Re Beloff Michael Jacob QC
[2013] SGHC 177

Case Number	: Originating Summons No 1096 of 2012
Decision Date	: 17 September 2013
Tribunal/Court	: High Court
Coram	: Judith Prakash J
Counsel Name(s)	: Edwin Tong, Kenneth Lim, Peh Aik Hin and Tan Kai Liang (Allen & Gledhill LLP) for the applicant; Lee Eng Beng SC, Low Poh Ling, Raelene Su-Lin Pereira and Jonathan Lee (Rajah & Tann LLP) for the Monitoring Committee; Chan Hock Keng and Foo Xian Yao (WongPartnership LLP) for the respondent in CA 44 and CA 47; Jeffrey Chan SC, Dominic Zou and Clement Chen for the Attorney-General; and Christopher Anand Daniel and Harjean Kaur (Advocatus Law LLP) for the Law Society.
Parties	: Re Beloff Michael Jacob QC

Legal profession – admission – ad hoc

[LawNet Editorial Note: The appeals to this decision in Civil Appeals Nos 68, 69, 70 and 71 of 2013 were allowed by the Court of Appeal on 16 May 2014. See [2014] SGCA 25.]

17 September 2013

Judith Prakash J:

Introduction

1 On 3 May 2013, I heard the application of Mr Michael Jacob Beloff QC ("the Applicant") to be admitted on an ad hoc basis pursuant to s 15 of the Legal Profession Act (Cap 161, 2009 Rev Ed, as amended in 2012) ("the Act") to practise as an advocate and solicitor in Singapore for the purpose of representing nTan Corporate Advisory Pte Ltd ("NCA") in certain proceedings I will elaborate on below. This application met with strong opposition. On 17 May 2013, I allowed the application. The decision has been appealed against and I now give my grounds.

2 The principal order that I made reads as follows:

> 1. The Applicant be admitted on an ad hoc basis pursuant to section 15 of the Legal Profession Act (Cap. 161, 2009 Revised Edition) to practice as an advocate and solicitor in Singapore for the purposes of representing nTan Corporate Advisory Pte Ltd (RC No. 200102926R), the Other Party, in:
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> (a) Summons No. 5682 of 2012/A;
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> (b) Summons No. 6520 of 2012/K;
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> (c) Summons No. 6475 of 2012/C; and
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> (d) Summons No. 108 of 2013,

in Civil Appeal No. 44 of 2010/E and Civil Appeal No. 47 of 2010/S, and other ancillary proceedings which are directly related to or arise from the aforesaid summonses.

Background

3 The background to the application was somewhat complicated. In October 2008, NCA was appointed as the independent financial adviser of a Singapore incorporated company, TT International Ltd ("the Company"), which was experiencing serious financial difficulties. The fees payable by the Company to NCA for its services, as set out in two engagement letters dated 28 October 2008 and 15 May 2009, included a value added fee ("VAF").

4 On 29 January 2009, the Company applied for and received approval from the court pursuant to s 210(1) of the Companies Act (Cap 50, 2006 Rev Ed) ("the COA") to summon a meeting of its creditors to consider a proposed scheme of arrangement ("the Scheme"). Meetings of the Company's creditors were held subsequently and, on 17 December 2009, the proposed Scheme Manager reported that the Scheme had been passed by a majority of creditors representing 75.06% in value of the Company's debts. It should be noted that under the Scheme, the proposed Scheme Manager was Mr Nicky Tan and/or Mr Dan Yock Hian and/or Ms Lim Siew Soo who were all employees of NCA, Mr Nicky Tan being its chief executive officer.

5 The Company then applied for court sanction of the Scheme. The application which came on for hearing before me in due course was opposed by a number of the Company's creditors. After hearing arguments, I approved the Scheme. Two of the opposing creditors then appealed against my decision (*vide* Civil Appeal No 44 of 2010/E and Civil Appeal No 47 of 2010/S ("CA 44" and "CA 47")). On 27 August 2010, the Court of Appeal ("the CA") allowed the appeals. It also ordered that a fresh meeting of creditors be held in accordance with various directions made by the CA. At the fresh meeting, the requisite number of creditors voted in favour of the Scheme and, on 13 October 2010, the CA sanctioned the Scheme, subject to certain alterations made pursuant to the powers awarded to the courts under s 210(4) of the COA. Subsequently a monitoring committee ("the Monitoring Committee") comprising three of the Company's creditors was formed to monitor the implementation of the Scheme.

6 The CA's directions were set out in its brief grounds of decision dated 13 October 2010 ("Brief Grounds"). On 31 January 2012, the CA released the full grounds of decision *viz The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] SGCA 9 (subsequently reported in [2012] 2 SLR 213) ("the Judgment"). The Judgment deals comprehensively and extensively with the law in Singapore in relation to schemes of arrangement under s 210 of the COA.

