

**IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC(A) 16

Originating Summons No 6 of 2022

Between

- (1) Rodeo Power Pte Ltd
- (2) Gorpall Singh Darshan Singh
- (3) Straits Grid Pte Ltd
- (4) JS Energy Holdings Limited

... Applicants

And

- (1) Tong Seak Kan
- (2) Kensington Park Holdings
Limited

... Respondents

FOUNDATIONS OF DECISION

[Civil Procedure — Appeals — Leave]

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Rodeo Power Pte Ltd and others

v

Tong Seak Kan and another

[2022] SGHC(A) 16

Appellate Division of the High Court — Originating Summons No 6 of 2022
Woo Bih Li JAD, Quentin Loh JAD and See Kee Oon J
4 April 2022

19 April 2022

Woo Bih Li JAD (delivering the grounds of decision of the court):

1 This is an application for leave to appeal against the decision of a judge of the General Division of the High Court (“the Judge”) given on 4 February 2022 for four interpleader summonses in respect of competing claims to shares in various companies (“the Application”).

2 In brief, the respondents, Tong Seak Kan and Kensington Park Holdings Limited are judgment creditors (“JC”) of the judgment debtor, Jaya Sudhir a/l Jayaram (“JD”), pursuant to a judgment in Suit No 724 of 2014 (“the Suit”) on 30 January 2019. JC took steps which resulted in the Sheriff of Singapore (“the Sheriff”) seizing shares in various companies registered in the name of various persons on the basis that the beneficial owner was JD. In response, various parties filed formal notices of claim to claim the seized shares (“the Claimants”). The Claimants are:

- (a) Rodeo Power Pte Ltd (“Rodeo Power”);
- (b) Gorpall Singh Darshan Singh (“Gorpall”);
- (c) Straits Grid Pte Ltd (“Straits Grid”); and
- (d) JS Energy Holdings Limited (“JS Energy”).

3 On 29 October 2020, the Sheriff then filed interpleader summonses in the General Division of the High Court.

4 On 11 May 2021, an Assistant Registrar (“AR”) gave directions on these summonses for the claims to the seized shares, with JC being the plaintiffs and the Claimants being the defendants.

5 On 4 February 2022, the Judge gave her decision in favour of JC on the basis that JD was the beneficial owner of certain shares. The Claimants wished to appeal against that decision but faced a preliminary point as their stand, for the purpose of the Application, was that the value of all the shares seized is less than \$250,000. Hence, the preliminary point was whether they required leave to appeal. The first prayer of the Application was for a declaration that the Claimants do not require leave to appeal. The second prayer was an alternative prayer seeking such leave, if leave was required.

6 Under s 29A(1)(b) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (“the SCJA”) read with paragraph 2(2)(a) of the Fifth Schedule thereof, no leave to appeal is required if the claims were required under any written law to be decided by the General Division in the exercise of its original jurisdiction.

7 The Claimants conceded that there was no written law requiring their claims to be decided by the General Division in the exercise of its original jurisdiction. Instead, the Claimants submitted that this requirement was implied because the Sheriff had to commence the interpleader summonses in the General Division in the main action, *ie*, the Suit. However, in our view, this did not mean that the summonses had to be decided by the General Division bearing in mind that the value of all the shares seized was less than \$250,000 (which is the jurisdictional limit of the District Court (“the District Court limit”)).

8 In any event, under s 29(2) of the State Courts Act (Cap 321, 2007 Rev Ed) (“the State Courts Act”), the General Division may order any interpleader proceedings, in which the amount in dispute or value of the subject-matter does not exceed the District Court limit, to be transferred to a District Court. The Claimants argued that there was no application by either side for the interpleader proceedings to be transferred to a District Court and in any event, no such transfer took place. In our view, this was irrelevant. The point was that the claims were not necessarily required by law to be decided by the General Division and s 29(2) of the State Courts Act made this clear. Therefore, in our view, the exception in paragraph 2(2)(a) of the Fifth Schedule to the SCJA did not apply and leave to appeal was required.

9 We turn to the substantive merits of the Application, *ie*, whether leave should be granted. The three grounds for granting leave to appeal are well established: there must be (a) a *prima facie* case of error; (b) a question of general principle decided for the first time; or (c) a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage: see *UD Trading Group Holding Pte Ltd v TA Private Capital Security Agent Limited and another* [2022] SGHC(A) 3 at [21].

10 In the present case, the Claimants only relied on the first ground (*prima facie* cases of error) for its Application for leave to appeal. In *Engine Holdings Asia Pte Ltd v JTrust Asia Pte Ltd* [2021] SGHC(A) 14 at [10], this court noted that the general principle is that the *prima facie* error must be one of law and not of fact, though “[i]t may be that in exceptional circumstances leave to appeal may also be granted if there is an error of fact which is *obvious from the record*” [emphasis added]. As we shall go on to explain, we found that this exception was engaged in the present case. In this regard, we agree with the principles set out in cases such as *Essar Steel Ltd v Bayerische Landesbank and others* [2004] 3 SLR(R) 25 at [26] and *Bellingham, Alex v Reed, Michael* [2021] SGHC 125 at [100] that leave to appeal may be granted for errors of fact where such errors are “clear beyond reasonable argument ... [T]he court should not have to delve into the facts in detail”.

11 We were not persuaded by the written submissions of the Claimants to grant the Application as the matters complained of were not errors of law or on the face of the record. However, two matters came to our attention, although these two matters were not raised in the submissions of the Claimants for the Application.

