IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 53

Court of Appeal / Originating Application No 22 of 2025

Between

Avra International DMCC

… *Applicant*

And

Dava Pte Ltd

… *Respondent*

In the matter of Originating Application No 451 of 2025 (Summons No 1742 of 2025)

Between

Dava Pte Ltd

… *Applicant*

And

DZA Shipping LLC

… *Respondent*

And

Avra International DMCC

… *Non-party*

GROUNDS OF DECISION

[Civil Procedure — Appeals — Permission to Appeal]
[Civil Procedure — Extension of time — Notice of Appeal]

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Avra International DMCC
v
Dava Pte Ltd

[2025] SGCA 53

Court of Appeal — Originating Application No 22 of 2025
Sundaresh Menon CJ, Steven Chong JCA and Belinda Ang JCA
16 September 2025, 15 October 2025

26 November 2025

Steven Chong JCA (delivering the grounds of decision of the court):

1 The right of appeal is a vital aspect of the litigation process. Properly exercised, it affords a litigant an important opportunity to review the merits of a decision and vindicate his legal rights (see *Adeeb Ahmed Khan s/o Iqbal Ahmed Khan v Public Prosecutor* [2022] 2 SLR 1197 at [1]). .

2 In most cases, whether a litigant has a right of appeal is straightforward. For instance, a right of appeal generally lies from a judgment of the General Division of the High Court in a trial of an originating claim. However, a different approach applies to a litigant's right of appeal in respect of interlocutory applications. As stated by this court in *Telecom Credit Inc v Midas United Group Ltd* [2019] 1 SLR 131 ("*Telecom Credit*") at [6]–[7], the legislative philosophy underlying the right of appeal against orders made at the hearing of interlocutory applications is that a party's ability to appeal ought to depend on the importance of that interlocutory matter to the substantive

outcome of the case (see, generally, *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 at [22]–[49] for a brief exposition on the relevant legislative developments leading up to the Supreme Court of Judicature (Amendment) Act 2010).

3 This court has since applied that general philosophy in determining whether a party requires permission to appeal against decisions rendered in various types of applications in an action (see, *eg, Telecom Credit*; *Zhu Su v Three Arrows Capital Ltd and others and another matter* [2024] 1 SLR 579 ("*Three Arrows*")). We pause to observe that, although the relevant term under the current Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("2020 SCJA") and Rules of Court 2021 is that of "permission" to appeal, these grounds make reference to the prior term of "leave" to appeal when discussing cases decided under the previous Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("2007 SCJA") and Rules of Court (2014 Rev Ed).

4 Despite the principles established in our case law, we continue to encounter cases before the court where parties misapprehend the extent of their right of appeal or for some other reason seek an order of the court to insulate themselves from being challenged. As a result, they may either fail to seek and obtain permission where it is necessary or seek permission to appeal unnecessarily.

5 *The "Chem Orchid" and other appeals and another matter* [2016] 2 SLR 50 ("*The Chem Orchid*") was one such case involving a party's misapprehension. There, counsel for the applicant erroneously took the position that it did not require leave of court to appeal against the High Court's decision not to set aside *in rem* writs against a vessel. In its decision, this court observed that a party could, in appropriate circumstances, seek a declaration that leave to

appeal was not necessary (at [57]). This was implicitly premised on the notion that such a declaration should only be sought in instances where there was *genuine uncertainty*, a point that was subsequently clarified in *The "Xin Chang Shu"* [2016] 3 SLR 1195 ("*Xin Chang Shu*") and reiterated by this court in *Commodities Intelligence Centre Pte Ltd v Hoi Suen Logistics (HK) Ltd* [2022] 1 SLR 845 ("*Commodities Intelligence*").