7 Before I proceed, I should say something about the VAF as this fee lies at the heart of the dispute. The VAF was based on a formula which provided for it to be calculated in relation to the savings or capital injections obtained for the Company by the Scheme Manager. The VAF was not disclosed to the Company's creditors prior to either vote that was taken in respect of the Scheme. Apparently, in the events that occurred, when the formula was applied, the VAF worked out to be a very substantial sum in the region of between $15m and $30m. The fees payable to NCA are not covered by the Scheme and are payable by the Company in priority to the amounts owing to the creditors.

8 A few days prior to the release of the Judgment, M/s Rajah & Tann LLP ("R&T"), acting as solicitors for the Monitoring Committee, wrote a letter to the CA in which it raised the issue of payment of the VAF due to NCA and raised certain queries regarding [8(j)] of the Brief Grounds which

had directed that all professional costs and disbursements of the Scheme Manager and the Company's professional advisers incurred after 27 August 2010 should be taxed by the High Court. R&T sought various further directions from the CA in this respect. This letter led to an exchange of correspondence (which included submissions from the parties) between the parties and the CA during the period from 27 January 2012 until 10 April 2012. The persons involved in this exchange were R&T, M/s WongPartnership LLP ("WongP") which was acting for the Company and the Scheme Manager's solicitors, M/s Allen & Gledhill LLP ("A&G").

9 On 27 September 2012, the CA handed down a further written judgment in CA 44 and CA 47 (which was subsequently reported under the same case name in [2012] 4 SLR 1182) dealing with the issues that had been raised in the correspondence/submissions referred to in [8] above ("the Second Judgment"). In brief, the CA held:

(a) The existence of the VAF and its estimated quantum were material information which ought to have been disclosed by the Company and the Scheme Manager to the creditors and the CA prior to sanction of the Scheme.

(b) The Scheme Manager was in a position of conflict as the quantum of the VAF payable to NCA was dependent on the value of the debts which would be adjudicated by the Scheme Manager himself.

(c) The Scheme would ordinarily have been set aside and put to a fresh vote as a result of the non-disclosure of the VAF to the creditors. However, as the Scheme had been implemented for more than two years, it was not practical to set it aside since doing so would cause more harm to the Company and the creditors.

(d) The CA directed the Scheme Manager/NCA, the Company and the Monitoring Committee to try and reach an agreement as to the proper amount of professional fees to be awarded for NCA's efforts in reviving the Company to date. In the event that the parties were unable to reach an agreement, NCA's global fees (both before and after the Scheme Manager's appointment) would be assessed by a High Court Judge in accordance with the principles stated in *Re Econ Corp Ltd (in provisional liquidation)* [2004] 2 SLR(R) 264.

10 It is NCA's contention that in the Second Judgment, the CA:

(a) made several crucial findings of fact ("Findings of Fact") that directly affected NCA; and

(b) on the basis of the Findings of Fact, the CA gave directions relating to NCA's fees ("the Fee Orders") as set out in [9(d)] above.

11 NCA took the view that the Second Judgment is not valid because:

(a) the Findings of Fact and Fee Orders were made, *inter alia*, without the necessary jurisdiction; and

(b) they were made in breach of the rules of natural justice, in particular, the fair hearing rule, which gives all litigants the right to be heard before a decision is taken.

12 On 5 November 2012, NCA filed Summons No 5682 of 2012 in CA 44 ("Summons 5682") and Summons No 6520 of 2012 in CA 47 (together "the Summonses"). The relief sought in the Summonses is the same. NCA wants:

(a) leave to intervene in the respective appeal cases; and

(b) substantively, for the CA to set aside the Second Judgment in each appeal.

13 The Summonses were, according to NCA, filed only after it had obtained the advice of the Applicant. Having accepted the Applicant's advice, NCA was, not surprisingly, desirous of being represented by the Applicant when the Summonses came on for hearing. Hence, on 22 November 2012 the present application was filed. Subsequently, the three banks that formed the Monitoring Committee *viz*, DBS Bank Ltd, Habib Bank Ltd and Oversea-Chinese Banking Corporation Limited ("the Interveners") applied for permission to intervene in the application so that they could oppose it. I granted that application. When the Summonses came on for hearing, they were opposed by the Company, by the Law Society, by the Attorney-General and by the Interveners. I shall hereafter sometimes refer to these four parties collectively as "the Opposing Parties".

My decision

The legal regime

14 The law relating to *ad hoc* admission of foreign counsel to the Singapore Bar for the purpose of representing litigants in domestic litigation in the Singapore courts has undergone several changes over the years. From a fairly relaxed approach which saw most such applications succeeding, the law moved to an extremely restricted approach which made such admissions extremely rare. In 2012, the position changed again and I had to consider the Applicant's application in relation to fairly recent statutory provisions. Fortunately, I had the guidance of two reported decisions *viz*, *Re Andrews Geraldine Mary QC* [2013] 1 SLR 872 ("*Re Andrews*") and *Re Caplan Jonathan Michael QC* [2013] 3 SLR 66.

