IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 14

Court of Appeal / Originating Application No 37 of 2023

Between

Zhu Su

… *Applicant*

And

(1) Three Arrows Capital Ltd
(2) Christopher Farmer
(solely in his capacity as a duly appointed joint liquidator of Three Arrows Capital Ltd)
(3) Russell Crumpler
(solely in his capacity as a duly appointed joint liquidator of Three Arrows Capital Ltd)

… *Respondents*

Court of Appeal / Originating Application No 38 of 2023

Between

Kyle Livingston Davies

… *Applicant*

And

(1) Three Arrows Capital Ltd
(2) Christopher Farmer
(solely in his capacity as a duly appointed joint liquidator of Three Arrows Capital Ltd)
(3) Russell Crumpler
(solely in his capacity as a duly appointed joint liquidator of Three Arrows Capital Ltd)

… *Respondents*

GROUNDS OF DECISION

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Sundaresh Menon CJ and Kannan Ramesh JAD
22 January 2024

10 May 2024

Kannan Ramesh JAD (delivering the grounds of decision of the court):

Introduction

1 Is an order under s 244 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA") and a decision refusing to set aside the order interlocutory orders for the purpose of para 3(*l*) of the Fifth Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA")? This was the central question in CA/OA 37/2023 ("OA 37") and CA/OA 38/2023 ("OA 38") (collectively, the "Applications") which were applications for permission to appeal a decision by a Judge of the General Division of the High Court (the "Judge") refusing to set aside certain orders he made against the applicants, including an order under s 244 of the IRDA.

2 We answered the question in the negative and, on 22 January 2024, dismissed the Applications on the basis that permission to appeal was not

required, because an order under s 244 of the IRDA was a final, and not an interlocutory order. We provided brief reasons then. Our attention was subsequently drawn by the applicants to two earlier decisions of the Court of Appeal, which the parties had previously not cited, that stated that an order under s 285 of the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act") (the predecessor to s 244 of the IRDA) was an interlocutory (and not a final) order. The applicants stated that they had filed the Applications seeking permission to appeal on the basis of these decisions. We respectfully disagreed with and declined to follow these decisions on this point. In our view, an order under s 244 of the IRDA is a final and not an interlocutory order. We set out hereinafter the full reasons for our decision.

Background facts

3 The applicants in OA 37 and OA 38 were respectively Mr Zhu Su ("Mr Zhu") and Mr Kyle Livingston Davies ("Mr Davies") (collectively, the "Applicants"), directors of Three Arrows Capital Pte Ltd ("TA-SG"), a Singapore entity. TA-SG owned 100% of the shares in the first respondent, Three Arrows Capital Ltd ("TA-BVI"), a British Virgin Islands (the "BVI") entity. The liquidators of TA-BVI, Mr Christopher Farmer ("Mr Farmer") and Mr Russell Crumpler ("Mr Crumpler"), were respectively the second and third respondents in both OA 37 and OA 38. The respondents shall collectively be referred to hereinafter as the "Respondents".

4 On 9 July 2022, the Respondents filed HC/OA 317/2022 ("OA 317") for recognition of TA-BVI's liquidation proceedings in the BVI as a foreign main proceeding under Art 2(*f*) of the UNCITRAL Model Law on Cross-Border Insolvency (the "Model Law") as adopted in Singapore in the IRDA, Third Schedule. Various consequential orders were also sought, including recognition

of the liquidators (*ie*, Mr Farmer and Mr Crumpler) as foreign representatives within the meaning of Art 2(*i*) of the Model Law with standing to make applications for orders or reliefs under the IRDA. The Applicants were non-parties to OA 317. OA 317 was allowed by the Judge on 22 August 2022.

5 Subsequently, on 15 October 2022, the Respondents filed HC/SUM 3802/2022 ("SUM 3802") in OA 317 seeking, *inter alia*, an order for TA-SG to submit an affidavit containing an account of TA-SG's dealings with TA-BVI and to "produce any books, papers or other records" in its possession or control "relating to the promotion, formation, business, dealings, affairs or property of [TA-BVI]". The Judge allowed SUM 3802 on 30 November 2022. In particular, the Applicants were each ordered to submit an affidavit detailing TA-SG's and his own dealings with TA-BVI (the "Disclosure Order").