6 Notwithstanding our having repeated the point in these cases, some residual uncertainty appears to persist as to (a) when it would be appropriate for a party to apply for a declaration that permission to appeal is not required; and (b) the proper procedure to follow in filing such an application. There have even been cases where a party's counsel took the considered view that permission to appeal is not necessary, but nonetheless sought a declaration to that effect from the court supposedly for the avoidance of doubt (see, *eg, Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 ("*Axis Law Corp*") at [86]; *Clearlab SG Pte Ltd v Ma Zhi and another* [2016] 3 SLR 1264 at [6]; *Commodities Intelligence* at [18]; *Rodeo Power Pte Ltd and others v Tong Seak Kan and another* [2022] SGHC(A) 16 at [5]). The present case thus presents us with an opportunity to clarify the applicable principles.

Background Facts

7 CA/OA 22/2025 ("OA 22") arose in the context of a planned shipment of Indonesian steam coal (the "Cargo") from Indonesia to Bangladesh on the vessel MV *Milos* (the "Vessel"). For the purpose of the shipment, Dava Pte Ltd ("Dava") had voyage-chartered the Vessel to DZA Shipping LLC ("DZA"). The relevant charterparty incorporated a dispute resolution clause providing for arbitration in London. Avra was stated in the charterparty to be the supplier/shipper, though it was not a party to the charterparty. After the Vessel

was loaded with the Cargo, complications arose and the Vessel eventually sailed from Indonesia to Singapore instead.

8 While the Vessel was in Singapore, Dava made an *ex parte* application in HC/OA 451/2025 ("OA 451") against DZA seeking an order for the sale of the Cargo and for the net proceeds of sale to be paid into court pending the commencement of arbitration proceedings against DZA. OA 451 was filed pursuant to s 12A read with s 12(1)(*d*) of the International Arbitration Act 1994 (2020 Rev Ed) and Art 9 of the UNCITRAL Model Law on International Commercial Arbitration. A judge of the General Division of the High Court (the "Judge") granted an order-in-terms with minor amendments in HC/ORC 2458/2025 ("ORC 2458").

9 Shortly after ORC 2458 was granted, Avra commenced an action against Dava in HC/OC 366/2025 ("OC 366"), in which it sought damages for conversion of the Cargo. According to its solicitors, Avra subsequently became aware of OA 451 and the order made in ORC 2458. It consequently applied for various orders including to vary and/or set aside ORC 2458 *vide* HC/SUM 1742/2025 ("SUM 1742"). It will be immediately apparent that OA 451 and SUM 1742 are related and pertain to the same ultimate relief, which is whether an order should be made for the sale of the Cargo and for the payment of the proceeds into court pending the intended arbitration proceedings. The Judge dismissed the application in SUM 1742. Avra wished to appeal this ruling.

10 In OA 22, Avra applied for the following:

(a) a declaration that Avra did not require permission to appeal against the Judge's decision to dismiss Avra's application in SUM 1742 to vary and/or set aside ORC 2458 (the "Declaration Prayer");

(b) if the Declaration Prayer was granted, that Avra be granted an extension of time of 14 days from the date of this court's order to file and serve its notice of appeal (the "EOT Prayer"); and

(c) if permission to appeal was required, that permission be granted (the "Permission Prayer").

11 It may be seen that Avra's application in OA 22 contained both the Declaration Prayer and the Permission Prayer in the alternative. As we observed in *Commodities Intelligence* at [16], this is what we termed a "Composite Application". Notably, Avra did not file a notice of appeal concurrently with its Composite Application; instead, it sought an extension of time to file and serve its notice of appeal if we granted the Declaration Prayer (*ie,* the EOT Prayer). We elaborate on the significance of Avra's decision below.

The Declaration Prayer

The standard of genuine uncertainty

12 We turn first to the Declaration Prayer. As stated above, a declaration will only be granted where there is *genuine uncertainty* as to whether permission to appeal is required (*Xin Chang Shu* at [9]; *Commodities Intelligence* at [16]). Whether there is genuine uncertainty is a matter of objective interpretation, and this is not met just because a party subjectively believes that there may be room for some argument to be raised as to the requirement of permission.

13 In most cases, there will be no genuine uncertainty surrounding the requirement for permission. The application of the relevant principles is straightforward, and legal advisors are required to advise their clients accordingly. In such cases, where an incorrect course of action is taken due to a misunderstanding of the law, the litigant will have to bear the consequences and seek its remedies accordingly.