15 The present law regarding *ad hoc* admissions is set out at s 15 of the Act, with the material sections being ss 15(1), (2) and (6A):

> **15.—(1**) Notwithstanding anything to the contrary in this Act, the court may, for the purpose of any one case, admit to practise as an advocate and solicitor any person who —
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> (*a*) holds –
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> (i) Her Majesty's Patent as Queen's Counsel; or
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> (ii) any appointment of equivalent distinction of any jurisdiction;
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> (*b*) does not ordinarily reside in Singapore or Malaysia, but has come or intends to come to Singapore for the purpose of appearing in the case; and
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> (*c*) has special qualifications or experience for the purpose of the case.
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> (2) The court shall not admit a person under this section in any case involving any area of legal practice prescribed under section 10 for the purposes of this subsection, unless the court is satisfied that there is a special reason to do so.
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> …
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> (6A) The Chief Justice may, after consulting the Judges of the Supreme Court, by notification

published in the *Gazette*, specify the matters that the court may consider when deciding whether to admit a person under this section.

16 Further, in relation to s 15(2) of the Act which requires there to be a special reason for an *ad hoc* admission under this section in certain cases, r 32(1) of the Legal Profession (Admission) Rules 2011 (S 244/2011) states:

> **32.—(1)** The following areas of legal practice are prescribed for the purposes of section 15(2) of the Act:
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> (*a*) constitutional and administrative law;
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> (*b*) criminal law;
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> (*c*) family law.
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> …

There was a preliminary issue raised as to whether the present case was one falling within the category of "administrative law" referred to in r 32(1)(*a*) above ("the Preliminary Objection"). I deal with this below.

17 Pursuant to s 15(6A) of the Act, the Legal Profession (Ad Hoc Admissions) Notification 2012 (S 132/2012) ("the Notification") was issued, of which para 3 is material:

> **3**. For the purposes of section 15(6A) of the Act, the court may consider the following matters, in addition to the matters specified in section 15(1) and (2) of the Act, when deciding whether to admit a person under section 15 of the Act for the purpose of any one case:
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> (*a*) the nature of the factual and legal issues involved in the case;
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> (*b*) the necessity for the services of a foreign senior counsel;
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> (*c*) the availability of any Senior Counsel or other advocate and solicitor with appropriate experience; and
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> (*d*) whether, having regard to the circumstances of the case, it is reasonable to admit a foreign senior counsel for the purpose of the case.

18 In considering the application, I bore in mind the observations of V K Rajah JA in *Re Andrews* regarding what the court had to do in dealing with such application. Rajah JA pointed out that the court must strike a balance between a plurality of objectives which include: (a) nurturing the local Bar, (b) allowing litigants to engage counsel of their choice to advance their case as well as possible, and (c) ensuring the proper and timely administration of justice. Another relevant factor was whether there was a wider public interest in developing the local law in the specific area(s) of law involved in the underlying dispute. This balancing process was highly discretionary and would turn on the precise factual matrix of each case. The court was required to engage in a judicious balancing of the competing interests in each case: at [66] and [67].

19 Rajah JA also gave very useful advice on how the criteria in the Notification should be handled. He said at [44] and [45]:

44 In my view, the architecture of the 2012 Amendment and the Notification plainly indicates that the courts are under a duty to consider all the matters listed in para 3 of the Notification. *The 2012 Amendment is not intended to lead to a "free for all", and in assessing applications for* ad hoc *admission, the courts are required to conduct a judicious balancing of the competing interests in the particular case at hand within the framework of the matters specified in para 3 of the Notification*. Interpreting para 3 of the Notification to mean that the courts are obliged to consider all the matters set out therein also ensures consistency in assessing future applications for the ad hoc admission of foreign senior counsel. In turn, this consistency in approach will lend some predictability and certainty for both the Bar and litigants who intend or are considering whether to apply for the ad hoc admission of foreign senior counsel. At the same time, however, it hears emphasis that the matters set out in para 3 of the Notification, and in particular, para 3(d) have been judiciously designed to be sufficiently flexible to allow for the inclusion of other situational considerations which may carry significant weight in a particular case.