6 The Applicants failed to comply with the Disclosure Order. On 26 May 2023, in HC/SUM 1591/2023 and HC/SUM 1592/2023 against Mr Zhu and Mr Davies respectively, the Respondents sought permission to apply for orders of committal as a result of the Applicants' intentional failure to comply with the Disclosure Order. Permission was granted by the Judge on 30 June 2023 (the "Leave Orders").

7 The Respondents thereafter filed HC/SUM 2104/2023 and HC/SUM 2105/2023 for orders of committal against Mr Davies and Mr Zhu respectively. The applications were granted by the Judge on 25 September 2023 (the "Committal Orders"), and the Applicants were each sentenced to four months' imprisonment for contempt of court. Mr Zhu was arrested and committed to prison on 29 September 2023, while Mr Davies has remained out of jurisdiction.

8 Notably, the Applicants did not appeal the Disclosure Order or the Committal Orders. Instead, well after the time for appeal had passed, on 1 November 2023 and 3 November 2023, in HC/SUM 3418/2023 and HC/SUM 3417/2023 (the "Setting Aside Applications"), Mr Zhu and Mr Davies respectively applied to set aside the Disclosure Order and the Committal Orders, as well as the Leave Orders. The Setting Aside Applications were dismissed by the Judge on 27 November 2023.

9 Thereafter, on 11 December 2023, the Applications were filed. The Respondents opposed the Applications.

10 For completeness, following Mr Zhu's arrest, the Respondents filed HC/SUM 3306/2023 ("SUM 3306") on 24 October 2023 under s 244 of the IRDA for an order for Mr Zhu to be examined in court on matters that Mr Zhu was supposed to disclose under the Disclosure Order. The Judge granted SUM 3306 on 27 November 2023, and Mr Zhu was duly examined on 12 and 13 December 2023 by an Assistant Registrar in chambers.

The law

11 Permission to appeal is required under s 29A(1)(*c*) of the SCJA before an appeal may be brought against a decision of the General Division of the High Court if the case is specified in the SCJA, Fifth Schedule, paras 3, 4(1) and 5(1). For the present purposes, the SCJA, Fifth Schedule, para 3(*l*) is relevant. It reads:

> **Interlocutory decisions, etc.**
>
> 3. Subject to paragraph 4(2), the permission of the appellate court is required to appeal against a decision of the General Division in any of the following cases:
>
> …

> (*l*) where a Judge makes an order at the hearing of any interlocutory application other than an application for any of the following matters:
>
> (i) for summary judgment;
>
> (ii) to set aside a default judgment;
>
> (iii) to strike out an action or a matter commenced by an originating claim or by any other originating process, a pleading or a part of a pleading;
>
> (iv) to dismiss an action or a matter commenced by an originating claim or by any other originating process;
>
> (v) for further and better particulars;
>
> (vi) for permission to amend a pleading;
>
> (vii) for security for costs;
>
> (viii) for discovery or inspection of documents;
>
> (ix) for interrogatories to be varied or withdrawn, or for permission to serve interrogatories;
>
> (x) for a stay of proceedings;
>
> …

12 It is well-established that "order" in para 3(*l*) means an "interlocutory order": see the decisions of the Court of Appeal in *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 ("*Dorsey*") at [85]; *Telecom Credit Inc v Midas United Group Ltd* [2019] 1 SLR 131 ("*Telecom Credit*") at [19(a)] which dealt with the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), Fifth Schedule, para (*e*), the predecessor to para 3(*l*). As to what is an "interlocutory order", the test stated in *Bozson v Altrincham Urban District Council* [1903] 1 KB 547 ("*Bozson*") (at 548) is instructive:

> Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then … it ought to be treated as a final order; but if it does not, it is then … an interlocutory order.

The *Bozson* test is concerned with the nature and consequences of the order that is made and may be contrasted with the test set out in *Salaman v Warner* [1891] 1 QB 734 ("*Salaman*") which focuses on the nature of the application or proceeding. The *Bozson* test has been repeatedly affirmed in Singapore jurisprudence in preference to the *Salaman* test: see *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 525 ("*Wellmix Organics*") at [14]; *Dorsey* at [29]; *Telecom Credit* at [15].

Our decision

13 In light of the foregoing, the issue we had to consider was whether the Judge's dismissal of the Setting Aside Applications was an interlocutory order for which permission to appeal was required, or a final order, for which permission to appeal was not required.

14 We first considered the nature of the Disclosure Order and Committal Orders as the Applications sought permission to appeal with a view to challenging those orders.