14 Hence, it would be inappropriate to ask the court for a declaration where it is plain and obvious that permission to appeal is not required. The same is true where a party has, on a considered position of the law, already taken the position that permission to appeal is not required and where there is no immediate reason to think this may be wrong. In our view, it would be an abuse of the court's process to seek a negative declaration that permission is not required in circumstances when the applicant had already been advised by his solicitors that permission is not required. This is tantamount to seeking insurance from the court, which is not our role. We do not condone this practice.

15 Particularly egregious examples of parties engaging in such conduct may be found in *Axis Law Corp* and *Commodities Intelligence*, where it was patently obvious that leave was not required *and* where counsel had taken a similar view based on their assessment of the law:

> (a) In *Commodities Intelligence*, it was eminently clear that the applicant did not require leave to appeal against the High Court's dismissal of an application to set aside a court order granting the respondent leave to enforce an arbitral award against the applicant (at [19]–[22]). However, the applicant persisted in applying for a declaration despite taking the primary position that leave was not required. This court refused to grant the declaration sought.

(b) In *Axis Law Corp*, the High Court had dismissed the plaintiff's application for leave to commence judicial review proceedings against the Intellectual Property Office of Singapore. The plaintiff then sought a declaration that leave to appeal the High Court's order was not necessary. This was despite our decision in *OpenNet Pte Ltd v Info-communications Development Authority of Singapore* [2013] 2 SLR 880 on a similar application, as well as the considered position taken by the plaintiff's legally trained director that leave to appeal was indeed not necessary (at [86]–[87]). The High Court granted the declaration even though it considered the declaration to be quite unnecessary, there being no real uncertainty as to the requirement of leave (at [90]).

16 We note that in *Munshi Rasal v Enlighten Furniture Decoration Co Pte Ltd* [2021] 1 SLR 1277 ("*Munshi Rasal*") at [9], this court observed that it would have been prudent for an errant solicitor, who had misapprehended the plain and obvious requirement of obtaining leave to appeal with respect to a claim with a value below $250,000, to clarify any residual doubt by obtaining a declaration from the court as to whether leave was required. But this must be seen in its proper context. Once that is done, it will be evident that *Munshi Rasal* does not stand for the proposition that a party's misapprehension as to such a plain, obvious and rudimentary requirement can amount to genuine uncertainty. The context in which the point was made was whether the imposition of a personal costs order against the solicitor was warranted (at [17]–[21]). In that context, this court's focus was directed at whether the errant solicitor's conduct was entirely improper and unreasonable and not with the requirements for when an application for a declaration should be made. Indeed, had the solicitor sought a declaration that leave to appeal was unnecessary, we would have dismissed it

on the ground that no genuine uncertainty existed, and even more so given that he had been alerted to the leave issue on a number of occasions.

17 Conversely, there have been instances where there was genuine uncertainty concerning the permission requirement. Examples include this court's decision in *Lin Jianwei v Tung Yu-Lien Margaret and another* [2021] 2 SLR 683 ("*Lin Jianwei*") as well as the High Court's decision in *Taylor, Joshua James and another v Sinfeng Marine Services Pte Ltd and other matters* [2019] SGHC 248 ("*Sinfeng Marine (HC)*"). We examine these cases in turn.

18 In *Lin Jianwei,* the appellant contended that a summons filed in an originating summons was not caught by the requirement of leave under para 1(*h*) of the Fifth Schedule to the 2007 SCJA as amended by the Supreme Court of Judicature (Amendment No 2) Act 2018, which is the statutory equivalent of para 3(*l*) of the Fifth Schedule to the 2020 SCJA, because the summons finally determined the parties' rights in *another* originating summons. As the appellant was unable to cite any authority for the proposition that the requirement of leave under para 1(*h*) ought to be viewed with regard to the "entire tapestry" of the "multiple originating processes", this court opined that his argument hinged on the acceptance of a novel proposition of law that was not settled by the existing case law, and there would therefore have been uncertainty as to whether leave to appeal was required (at [92]).