45 The four criteria in para 3 of the Notification are schematically set out in a mode that does not indicate any particular precedence or that all four of the listed criteria must be identically satisfied in every application for ad hoc admission. No particular weight has been assigned to any of the matters identified as being relevant in assessing the merits of an application. Paragraph 3 of the Notification does not set out a new rigid four-stage test that replaces the earlier test in s21 of the 1990 LPA of "sufficient difficult and complexity and having regard to the circumstances of the case". Additionally, the court is not obliged to invariably accord equal weight to each of the matters listed in para 3 of the Notification (see below at [63]). It would be inappropriate, and, indeed, unprincipled, to give equal emphasis to the four matters identified in para 3 of the Notification, given that the application of these matters to the facts is necessarily fact-dependent. What the court is obliged to do in considering an application for the ad hoc admission of foreign senior counsel is to *carefully evaluate* these matters in the exercise of its discretion to grant or reject the application. Having considered all these matters, the court may well decide that on the facts of a particular case, less weight should be assigned to some or even most of them. In short, the emphases to be placed on the matters identified in paras 3(*a*)-3(*d*) of the Notification will necessarily vary from case to case. The court now has a *substantial*, although not unfettered, discretion in assessing the merits of each ad hoc admission application.

[emphasis in original]

The Preliminary Objection

20 The Law Society, the Company and the Interveners raised the preliminary point that the application should be considered on the basis that it fell within s 15(2) of the Act and that therefore the Applicant could only be admitted if I was satisfied that there was a special reason to do so. They argued that the Summonses dealt with matters of administrative law and that was why they were covered by s 15(2).

21 They noted that the definition of administrative law given in *Halsbury's Laws of Singapore* vol 1 (LexisNexis Singapore, 2012 Reissue) ("*Halsbury's*") at para 10.001 was:

> Administrative law, like constitutional law, is a branch of public law. It has been said to the law relating to administration, which law determines the organisation, powers and duties of administrative authorities. Administrative authorities include boards and tribunals. Another definition is the body of principles, practices and institutions which provide mechanisms for the supervision, regulation and structuring of the exercise of executive power of government. *In this work, it is understood to mean the law relating to the discharge of functions of a public nature*

in government and administration. It includes functions of public authorities, judicial review of the exercise of those functions, the civil liability and legal protection of those purporting to exercise them …

[emphasis added]

22 Further, *Halsbury's* had endeavoured to define "Public authorities" in the following way (at para 10.005):

There is no official or statutory definition of the term "public authority". It is, however, used in this section to mean any person or administrative body entrusted with functions or duties to perform for the benefit of the public or for a public purpose generally and not for private profit.

23 Using the above definitions, they contended that because NCA was, by the Summonses, asking the CA, a public body, to set aside its own judgment by reason of a lack of jurisdiction and for acting in breach of the rules of natural justice, NCA was effectively seeking judicial review of the Second Judgment. This, they argued, was clearly a matter under the purview of administrative law. I should point out here that the Attorney-General did not agree with this position.

24 I had little hesitation in rejecting the argument that the Summonses relate to administrative law. It is clear from the definition of "administrative law" in *Halsbury's* that this area of the law deals with, *inter alia*, the court's powers to supervise the discharge of powers by the executive and the conduct of hearings by inferior tribunals. In exercising such supervisory powers, the court often has to consider questions of jurisdiction and whether natural justice has been afforded to the individuals affected by the administrative or tribunal decision which is being challenged. That does not mean that when the court considers a challenge to its own jurisdiction or whether any of its decisions can be impugned because of an alleged breach of natural justice the challenge falls within the category of administrative law or that the court's consideration is in the nature of "judicial review" within the commonly understood meaning of that term. The Second Judgment is a judicial decision and not the decision of an executive agency or an inferior tribunal. Nor was it made by an administrator acting in an executive capacity.

25 As *Marplan Private Limited v Attorney-General* [2013] 3 SLR 201 makes clear, the challenge to the Second Judgment does not concern issues of administrative law and is not amenable to the prerogative writs which formed the original basis of administrative law. In that case, the applicant applied for judicial review to quash Lee Seiu Kin J's decision in a District Court Appeal. Andrew Ang J considered the application to be unsustainable and dismissed it. In the course of his judgment, he said (at [22], [23], [24] and [25]):

22 The High Court is part of the Supreme Court, the superior court of record; see s 3, SCJA. It exercises appellate civil and criminal jurisdiction. As a superior court, its decisions are not susceptible to judicial review. Sinnathuray J opined in *Abdul Wahab bin Sulaiman v Commandant, Tanglin Detention Barracks* [1985-1986] SLR(R) 7 (at [14]):

… Where courts are expressly declared by statute to be superior courts, it is beyond doubt that the High Court has no supervisory jurisdiction over them. *Their decisions cannot be subject to review by the High Court*. … [emphasis added]

23 Section 9 of the SCJA states:

Constitution of High Court

9. The High Court shall consist of –

(*a*) the Chief Justice; and

(*b*) the Judges of High Court.