15 The Disclosure Order was made pursuant to s 244 of the IRDA. The section reads:

> **Inquiry into company's dealings, etc.**
>
> **244**.—(1) Where a company is in judicial management or is being wound up, the Court may, on the application of any person mentioned in subsection (2), summon to appear before the Court —
>
> (*a*) any officer of the company;
>
> (*b*) any person who was previously an officer of the company;
>
> (*c*) any person known or suspected to have in his or her possession any property of the company or supposed to be indebted to the company; or

> (*d*) any person whom the Court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company, including any banker, solicitor or auditor,
>
> and the Court may require any person mentioned in paragraphs (*a*) to (*d*) to submit an affidavit to the Court containing an account of the person's dealings with the company or to produce any books, papers or other records in the person's possession or under the person's control relating to the promotion, formation, business, dealings, affairs or property of the company.
>
> (2) The persons mentioned in subsection (1) are —
>
> (*a*) in the case of a company in judicial management, the judicial manager;
>
> (*b*) in the case of a company being wound up, the Official Receiver or liquidator; or
>
> (*c*) in either case, a creditor or contributory of the company with the leave of the Court.
>
> …

16 As stated above, s 244 of the IRDA was previously s 285 of the Companies Act, which reads:

> **Power to summon persons connected with company**
>
> **285**.—(1) The Court may summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court considers capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company.
>
> (2) The Court may examine him on oath concerning the matters mentioned in subsection (1) either by word of mouth or on written interrogatories and may cause to be made a record of his answers, and any such record may be used in evidence in any legal proceedings against him.
>
> (3) The Court may require him to produce any books and papers in his custody or power relating to the company, but where he claims any lien on books or papers the production shall be without prejudice to that lien, and the Court shall have jurisdiction to determine all questions relating to that lien.

> (4) An examination under this section or section 286 may, if the Court so directs and subject to the Rules, be held before any District Judge named for the purpose by the Court, and the powers of the Court under this section and section 286 may be exercised by that Judge.
>
> (5) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful excuse, made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examination.

For the present purposes, it suffices to observe that the provisions are substantially similar.

17 In *Jumabhoy Asad v Aw Cheok Huat Mick and others* [2003] 3 SLR(R) 99 ("*Jumabhoy*"), the Court of Appeal had occasion to consider the nature of an order under s 285 of the Companies Act. There, the appellant, a former director of a company, had appealed the decision of the lower court refusing to set aside or vary an order made against him under s 285 (*Jumabhoy* at [3]–[4]). The order compelled the appellant to be examined in court as to his knowledge of the affairs of the company and produce documents relating to the dealings and affairs of the company that were in his possession or under his control (*Jumabhoy* at [1] and [15]).

18 The Court of Appeal in *Jumabhoy* struck out the appeal on the basis that the appellant had not applied for further arguments as required under the legislation then for appeals against interlocutory orders (*Jumabhoy* at [20]–[21]). In reaching its decision, the Court of Appeal held that an order under s 285 of the Companies Act was an interlocutory order (*Jumabhoy* at [15]):

> 15. … The order … was made pursuant to an application by the liquidators in the course of their duties in winding up the company. The order did not determine the substantive rights of any party. It only required [the appellant] … to appear before the court to be examined as to his knowledge of the affairs of

> the company and to produce the relevant documents if they were in his possession. It is an order to assist the liquidators in discharging their functions of establishing the true state of affairs of the company. Such an order is clearly of a procedural nature and is similar in effect to a subpoena in other civil proceedings. We are unable to see how it could be said that this order affects substantive rights.

19 The Court of Appeal reasoned that by refusing the application to set aside the order, the judge was affirming the earlier order under s 285. Such affirmation did not alter the nature of the order as an interlocutory order (*Jumabhoy* at [16] and [19]). Accordingly, the dismissal of the setting aside application was also an interlocutory order and the appellant ought to have requested the judge to hear further arguments before he was entitled to file the appeal (*Jumabhoy* at [20]–[21]).

20 *Jumabhoy* was followed some years later in *PricewaterhouseCoopers LLP and others v Celestial Nutrifoods Ltd (in compulsory liquidation)* [2015] 3 SLR 665 ("*Celestial Nutrifoods*"). The appellants were PricewaterhouseCoopers and two of its audit partners. PricewaterhouseCoopers were the auditors of Celestial Nutrifoods Limited ("Celestial") for the financial years 2004 to 2009. The respondent was Celestial's liquidator. The respondent filed an application under s 285 of the Companies Act to compel the appellants to disclose documents in their custody, power or control relating to Celestial's trade dealings, affairs and property. The respondent asserted that he needed the documents for a proper analysis of Celestial's consolidated financial statements and year-end balances. These documents would enable him to reconstruct the financial records of Celestial and investigate various suspicious transactions he had uncovered. The application was allowed, and the appellants appealed (*Celestial Nutrifoods* at [2]).

