to trial on the basis of SLA's claim being within and limited to the jurisdiction of the District Court*. By accepting that the District Court had jurisdiction of the matter, VM is now *estopped* from asserting that the monetary value of the said subject matter exceeded $250,000. At the time of the trial, as far as SLA was concerned, VM's maps had no value because they were counterfeit, whereas, as far as VM was concerned, the maps had substantial value because they were not counterfeit and therefore could be used for commercial purposes. Be that as it may, if VM considered its maps to be worth an amount in excess of the jurisdictional limit of the District Court, it should have applied to have the entire action transferred to the High Court. That was not done. *VM cannot be allowed to blow hot and cold in the same action by now asserting that its maps have a monetary value in excess of $250,000*.
>
> [emphasis added]

25 On the same basis, it was not open for the Plaintiff, having started the action in the District Court, to say for the purposes of securing a right to appeal without leave (which would be the case if one's claim in fact exceeds $250,000) that his claim should be regarded as one for a higher sum. Indeed, had that been the case, the District Court would not have had the jurisdiction to determine the matter by virtue of s 11(4) of the Subordinate Courts Act (Cap 321, 2007 Rev Ed) unless the Plaintiff were to abandon any right to claim such excess amount (under s 22) or the parties were to confer such jurisdiction by agreement (under s 23). None of these circumstances existed in this case.

26 Hence, it was inconceivable that an appeal could ever have been brought to this court against the decision of the JC except with leave. Moreover, by virtue of the amendments to s 34(2) of the SCJA effected in 2010 ("the 2010 amendments") read with s 34(2B) of the same statute, it is plain that such leave can *only* be sought from the High Court and not from this court. Hence, any attempt by the Plaintiff to shift the nature of the relief he was seeking (see [17] above) was also misconceived and doomed to failure.

Jurisdictional limits of this court

27 We turn to the second issue and observe at the outset that this court is a creature of statute, and is thus 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]). Our law on appeals against interlocutory orders as well as against certain final orders is somewhat idiosyncratic particularly in the aftermath of the 2010 amendments, one of the principal purposes of which was to limit and regulate the scope for such appeals. The philosophy underlying those amendments was to categorise matters according to whether they were appealable with leave or not appealable at all, with other matters generally being appealable as of right. Where leave is required, it is, as noted above, to be sought from the High Court, though we also noted in *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 ("*Dorsey*") at [97] there might be a case for legislative reform in this regard. The overall scheme of this regime that we have termed idiosyncratic, was canvassed in some detail in *Dorsey* as well as in *OpenNet Pte Ltd v Info-communications Development Authority of Singapore* [2013] 2 SLR 880 ("*OpenNet*") and it is not necessary for us to rehearse this here. However it is in

that light that we must consider the Plaintiff's prayer for an extension of time to be granted for it to make its leave application before the JC.

28 The Plaintiff's appeal against the second DJ's decision was dismissed by the JC on 23 October 2012 and its request to make further arguments was declined. At this point, the Plaintiff could not file a valid Notice of Appeal against the JC's decision in DCA 27/2011 without leave of the High Court and *only* of the High Court. In short, it is unarguable to suggest that he could proceed with the appeal on any basis without such leave (as explained above at [21]-[26]). While the Plaintiff was out of time to apply for leave, this could have been cured by a successful application for an extension of time. Had the extension of time been granted by the JC, and if he had then heard the leave application and refused leave, that would have been the end of the matter because s 34(2B) of the SCJA would have prevented the Plaintiff from renewing an application for leave before this court. As a matter of fact and as already noted, the Plaintiff *did* seek an extension of time from the High Court by way of SUM 5999/2012 to bring his application for leave. The extension was refused by the JC.

29 It would not have been open to the Plaintiff at that stage to appeal the JC's refusal without leave of the High Court although it did attempt to do so. As it turned out, the Plaintiff was prevented from proceeding with the appeal because of its failure to provide security for costs (see [14] above). This warrants some elaboration though we should mention here that this is not the issue we are in fact required to deal with. Although in substance the Plaintiff was seeking to have us reverse the JC's decision not to extend time for the leave application, he was doing so in purported reliance on the jurisdiction that is conferred under O 3 r 4 of the ROC, which we will turn to shortly.