19 In *Sinfeng Marine (HC)*, three defendant companies had been the main trading partners of a company prior to the latter company being placed in a creditors' voluntary winding up (see *Sinfeng Marine Services Pte Ltd v Taylor, Joshua James and another and other appeals* [2020] 2 SLR 1332 at [4]). After the High Court granted disclosure orders against the three defendants pursuant to s 285 of the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act"),

the defendants sought a declaration that leave to appeal the disclosure orders was not necessary (*Sinfeng Marine (HC)* at [1]). In holding that leave was not required, Hoong JC (as he then was) took reference from the prevailing authority at the time, *PricewaterhouseCoopers LLP and others v Celestial Nutrifoods Ltd (in compulsory liquidation)* [2015] 3 SLR 665 ("*Celestial Nutrifoods*"), in which this court held that a disclosure order made under s 285 was an interlocutory application requiring leave to appeal. However, Hoong JC noted that *Celestial Nutrifoods* concerned disclosure orders in the context of a court-ordered winding up, and did not necessarily cover disclosure orders made in the context of a voluntary winding up. He accordingly granted the defendants the requested declaration that leave to appeal was not required (*Sinfeng Marine (HC)* at [18]–[23]).

20 The foregoing demonstrates that genuine uncertainty may exist where the argument that permission is not needed hinges on the court accepting a novel proposition of law surrounding the requirement of permission (*Lin Jianwei* at [92]) or requires the court to make a significant clarification surrounding the prevailing legal position (as was done in *Sinfeng Marine (HC)*). Genuine uncertainty may also exist where there is ambiguity in the law concerning the requirement of permission stemming from inconsistent decisions. But in the ordinary and typical course such uncertainty will not exist. For completeness, we should clarify that in referring to *Sinfeng Marine (HC)* we are not commenting on the legal position that was taken there by the High Court. We make this clear because *Celestial Nutrifoods* was recently departed from in *Three Arrows*, where this court held that disclosure orders granted under s 244 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (which is the statutory successor to s 285 of the Companies Act) ought to be regarded as final orders (at [24]).

There was no genuine uncertainty justifying the grant of a declaration in the present case

21 Returning to the case at hand, we held that there was no genuine uncertainty as to whether Avra required permission to appeal. The parties were in agreement that Avra required permission to appeal if the Judge's decision to dismiss SUM 1742 was an order made at the hearing of an interlocutory application, pursuant to s 29A(1)(*c*) read with para 3(*l*) of the Fifth Schedule to the 2020 SCJA. While Avra's counsel took the primary position that permission to appeal was not necessary as SUM 1742 was not an interlocutory application and the order made therefrom was a final order, Avra alluded to a possible genuine uncertainty on the basis of prayer 5 of OA 451, which was granted in ORC 2458. We set out prayer 5 in full:

> The sale of the Cargo and any other steps taken in connection therewith and in and about the preservation, maintenance, sale and/or disposal of the Cargo shall be effected without prejudice to all existing claims, liens (including but not limited to the Claimant's lien over the Cargo), charges, encumbrances, and rights over or to the Cargo (collectively referred to as "All Claims"), all of which rights are expressly reserved, and the net proceeds shall stand in place of the Cargo, with All Claims being transferred to the net proceeds.

22 Avra's concern was that SUM 1742 might be regarded as an interlocutory application because prayer 5 made it clear that the claims against the Cargo had not yet been determined. This point was subsequently picked up by Dava, who argued that prayer 5 expressly provided for the parties' substantive rights to be dealt with later, with the result that SUM 1742 did not finally determine the parties' rights in respect of the Cargo.