21 The Court of Appeal in *Celestial Nutrifoods* agreed with *Jumabhoy* that an order under s 285 of the Companies Act was an interlocutory order, and dismissed the appeal on the ground that permission to appeal was not obtained by the appellants (*Celestial Nutrifoods* at [27] and [35]). The court observed that although *Jumabhoy* was decided before the amendments to the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) in 2010, which restricted the right of appeal against interlocutory orders, that did not change the primary issue before the court, namely, whether the order in question was an interlocutory or final order (*Celestial Nutrifoods* at [31]).

22 The court held that a disclosure order under s 285 was an interlocutory order as it was made in the course of winding-up proceedings (*Celestial Nutrifoods* at [27]). The court further held that an order under s 285 did not determine the substantive rights of the parties as it merely required a party to disclose documents or be orally examined. An analogy was drawn with a subpoena. Further, an order under s 285 neither disposed of the entire proceedings nor determined the outcome of the winding-up proceedings; it was merely an intermediate step in the winding-up proceedings (*Celestial Nutrifoods* at [28] and [32]).

23 The Court of Appeal observed that while an order under s 285 of the Companies Act might seem akin to an application for leave to serve pre-action interrogatories, which did not require permission to appeal, there were significant differences. First, while pre-action interrogatories were sought for the purpose of obtaining relevant information in order to commence an action, s 285 served a broader purpose of enabling liquidators to obtain documents and/or information for the purpose of determining the reasons for the company's failure. The latter order was sought irrespective of whether the liquidator was seeking information for the purpose of commencing an action. Second, an

application for leave to administer pre-action interrogatories was commenced by way of an originating application, while an application under s 285 was by way of summons made in the wider context of ongoing winding-up proceedings (*Celestial Nutrifoods* at [34]).

24 We respectfully disagree with the reasoning of the Court of Appeal in *Jumabhoy* and *Celestial Nutrifoods*. In our judgment, an order under s 285 of the Companies Act (now s 244 of the IRDA) is a final, and not interlocutory, order.

25 We first observe that an order under s 244 of the IRDA may be analogised to orders for pre-action reliefs, such as pre-action discovery and interrogatories. In an application under s 244, it is first necessary to determine whether the party whom the application is sought against is one that falls within ss 244(1)(*a*) to 244(1)(*d*) of the IRDA. These are individuals who possess the relevant information by reason of their connection or dealing with the company in liquidation or judicial management and may therefore be able to assist, amongst others, the judicial manager, liquidator or Official Receiver in understanding not only why the company failed but also whether recourse lies against any potential party. The party against whom the order is made may very well be a potential defendant or someone who is able to assist in identifying a potential defendant. This is similar to the purpose served by a pre-action discovery or interrogatory (see O 11 r 11(1) of the Rules of Court 2021). Indeed, in the latter situation, where the person to be examined is not the potential defendant but someone who may assist in identifying that party, it seems implausible to us to view any order that may be made as being anything other than final in terms of determining the substantive rights of the applicant, to obtain the information, and of the person to be examined, to provide that information.

26 Second, if a party falls within any of the categories set out in ss 244(1)(*a*) to 244(1)(*d*) of the IRDA, that party may be summoned to appear before the court and be required to produce an affidavit or relevant documents (s 244(1) of the IRDA) and/or be ordered to be examined (s 244(4) of the IRDA). Further, and significantly, on consideration of that party's evidence, the court may order him or her to deliver any property of the company in his or her possession to the judicial manager, Official Receiver, or liquidator, as the case may be (s 244(6) of the IRDA) or make payment of any debt owed by that party to the judicial manager, Official Receiver, or liquidator, as the case may be (s 244(7) of the IRDA). It is therefore apparent that one of the purposes of an order under s 244(1) of the IRDA is to obtain information to enable recovery of assets or debts owed to the company for the purpose of an ongoing insolvency. But it would be incorrect, in our judgment, to view the ongoing insolvency as a parent action, in the context of which the application to examine the relevant person is then seen as an interlocutory matter. The ongoing insolvency action concerns other parties and the realisation and distribution of the assets of the company. As against this, the application to obtain information from other parties, as far the applicant and those parties are concerned, involves a separate and self-standing question of whether those parties can be compelled to provide the information or documents that the applicant is seeking. It is evident that it is more appropriate, in this light, to analogise an order under s 244 of the IRDA with an order for leave to serve pre-action discovery or interrogatories.