30 A decision not to grant an extension of time to make a leave application is not explicitly listed as a non-appealable order under the Fourth Schedule of the SCJA. However the present matter is to be seen in the context of s 34(2)(a) of the SCJA which expressly provides that no appeal shall be brought to this court without the leave of the High Court where the amount in dispute or the value of the subject matter does not exceed $250,000. Since that is unquestionably the case here (see [23] above), there was never any jurisdiction for us to entertain any appeal relating to this matter by virtue of s 34(2)(a). It is most unfortunate that the Plaintiff did not take the cue when this difficulty was specifically alluded to by the Registry in its letter dated 12 November 2012 (see [10] above).

31 Indeed, given our statutory framework, it would be wholly incongruous if the Plaintiff *could* have appealed against the JC's refusal to grant the extension of time in this case. This would have meant that while a party would need leave to invoke our jurisdiction in relation to the substantive merits, the same would not be necessary if it was seeking our intervention in relation to a preliminary and procedural issue such as an application for an extension of time. This is untenable. Moreover, by this stage, the party in question, as was the case with the Plaintiff in this matter, would already have had two bites of the cherry - one at the District Court at trial and the other at the High Court on appeal - his substantive case having been heard at both levels. Bearing in mind that the overall rationale behind the calibrated approach to interlocutory appeals as introduced by the 2010 amendments was "really to ensure that in general, a decision of a High Court judge in an interlocutory application is not unnecessarily taken all the way to the Court of Appeal, leading to a waste of judicial time" (*OpenNet* at [18]), it would be anomalous if appeals against what is substantively an application to extend time to seek *leave to appeal to this court* (which, as explained, is now entirely within the High Court's province) should be allowed to proceed before us without leave having first been obtained.

32 Ultimately, in any appeal against the JC's decision, we would have been constrained by s 34(2)(a) which provides that nothing relating to a matter where the amount in dispute or the value of the subject matter is less than $250,000 can reach us without leave of the High Court and further by s 34(2B) of the SCJA which vests the entire and exclusive jurisdiction over giving leave to appeal to

this court in the High Court.

33 In this connection, we mention in passing that it might be thought possible to construe s 34(2)(a) literally to require leave even for an appeal from the High Court if the value of the subject matter or the sum in dispute was less than $250,000 but the matter had originated in the High Court for some reason and not in the District Court. Having regard to the legislative debates at the time of the 2010 amendments to the SCJA as well as s 34(3) of the SCJA, we do not think this was the legislative intent of s 34(2)(a). In our judgment, the architecture of s 34 in the aftermath of the 2010 amendments was such as to restrict or exclude appeals concerning any matter emanating from the Subordinate Courts in the manner prescribed in s 34(2)(a); this much is made clear when recourse is had to the speech of Associate Professor Ho Peng Kee, the Senior Minister of State for Law, during the Second Reading of the Supreme Court of Judicature (Amendment) Bill 2010 (*Singapore Parliamentary Debates, Official Report* (18 October 2010) vol 87 cols 1367-1395) which brought into being the 2010 amendments, as follows (at col 1370):

> … all applications to appeal to the Court of Appeal on interlocutory matters will need leave of a High Court Judge whose decision is final. This will also apply to the substantive action in a *civil suit that is commenced in the Subordinate Courts*. These cases *generally enjoy one tier of appeal to the High Court as of right*. A claimant who wishes to bring the case further to the Court of Appeal will need the permission of the High Court.
>
> [emphasis added]

34 In relation to matters originating in the High Court, the 2010 amendments sought to regulate the availability of appeals in such matters in ss 34(1)(a), (d) and (e), ss 34(2)(b), (c), (d) and (e) and s 34(2A) of the SCJA. Those provisions are to be understood in the light of *Dorsey* and *OpenNet*.