23 In this regard, the applicable legal principles were not in dispute. As we stated in *Commodities Intelligence*, para 3(*l*) of the Fifth Schedule specifies that permission to appeal will be required in respect of an *interlocutory order* made

at the hearing of an *interlocutory application* (at [21]). Guidance on what constitutes an "interlocutory application" and an "interlocutory order" has been laid down in previous decisions:

> (a) While the nature of an interlocutory application can be open to some uncertainty since it may or may not finally determine the parties' rights "in the cause of the pending proceedings in which the application is being brought", a clear indicator of a non-interlocutory application is one that it is entirely self-contained and complete in itself, in the sense that there are no pending proceedings in which the application may be said to have been made. These include, for instance, applications for leave to apply for judicial review or applications for pre-action interrogatories (see *Telecom Credit* at [26] and [28]). The relief sought is the very end of the proceedings in question, even if that may in certain circumstances give rise to new and separate proceedings.
>
> (b) Where the application is "interlocutory", the court may apply the test set out in *Bozson v Altrincham Urban District Council* [1903] 1 KB 547 (the "*Bozson* test") to determine whether the order made in the application is interlocutory or final in nature. The *Bozson* test provides that an order is final if it finally disposes of the rights of the parties and is interlocutory if it does not (see *The "Nasco Gem"* [2014] 2 SLR 63 ("*The Nasco Gem*") at [13] and [14(b)]; *Telecom Credit* at [18]; *Three Arrows* at [29]). In applying the *Bozson* test, it is necessary to view the matter in the context of the cause of the pending proceedings (if any) in which the application is being brought (*The Nasco Gem* at [16]).

24 Applying the foregoing principles, we agreed with Avra that SUM 1742 was not an interlocutory application in the first place. Viewed in context of what

was before the court in OA 451, it was clear that SUM 1742 was a self-contained application. OA 451 was only concerned with the sale of the Cargo in aid of arbitration proceedings in London. As Avra submitted, it followed that SUM 1742, the sole and entire purpose of which was to vary and/or set aside ORC 2458, was a self-contained application. Once SUM 1742 was determined, the entire subject matter of OA 451 and SUM 1742 was spent.

25 The point was in fact directly covered by our decision in *Maldives Airports Co Ltd and another v GMR Malé International Airport Pte Ltd* [2013] 2 SLR 449 ("*Maldives Airports*"), which clearly indicated that where the substantive merits of a dispute were being determined in another forum (*eg,* in arbitration), it would be incorrect to characterise an originating application concerning an interim order in aid of the substantive determination as being interlocutory (at [16]). In *Maldives Airports,* this court considered an appeal against the High Court's grant of an interim injunction enjoining the appellants and their employees from *inter alia* interfering with the respondent's performance of certain contractual obligations, that injunction having been granted in aid of arbitration proceedings between the appellants and the respondent. This court held that leave to appeal was not necessary because the High Court's decision was not one made on an interlocutory application (at [15] and [16]):

> 15 The Respondent's jurisdictional objection is without merit. First, it is incorrect to characterise the Judge's decision as one made on an interlocutory application. The application for the Injunction was made by OS 1128; the sole purpose of OS 1128 was to seek the Injunction. It would be odd if OS 1128 were 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 a 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 that proceeding would have been spent.
>
> 16 … Whether a particular decision is one that has been made upon an interlocutory application depends in the first place on the nature of the application which is the subject matter of the decision. ***Where, as in the present case, the nature of the application takes the form of an originating summons and the substantive merits are being determined in another forum, it would be wrong to characterise the application as interlocutory in nature***: see further *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 525 at [16].
>
> [emphasis added in bold italics]

26 The reasoning in *Maldives Airports* was equally applicable to the present case. The application for the sale of the Cargo and the consequent application to vary and/or set aside the order granting the sale was not sought pending the resolution of any substantive dispute before the Singapore courts. The application for the sale of the Cargo was instead made in aid of arbitration proceedings, in which the substantive dispute between Dava and DZA would be separately determined.

27 Furthermore, Avra's claim against Dava in OC 366 did not affect our analysis that OA 451 and SUM 1742 were self-contained applications. At the time of our decision that Avra did not require permission to appeal, Avra's claim in OC 366 was a claim for damages against Dava for conversion. It was a separate claim from the applications in OA 451 and SUM 1742, which concerned an order for a sale of the Cargo in aid of the arbitration between Dava and DZA.