24 Section 2 of the SCJA defines a "Judge of Appeal" as including "the Chief Justice and a Judge of the High Court sitting as a judge of the Court of Appeal under section 29(3)". While the Court of Appeal has a different appellate jurisdiction, there appears to be no distinction in the SCJA between the High Court and the Court of Appeal in terms of its status as a superior court. The High Court and the Court of Appeal are treated as a unitary Supreme (and superior) court where Judges of the High Court may sit as a judge of the Court of Appeal under s 29(3) of the SCJA, the Judges of Appeal may sit in the High Court under s 10(3) of the SCJA.

25 Accepting the Applicant's proposition that a right of judicial review lies against a High Court decision (whether by way of review by another High Court Judge or by the Court of Appeal) would be tantamount to saying that the superior court of Singapore can exercise supervisory jurisdiction over itself. This makes nonsense of the word "supervisory". …

26 If the High Court is a superior court because of the operation of the relevant legislation, then *a fortiori* the CA is a superior court. The Summonses have been filed in proceedings before the CA and it is the CA that will be hearing them and deciding whether or not the Second Judgment can and/or should be set aside. In undertaking this exercise the CA cannot be considered to be conducting a supervisory exercise because, as Andrew Ang J pointed out, such an interpretation would make "nonsense of the word 'supervisory'". In dealing with the Summonses, the CA will be considering how its own procedures may be regulated and what comprises the nature and scope of judicial authority. Though some principles encountered in this exercise may be principles that are also involved in administrative law, this overlap does not transform the essential nature of the exercise into an administrative law one.

The legal criteria for ad hoc admission

27 In considering this application, I had, as pointed out above, to consider the four matters set out in the Notification and thereafter, had also to be satisfied that the Applicant satisfied s 15(1) of the Act. There are three requirements in s 15(1). In this case the first two were not disputed since the Applicant does hold Her Majesty's Patent as Queen's Counsel and does not ordinarily reside in Singapore or Malaysia but will be coming here for the purpose of the Summonses. It was the third requirement, *ie* whether the applicant had special qualifications or experience for the purposes of the case that was in dispute. I will deal with the Applicant's qualifications and experience in the course of discussing the factors laid down by the Notification.

The nature of the factual and legal issues involved in the case

28 The first Notification factor required me to identify and apply my mind to the legal and factual issues which had been raised in the underlying case (see *Re Andrews* at [47]). *Re Andrews* pointed out that some of the points to be considered in this regard were whether the issues were novel (even if not complicated and difficult); whether there were procedural complexities in the underlying case; whether the underlying case would be of significant precedential value; whether there would be public interest in that the case would involve the development of Singapore law; and whether the integrity of the litigant was impugned by the litigation.

29 The Applicant submitted that the Summonses raise questions as to the extent to which the CA may exercise its powers in relation to:

(a) deciding (serious) factual allegations between *inter alia* two non-parties to the Appeal;

(b) where the allegations were not part of the original action before the High Court;

(c) concerning a subject-matter which is a separate commercial agreement between the Company and a non-party;

(d) with the result that the agreement, though otherwise perfectly valid in law, is varied or re-written by the CA; and

(e) in procedural circumstances where there no hearing was conducted (despite repeated requests) with the result that a judgment on fact and law was made only on an exchange of letters between the non-parties and the CA.

30 Mr Edwin Tong ("Mr Tong"), counsel for the Applicant, fleshed out the points stated above in the following manner. He said that the questions raised were:

(a) First, what is the proper jurisdiction of the CA over the parties (including the non-parties) to the appeals in relation to matters raised after the appeals proper have been disposed of in a situation where:

(i) at all material times, the jurisdiction of the High Court and the CA was founded on s 210 of the COA which gave them the jurisdiction (and discretion) to decide whether or not to sanction the Scheme and, if so, on what terms. All submissions and evidence put forward by the Company and the creditors before the High Court and the CA addressed the question of whether the Scheme should be sanctioned;

(ii) the VAF was not part of the Scheme but had arisen before the Scheme on the basis of a separate contract between the Company and its financial advisor NCA (thus giving rise to the issue whether the CA had jurisdiction over the VAF as a private contract which preceded the Scheme); and

(iii) NCA was not a party to the proceedings under s 210 and it was Mr Nicky Tan and two other persons who were appointed to the post of Scheme Manager, the issue here being the extent to which the CA is able to exercise jurisdiction at the appellate stage over a non-party in respect of an issue which was not part of the original proceedings.

(b) Second, if the CA has jurisdiction in relation in the situations set out in (a) above, what powers would it have to enquire into and make findings on a separate private agreement entered into between the Company and a non-party (NCA) where the agreement was not made an issue by any party in the appeal and in this respect, the questions that arise would be:

(i) on what basis would the CA be able to vary or re-write the contractual terms of NCA's engagement letter where the fee arrangement would otherwise be upheld as a valid legal and binding agreement; and

(ii) even if the creditors opposing the Scheme had, during the hearing before the CA or High Court obtained disclosure of the fees payable to NCA, the creditors would not have had

any cause of action on the VAF against NCA and therefore, can any free-standing cause of action can exist in the appeals against NCA in relation to the VAF and if so, by whom.