27 It is settled law that permission to appeal an order giving or refusing leave to: (a) serve pre-action discovery; (b) serve interrogatories; or (c) apply for judicial review, is not needed, for such an order is final in that it disposes of everything in the proceeding: see *Dorsey* at [64]; *Wellmix Organics* at [16]; *OpenNet Pte Ltd v Info-communications Development Authority of Singapore*

[2013] 2 SLR 880 at [21]. As the Court of Appeal observed in *Telecom Credit* at [28]:

> 28 … an application for leave to apply for judicial review, and … 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].

28 Insofar as the Court of Appeal in *Celestial Nutrifoods* was of the view that an application under s 285 of the Companies Act (now s 244 of the IRDA) may serve a wider purpose than applications for pre-action interrogatories, this, in our judgment, does not reveal the consequences of an order under s 285 of the Companies Act on the rights of the parties. Further, while an application for an order under s 285 of the Companies Act is made in the course of, *inter alia*, winding-up proceedings, this is inconclusive of the nature of the order.

29 As the Court of Appeal observed in *Telecom Credit* (at [26]), "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". It is therefore "necessary to look at whether the order which is made on such an application determines the parties' rights on the *Bozson* test" (*Telecom Credit* at [26]). It may be that this consequence-focused approach was not brought to the fore in *Celestial Nutrifoods*, a decision predating *Telecom Credit.*

30 In our judgment, in applying the *Boszon* test, an order under s 244 of the IRDA does finally determine the rights of the parties, namely, whether the

respondent may be compelled to submit an affidavit or produce relevant documents (s 244(1) of the IRDA). The rights are completely determined when a court grants or refuses the relevant order(s) under s 244 of the IRDA. Upon the application being allowed or refused, that disposes of the matter as between the parties, leaving nothing further for the court to determine or deal with.

31 Having concluded that the Disclosure Order was a final order, we turn next to the Committal Orders.

32 The Committal Orders were evidently final orders on the *Bozson* test for which no permission to appeal was needed because they had the effect of finally determining the substantive rights of the Applicants. By the Committal Orders, the Applicants were each sentenced to prison for a term of four months as a result of contempt of court for breaching the Disclosure Order.

33 Accordingly, as the Disclosure Order and the Committal Orders were final orders that disposed of the substantive rights of the Applicants, they had the right to appeal these orders. However, as noted earlier, for reasons not explained, the Applicants elected not to do so. Instead, well after the time for appeal had expired, the Applicants filed the Setting Aside Applications.

34 We similarly determined that the dismissal of the Setting Aside Applications was a final order, as it was dispositive of the issue of whether there were any grounds for setting aside the Disclosure Order and the Committal Orders. With the dismissal of the Setting Aside Applications, the Disclosure Order and the Committal Orders stood as final, subject to any order on appeal. Permission to appeal was therefore not required.

35 For completeness, we also addressed the issue of whether permission to appeal was required as regards the Leave Orders. The Leave Orders were interlocutory orders as they did not dispose of any substantive rights of the parties and, ordinarily, permission would have been required to appeal them. However, as the Leave Orders had resulted in the Committal Orders being made, and the latter was appealable as of right, the question of permission to appeal the former was merely academic. The appropriate course for the Applicants to have taken was to appeal the Committal Orders.

Conclusion

36 For the foregoing reasons, we dismissed the Applications and ordered costs of $4,000 inclusive of disbursements against Mr Zhu and Mr Davies respectively in favour of the Respondents.

Sundaresh Menon
Chief Justice

Kannan Ramesh
Judge of the Appellate Division

Christopher Anand s/o Daniel, Harjean Kaur, Yeo Yi Ling Eileen, Lim Yi Zheng and Saadhvika Jayanth (Advocatus Law LLP) for the applicants in CA/OA 37/2023 and CA/OA 38/2023;
Manoj Pillay Sandrasegara, Leo Zhen Wei Lionel, Liu Zhao Xiang, Muhammed Ismail Bin k.o. Noordin, Kwong Kai Sheng and T Abirami(WongPartnership LLP) for the respondents in CA/OA 37/2023 and CA/OA 38/2023.