28 While our determination that SUM 1742 was *not* an interlocutory application sufficed to answer the question of whether permission was required, we also agreed with Avra that the Judge's dismissal of SUM 1742 was a final order. Applying the *Bozson* test, the order made in SUM 1742 did finally

determine the parties' rights insofar as OA 451 was concerned. The relevant right being ventilated in OA 451 was Dava's right to obtain a sale of the Cargo in aid of the arbitration proceedings. By extension, SUM 1742 concerned the final determination of Avra's and Dava's rights in respect of the Judge's order for the sale of the Cargo and the terms of the payment of the sale proceeds into court. Prayer 5 was not relevant to the analysis because the parties' rights in the *substantive dispute* were not the correct point of reference. Dava's and DZA's rights in respect of their substantive claims against each other were to be determined separately via arbitration in London, and not in OA 451 or SUM 1742.

29 Accordingly, we held that Avra did not need permission to appeal. Further, applying the principles stated at [12]–[20] above, we did not think that this was a case of genuine uncertainty over whether permission to appeal was required. Instead, this was a case involving a straightforward application of the legal principles. In particular, our decision in *Maldives Airports* was analogous and clearly indicated that SUM 1742 ought not to be viewed as an interlocutory application. We therefore declined to grant the Declaration Prayer.

The EOT Prayer

30 We next considered Avra's EOT Prayer. To recapitulate, Avra took the considered decision to wait for the resolution of OA 22 before filing its notice of appeal (see [10]–[11] above). The consequence of that decision, which was clearly foreseeable at the time Avra filed OA 22, was that Avra would ordinarily be out of time to file and serve its notice of appeal even if we decided that it did not require permission to appeal. Indeed, that was what happened in the present case. Therefore, the key issue in respect of the EOT Prayer was whether Avra could justify the delay.

31 In this respect, Dava submitted that an extension of time should not be granted. It relied on our observations in *Commodities Intelligence*, where we clarified that a party which fairly entertained doubts as to the requirement of leave should file a notice of appeal and a Composite Application *concurrently* (at [36]). Conversely, Avra submitted that its delay was justifiable because it had relied on the *dicta* in *The Chem Orchid* at [57], which it submitted stood for the proposition that a litigant seeking to make a Composite Application ought only to lodge its appeal *after* the Composite Application had been dealt with.

32 In our view, the *dicta* at [57] of *The Chem Orchid* may have given rise to an undesirable trend of appellants seeking declarations from the court that permission to appeal is not required even when their counsel has already taken a considered view that permission is not required. As stated above, that is tantamount to seeking insurance from the court, which is not the court's role. Hence, it was in this context that *Commodities Intelligence*, without reference to the *dicta* in *The Chem Orchid*, clarified that an appellant should only seek such a declaration where there is genuine uncertainty as to whether permission to appeal is required (at [16]).

33 Dava was right to point out that in *Commodities Intelligence,* we stated that an appellant seeking such a declaration in view of any genuine uncertainty should also file its notice of appeal *concurrently* with the Composite Application (at [36]). We would add that this approach has the added advantage that the appellant need not seek an extension of time, regardless of the outcome of the application for a declaration. We also note that *Commodities Intelligences* squarely and directly addressed the question of when the notice of appeal should be filed in such Composite Applications, which may be contrasted with the context in which the *dicta* in *The Chem Orchid* was raised.

34 In *The Chem Orchid*, four creditors arrested a vessel that had been chartered by the debtor, and they subsequently filed *in rem* writs against the vessel. The owner of the vessel, who had chartered it to the debtor by demise, failed in its attempt to set aside the *in rem* writs before the High Court, and the owner appealed against the High Court's decision. Two of the creditors objected on the basis that the owner had failed to obtain leave to appeal, and in response the owner filed an originating summons seeking (a) a declaration that leave was not necessary; and (b) an alternative prayer *inter alia* for an extension of time to apply for such leave and for the retrospective grant of leave (see *The Chem Orchid* at [1]–[3]).