(c) Third, even if the CA had jurisdiction and powers to deal with the matters then:

(i) whether in considering the same, there had been such a fundamental departure from due process as to give rise to a breach of the principles of natural justice (and in this respect, whether an exchange of letters on issues of fact and law can constitute proper procedure); and

(ii) if so, what would the appropriate remedies be that could be granted to NCA.

31 In my view, the essential issues which the Summonses put forward before the CA are whether the CA had the jurisdiction to decide, after it had issued its substantive judgment in the appeals before it, a consequential question that arose between the creditors and an entity which was, allegedly, not a party to the appeals, and secondly, if it did have such jurisdiction whether there was a breach of natural justice in the way that the question was dealt with. Embodied in these questions is the factual issue of whether NCA was a party to the appeals and in that regard whether the Scheme Manager was a party to the appeals and, if so, what effect that would have on NCA's position.

32 One issue that was canvassed a great deal by the Opposing Parties was that of whether an appellate court has the inherent jurisdiction to revisit and/or reopen its own judgment. This is an issue which necessarily precedes the consideration of the issues set out in [30] above. The Opposing Parties took the view that this is a settled question and does not qualify as a difficult and novel issue which needs the assistance of foreign counsel. I agreed that *Management Corporation Strata Title Plan No 301 v Lee Tat Development Pte Ltd* [2011] 1 SLR 998 ("*Lee Tat*") did establish that the CA has inherent jurisdiction to reopen and rehear an issue which it decided in breach of natural justice as well as to set aside the whole or part of its earlier decision founded on that issue. In my view, however, *Lee Tat* although helpful to NCA in this respect, is very far from being applicable to the wider jurisdictional questions that arise in this case.

33 The questions that NCA has raised deal more with the ability of the CA to make determinations after its primary function has been fulfilled and the parties to whom those determinations can be made applicable. The questions will require detailed consideration of the powers bestowed on the court by s 210 of the COA and the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (the "SCJA") and the limits of the "inherent" power relied on in *Lee Tat*. The precise boundaries of that power remain to be defined.

34 The Opposing Parties, while accepting that the circumstances which gave rise to the Second Judgment were unique, argued that there could be no doubting the ability of the CA to do what it did because it "was simply exercising its jurisdiction to grant further directions as to the manner in which [NCA's] costs were to be determined, as it was empowered to do under the SCJA and/or under its inherent jurisdiction". That submission airily missed the point – it is the width of the inherent jurisdiction which is the issue here. They further argued that if NCA had wished to put in further evidence or have matters set out on affidavit or heard by the CA "it was open to [NCA] to make the relevant applications to be joined as a party". This submission seemed to recognise that NCA was not a party to the proceedings but at the same time did not appreciate the effect such a status might as a matter of law have on the ability of the court to make an order binding on NCA. Dealing with the factual matrix, the Opposing Parties submitted that it was straightforward and that at the core of the Summonses, "the only issue is whether the [Second Judgment] was proper notwithstanding that it

was not delivered in the context of a formal application being made. This is a question of law, not of fact". That submission indicated the existence of an ancillary issue which is to what extent and in what circumstances the court can make orders when there is no formal application before it. To my mind, that is not a straightforward issue and it is one that will receive differing answers depending on the facts and, perhaps, applicable legislation, in different cases.

35 Mr Tong also submitted that the CA in Summons 5682 could not have reasonably made key findings of fact (based solely on an exchange of letters) on, *inter alia*, non-disclosure and suppression of the VAF, or acting in conflict of interest, or taking advantage of the Company in executing the VAF, in the light of the fact that the Monitoring Committee told the CA on 14 February 2012 that it was not seeking a ruling on factual allegations. NCA will be asking the CA to consider that the adverse factual findings against it contained in the Second Judgment therefore, and reasonably, came as a complete surprise to it.

36 The Opposing Parties argued that the facts in the case are not complicated and I agreed that complex facts underlay the Judgement rather than the Second Judgment. However, complexity did arise in relation to the question of the CA's ability to make factual findings in the circumstances. This would depend partly on what evidence was before the court in the underlying case. The other part of the question would depend on the jurisdiction of the CA in the circumstances.

37 Having heard the arguments, I was satisfied that the issues raised by the Summonses involved questions of law and procedure which were fairly complex and required depth of knowledge and subtlety of approach if they were going to be adequately explored and presented. Issues involving the court's jurisdiction which cannot be decided by a quick reference to a statutory provision usually require sophisticated legal reasoning. In any case, under the new regime, complexity is not the be-all and end-all. In my view, the issues do not have to be extremely complex but simply of a nature which the court considers would benefit from expertise of knowledgeable and experienced counsel. In my judgement, the issues in the Summonses met that standard.