35 As we noted above, the Plaintiff's attempt to appeal against the decision of the JC in refusing to grant an extension of time for filing its leave application failed for want of security for costs. This led the Plaintiff to file the present originating summons. In effect, this was an attempt on its part to invoke our original jurisdiction in the hope that it might in that way avoid the difficulties of s 34(2) of the SCJA. In so doing, it was effectively asking us to decide afresh on the extension of time issue which the JC had previously declined to grant, without in fact *appealing* against the JC's decision. The only jurisdictional peg advanced for this renewed application is O 3 r 4 of the ROC, which was mentioned by the Plaintiff in its request to us to hear further arguments. That states as follows:

> **Extension, etc., of time (O. 3, r. 4)**
>
> **4**. —(1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules or by any judgment, order or direction, to do any act in any proceedings.
>
> (2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.
>
> (3) The period within which a person is required by these Rules, or by any order or direction, to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose, unless the Court specifies otherwise.
>
> (4) In this Rule, references to the Court shall be construed as including references to the Court

of Appeal. …

36 We have two observations. Firstly, if the Plaintiff could not possibly have appealed to this court without the leave of the High Court against a refusal of that court to grant an extension of time, as noted above at [30], then it would be odd if the Plaintiff could bypass that filter simply by purporting to bring its application for the identical relief under O 3 r 4 instead. Secondly, O 3 r 4 says no more than that a court may extend or abridge the time to do any act under the Rules. Undoubtedly, the JC had the power to extend the time for the Plaintiff to make a leave application. He decided not to do so, as he was perfectly entitled to do. But this does not mean that this court could then review or reconsider the matter afresh. Nor does O 3 r 4(4) change this. That rule states that references to the High Court shall be construed as including references to this court. But there is nothing there that indicates that the power in question extends to this court hearing applications for extensions of time concerning *applications before the High Court*, as opposed to this court being asked to extend the time to do something concerning *a matter before itself*. In keeping with this, O 57 r 17 provides as follows:

> **Extension of time (O. 57, r. 17)**
>
> **17.** Without prejudice to the power of the Court of Appeal under Order 3, Rule 4, to extend the time prescribed by any provision of this Order, the period for filing and serving the notice of appeal under *Rule 4* or for making application ex parte under *Rule 16(3)* may be extended by the Court below on application made before the expiration of that period.
>
> [emphasis added]

37 In Jeffrey Pinsler, SC, *Singapore Court Practice 2009* (LexisNexis, 2009) at [57/17/1], this court's power as referred to in O 57 r 17 is described as allowing it to "extend the time prescribed by any rule concerning *an appeal to it*" [emphasis added]. O 57 r 17 in fact empowers the High Court to grant extensions of time in certain circumstances in relation to matters before this court. The situation we were presented with was instead that we were being asked to stretch the reach of O 3 r 4 to allow us to manage the timelines in relation to a matter (*ie*, the application for leave to appeal) that was entirely and exclusively within the jurisdiction of the High Court. This was plainly untenable.

Conclusion

38 We have said above that there was a chameleon-like quality to the Plaintiff's efforts. It will be evident that to the extent it was invoking our appellate jurisdiction, the Plaintiff faced an insurmountable obstacle in the fact that no leave had been obtained from the JC. To the extent the Plaintiff sought to invoke our original jurisdiction, there was simply no basis for doing so.

39 We would also mention that having had ample opportunity to ventilate his claim twice before two separate district judges and once before the JC, we did not think this was a case where the Plaintiff was suffering from any want of access to justice. Finally, as we pointed out to Mr Sambasivam in the course of his oral arguments, had the JC thought that there was a case for leave to have been given in this case, we cannot imagine that he would have denied the Plaintiff's application for an extension of time to make the application for leave. Even if we were empowered to extend the time for that matter to be re-litigated before the JC, we cannot see that it would have been anything other than one more futile step.

40 For these reasons, we dismissed the Plaintiff's claim.

41 We made no order as to costs because the Defendants could have but did not strike out the application on the very simple basis set out above. In any event, with respect, we did not receive much assistance from the Defendants on the matters set out here. The Defendants' submissions focused more on the question of whether leave should be given and having regard to s 34(2B) this could never have been a live issue before us.

[note: 1] Mr Sambasivan's affidavit at [103].

[note: 2] Mr Sambasivam's affidavit at para [4].

[note: 3] Plaintiff's submissions at para [1.1].

[note: 4] Mr Sambasivan's affidavit para [95]-[96]