35 This court held that to begin with, the order of the High Court was not appealable pursuant to s 34(1)(*a*) read with the para (*e*) of the Fourth Schedule to the 2007 SCJA (as amended by the Supreme Court of Judicature (Amendment) Act 2014) (at [53]). That, in itself, was sufficient to dispose of the appeal and it was unnecessary to deal with the two creditors' arguments concerning the failure to obtain leave. Nevertheless, this court also held that if s 34(2)(*d*) read with para (*e*) of the Fifth Schedule to the 2007 SCJA (as amended by the Supreme Court of Judicature (Amendment) Act 2014) were the applicable provisions, it would still have been necessary for the owner to seek leave to appeal (at [55]). As the owner did not do so, it was out of turn for this court to grant the owner such leave, and there were no "special circumstances" making it "impossible or impracticable" for the owner to seek leave to appeal from the High Court. This was because the owner's solicitors had been adamant that no leave to appeal was required; and it was in this context that this court observed that the proper approach for the owner to follow would have been to (at [57]):

> … seek a declaration from the Judge that it did not need leave of court to appeal; alternatively, in the event that the Judge

> ruled that leave to appeal was needed, [the owner] should have sought leave from the Judge *before lodging its appeals*.
>
> [emphasis added]

36 In our view, it was clear that the issue of when a notice of appeal ought to be filed where a party seeks a declaration that permission to appeal is unnecessary was not before the court in *The Chem Orchid*, and the *dicta* should not be read as prescribing the definitive procedure for such applications. However, we acknowledge that this principle stated in *Commodities Intelligence* and the *dicta* in *The Chem Orchid* at [57] might be misunderstood to appear inconsistent, as the *dicta* in *The Chem Orchid* may be read to suggest that a notice of appeal should only be lodged *after* the application for a declaration that permission to appeal is not required has been resolved.

37 We therefore take the opportunity to clarify the appropriate procedures to follow:

(a) Where a party reasonably harbours *genuine* uncertainty as to the requirement of permission to appeal, it should file its notice of appeal and a Composite Application (*ie,* a prayer for a declaration that permission is not necessary, with an alternative prayer for permission to appeal to be granted) *concurrently.* If the court holds that permission is required and grants such permission, the appeal would be deemed to have been filed within time on the strength of the notice of appeal. Conversely, if permission is refused, the court may issue a consequential order to strike out the notice of appeal which was filed without permission.

(b) Our observation above follows from our remark in *Commodities Intelligence* at [36], where we stated that an applicant may simply

withdraw the notice of appeal if the court holds that leave to appeal is required. We would supplement that statement to clarify that an applicant may withdraw its notice of appeal should the court hold that permission is required *and denied.*

(c) If there is no genuine uncertainty as to the requirement of permission, the usual timelines would apply. In such a case, it would be plainly inappropriate to file a Composite Application to seek a declaration that permission is not required, as that would amount to an abuse of the court's process by seeking "insurance" from the court.

38 As for the present EOT Prayer, the proper course would have been for Avra to follow the usual timelines (*ie,* to file its notice of appeal within 14 days of the Judge's decision on 29 July 2025) given that there was no genuine uncertainty surrounding the requirement of permission. That being said, we acknowledged that the *dicta* in *The Chem Orchid* may have given rise to some uncertainty as to when an appellant should file a notice of appeal in cases where there is some doubt or dispute as to whether permission to appeal is required. On that basis, we granted Avra an extension of time to file and serve its notice of appeal against the Judge's decision in SUM 1742.

Conclusion

39 For the reasons above, we did not grant the Declaration Prayer, but we did grant Avra an extension of time to file and serve its notice of appeal. Turning to the issue of costs, we emphasised that there was no genuine uncertainty in the present case over whether permission was required, and that solicitors bear the duty of advising their clients on such issues. Accordingly, we ordered the parties to bear their own costs of the Declaration Prayer. The costs of Avra's application for an extension of time to file and serve its notice of appeal were

ordered to be in the cause of the substantive appeal against the dismissal of SUM 1742.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

Lin Weiwen Moses, Jamal Siddique Peer, Soong Jun De and Nilesh Khetan (Shook Lin & Bok LLP LLP) for the applicant;
Nur Rafizah Binte Mohamed Abdul Gaffoor and Kunal Haresh Mirpuri (Joseph Tan Jude Benny LLP) for the respondent.