Necessity for foreign counsel and availability of local Senior Counsel

38 In *Re Andrews* at [50], it was stated that the criterion of the necessity for foreign counsel is to be taken "broadly" and in a "common-sense manner". It is for the court to consider what is necessary.

39 The Applicant submitted that various factors supported the need for NCA to be represented by foreign counsel. First, all the parties in CA 44 and CA 47 and the Interveners had been and continued to be represented by Senior Counsel. Second, 14 law firms and their Senior Counsel could not act for NCA as they were currently, or had previously been, involved in the matter. Third, while currently there are 42 Senior Counsel in Singapore who hold practising certificates, a substantial number of them are either in a position of conflict or no longer litigate or do not practise in the relevant areas of the law that concern this case. Given the issues raised, it was reasonable for NCA to seek to be represented by an advocate with obvious standing and with Commonwealth and appellate judicial experience to advise it and appear on its behalf. Third, the Summonses raise serious questions concerning the propriety of the CA's process in this case and fundamental questions as to its jurisdiction. The Law Society had conceded, having regard to the nature of the application, this was an application which a local counsel "may not relish" making. Fourth, given the complexity/novelty of issues and the fact that other parties are, and had been from the start, all represented by Senior Counsel, the court should place weight on an "equality of arms" and the need for a level playing field.

40 I considered that it was in the context of satisfying the court that there was a "need" for

foreign counsel that the Applicant faced the most difficulty. As the Opposing Parties were quick to point out, NCA is a sophisticated and well-funded litigant. It is currently represented by A&G, one of Singapore's largest law firms with an established and respected litigation practice. This firm should have more than adequate resources to deal with the necessary questions of fact and law. Further, the law requires a litigant who wishes to be represented by foreign counsel to make reasonably conscientious efforts to secure the services of competent local counsel from the available pool. This included not only Senior Counsel but other counsel with relevant experience. In this case, NCA had made no efforts whatsoever to obtain the services of any Senior Counsel, notwithstanding that A&G itself has two Senior Counsel. It was submitted that the present case was far from the situation envisaged by Parliament in enacting the amendments being that of a litigant who is unable to find a large firm to represent him because of issues of conflict of interest.

41 There was much force in those points. This was especially so in relation to the capacity of A&G to adequately represent NCA. I should point out however, that Dr Stanley Lai, SC ("Dr Lai, SC"), one of the firm's Senior Counsel, has his main practice in the area of intellectual property and would not be the obvious choice of a litigant bringing a case like that under consideration. The other Senior Counsel with A&G, Mr Ang Cheng Hock, SC ("Mr Ang, SC"), has a much wider area of practice and has been involved in cases which concerned, *inter alia*, natural justice issues. According to A&G's own write-up, his practice "spans a wide range of civil and commercial litigation and arbitration matters". In fact, I had little doubt that Mr Ang, SC and Mr Tong himself (although not a Senior Counsel) could have handled this matter. However, I had also to consider in this connection, the experience and expertise of the Applicant.

42 The Applicant was called to the English Bar by Gray's Inn in November 1967 and became a Queen's Counsel in 1981. He has therefore had more than 45 years of legal practice and experience. According to the affidavit evidence, the Applicant had appeared as counsel more than 50 times in the House of Lords (eight times in the Supreme Court), ten times in the Privy Council, 12 times in the European Court of Justice and 8 times in the European Court of Human Rights. He had also appeared as counsel in the courts of ten other Commonwealth countries including Singapore. In Singapore he had appeared at least four times, primarily before the Court of Appeal. These cases involved the discharge of a Mareva injunction, an application for a writ of *habeas corpus*, floating charges and the interpretation of a statute.

43 The Applicant has also had extensive judicial experience. He was appointed a Recorder of the Crown Court from 1984-95, a Master of the Bench of Gray's Inn in 1988, Deputy High Court Judge from 1989-96 (designated to sit in the Crown Office list), and Senior Counsel Ordinary Appeal Judge of the Courts of Appeal of Jersey and Guernsey from 2005 (Judge of the Courts of Appeal of Jersey and Guernsey from 1995). In addition he had been identified in various legal publications as a leading practitioner in the areas of commercial, administrative and public law. He was one of six barristers in the Times List of the 100 Most Influential Lawyers in Great Britain in 2008, 2009 and 2012. He was also the first Chairman of the Administrative Law Bar Association from 1986-89 and is now a Vice-President and Emeritus Chairman of that organisation.