12 First, it appears that Gorpall is the registered owner of 100,000 shares in Al-Rafidian Holdings Pte Ltd (“Al-Rafidian”). These shares were seized by JC.

13 However, it transpired that Gorpall was adjudicated a bankrupt under a Malaysian court order of 17 May 2004 and again on 4 October 2010 prior to the date of the seizure of the shares by the Sheriff or the Judge’s decision. Although this fact was raised below, there was apparently no elaboration whether he had been discharged as a bankrupt up to the time of the Judge’s decision. At the

hearing of the Application before us, his counsel said he was still an undischarged bankrupt. There was no elaboration below on:

- (a) the applicable statutory regime in light of Gorpap's bankruptcy such as whether there was statutory recognition of his bankruptcy status in Singapore and whether anyone, apart from Gorpap and/or JC, should be notified of the execution proceedings; and
- (b) steps (if any) that Gorpap and/or JC needed to take before they could pursue their respective claims to the Al-Rafidian shares, *eg*, whether leave of the court had to be sought first (and if so, from which court) and whether the consent of the Official Assignee of Singapore ("OA") and/or the Director General of Insolvency of Malaysia or the equivalent office in Malaysia had to be first obtained.

14 We note that s 424(2) of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ("IRDA"), which took effect from 30 July 2020, is *in pari materia* with s 152(2) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("BA"). Regardless of whether the applicable law is the IRDA or the BA, it appears that where a person is adjudged a bankrupt by a court in Malaysia, the bankrupt's property in Singapore vests in the Official Assignee appointed by the government of Malaysia and all courts in Singapore must recognise the title of such Official Assignee to such property. Again, there was no elaboration below on the applicability of either of these provisions and their effect.

15 Finally, it was important that, as the parties confirmed before us, the OA was not notified of the execution proceedings and given an opportunity to address the court on the shares held by Gorpap.

16 The second matter concerns a group of shares of which the registered shareholding structure is as follows:

- (a) Johnathan Jaya Sudhir (“Johnathan”) is the registered shareholder of the sole share in JS Energy. He is JD’s son.
- (b) JS Energy is the registered shareholder of all 1,000,000 shares in Straits Grid.
- (c) Kundadak Ramesh Kudva is the registered shareholder of all 52,700,002 shares in Rodeo Power but he has executed a declaration of trust dated 4 March 2013 which states that he holds those shares on trust for Straits Grid.
- (d) Rodeo Power is one of two registered shareholders in Summit Energy Pte Ltd (“Summit Energy”), each holding one share.

17 According to the oral judgment of the Judge, it was not disputed that the shares in Summit Energy, Rodeo Power and Straits Grid are beneficially owned by JS Energy. The question before the Judge was whether Johnathan or JD is the beneficial owner of the one share in JS Energy. JC contended that the beneficial owner is JD. The Judge decided that JD is the beneficial owner.

18 It seems to us that there may have been a confusion between beneficial ownership and control. If JD were the beneficial owner of the share in JS Energy, he may control the other companies down the line. However, that does not necessarily mean that he is the beneficial owner of the shares down the line as each company is in law a separate legal entity. Hence, it appears that JC was wrong to proceed to seize those shares if JD is, at most, the beneficial owner only of the share in JS Energy. This is all the more so as it appears that JC does

not dispute that JS Energy is the legal and beneficial owner of the shares in Straits Grid, Straits Grid is the beneficial owner of the shares in Rodeo Power, and Rodeo Power is the legal and beneficial owner of one share in Summit Energy.

19 Furthermore, Johnathan was not a party in the proceedings below. Neither is he a party to the Application. It appeared that:

(a) JC had seized only the shares in Summit Energy, Rodeo Power and Straits Grid but not the share in JS Energy. The three companies are incorporated in Singapore whereas JS Energy is incorporated in the British Virgin Islands.

(b) Johnathan did not file a formal notice of claim for the share in JS Energy even if he did file an affidavit to explain the shareholding structure in various companies.

20 In such circumstances, there appears to be an error on the face of the record in respect of the first matter. The OA should at least have been alerted to JC's execution proceedings and Gorp'al's status as a bankrupt under a Malaysian court order and given an opportunity to address the court below on any further steps to be taken before the court decides on the ownership of the shares held by Gorp'al in Al-Rafidian.

21 As for the second matter, there appears to be an error on the face of the record in the AR's directions for two reasons. First, if JD is, at most, the beneficial owner only of the share in JS Energy, then JC was not entitled to seize the other shares down the line. Hence the AR should have dismissed JC's claim to the shares seized except for the shares in Al-Rafidian.

22 Secondly, it appears that his directions were intended to and did encompass the share in JS Energy as the beneficial ownership of that share was in issue between the parties. However, that share had not been seized. Also, Johnathan had not filed a formal notice of claim for it. Hence the directions should not have extended to the share in JS Energy. Consequently, there also appears to have been an error on the face of the record when the Judge decided that JD is the beneficial owner of that share even though it was not seized and Johnathan was not a party before her.

23 In the circumstances, we dismissed the first prayer and granted the second prayer which was to grant the Claimants leave to appeal against the decision of the Judge. Costs of the Application were reserved to the court hearing the substantive appeal. The JC was to notify the OA of the execution proceedings regarding the shares claimed by Gorpall and his status as a bankrupt under a Malaysian court order and inform the OA that his presence and assistance on the matter is requested by the court for the substantive appeal.

Woo Bih Li
Judge of the Appellate Division

Quentin Loh
Judge of the Appellate Division

See Kee Oon
Judge of the High Court

Mary-Anne Shu-Hui Chua (Joseph Tan Jude Benny LLP)
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