44 I was given a copy of the Applicant's CV. In addition to the matters stated above, this showed that the Applicant had authored and contributed to many legal publications. Many of his contributions were in respect of areas like human rights, judicial review, natural justice and judges and judicial accountability. Further, the Applicant has delivered many named lectures. Also provided was a long list of reported cases (463) in which the Applicant was involved. These covered a wide range of commercial and public law areas.

45 The Attorney-General contended that it had not been shown what relevant expertise or

experience the Applicant had with regard to Singapore's judicial processes and practices. Mr Tong's response, which I accepted, was that the Applicant was extremely familiar with Singapore's legal procedure and system having argued in the Singapore court on many previous occasions. This familiarity had been judicially noted (see *Re Beloff Michael Jacob QC* [2000] 1 SLR(R) 943 ("*Re Beloff*") at [18]).

46 With due respect to Mr Ang, SC and Mr Tong, it was obvious that they could not claim to have as wide ranging experience and expertise as the Applicant. Indeed, there are few Senior Counsel in Singapore with the years and range of experience of the Applicant. Having considered the Applicant's qualifications, it appeared to me that he would be able to bring a depth of knowledge and court craft to the handling of the Summonses which could be of great value to the CA. The Applicant's experience on the bench in various jurisdictions could also enable him to assist the CA in relation to an appellate court's jurisdiction to supplement an earlier decision and to the appropriate procedures to be followed so as to ensure that the rules of natural justice are observed. Whilst there may be different provisions in different national territories governing the jurisdiction of the national courts, the courts in which the Applicant has served are common law courts which would have inherited traditions and attitudes that are similar to those of the Singapore bench in regard to inherent jurisdiction and natural justice.

47 I also noted that it is no bar to a litigant seeking to admit a Queen's Counsel that the law firm that represents him has Senior Counsel. In *Re David Joseph QC* [2012] 1 SLR 791, the applicant was admitted notwithstanding the fact that the litigant was represented by WongP which then had four Senior Counsel among its lawyers. At [52(b)], V K Rajah JA stated:

> … the Respondent suggested that the Plaintiffs could obtain the services of Senior Counsel (including, but not limited to, the four Senior Counsel in Wong Partnership LLP). However, as I have pointed out earlier, I do not think that there is an iron rule of law that the availability and ability of local counsel is *per se* an absolute bar to admission of a Queen's Counsel. [original emphasis omitted]

48 The observation cited above was made in a case that was decided under the old *ad hoc* admission regime which imposed much stricter criteria for the admission of Queen's Counsel. Thus, it followed that under the present regime, there was no iron cast rule precluding the Applicant's admission because of the presumed availability of Dr Lai, SC and Mr Ang, SC to handle the case. It all depended on the overall circumstances of the case. Indeed, in *Re Beloff*, the Applicant himself was admitted to act alongside Mr Michael Hwang, SC who was already representing the litigant.

Is it reasonable in the circumstances to admit the Applicant?

49 The Applicant submitted that in all the circumstances it was reasonable in this case to admit a Queen's Counsel to represent NCA. The issues in the case were significant and raised substantial issues of jurisdiction and fair process. These questions arose against a factual back-drop that was novel. This would be the first time that there would be any judicial pronouncement as to the propriety of a fact-finding procedure deployed by the CA to resolve factual issues at the appellate stage. Both Summonses would have significant precedential value.

50 I agreed with the Applicant that the circumstances of the matter made it reasonable to allow the admission of a foreign counsel to represent NCA. Such admission would obviously fulfil one objective of the legislation, *ie* allowing litigants to engage counsel of their choice to advance their case as well as possible. I also thought that there was in this case a wider public interest in developing local law in relation to the jurisdiction and powers of the CA. This is an area of law that is

not often explored in our courts and in this regard the experience of counsel who has appeared before and also sat as a judge, in different common law jurisdictions had the potential to add a great deal of value to the exercise. Whilst the admission would not directly nurture the local Bar, I did not consider that to be a significant factor in this case since the factual and legal issues involved in the Summonses are, if not novel, then somewhat arcane and of a nature that would not commonly arise.

51 Although NCA had made no effort to engage a local Senior Counsel, I considered that that omission should not weigh too heavily against it here since many Senior Counsel had already been involved in the underlying case and very few Senior Counsel in Singapore, including those in A&G, have the breadth of experience of the Applicant. I was also strongly influenced by the nature of the case that NCA wishes to make. Local counsel acted very competently for the litigants in *Lee Tat* but the present case has complications that did not exist there especially in relation to the allegation of improper fact-finding. When pressing such arguments, NCA would naturally wish to be represented by counsel in whom they could have the greatest confidence because of his learning and experience in the relevant legal areas.

Conclusion

52 For the reasons given above, I was satisfied that this was a proper case in which to admit the Applicant to practise under s 15(1) of the Act.