Syed Ahmad Jamal Alsagoff (administrator of the estates of Syed Mohamad bin Hashim bin Mohamad Alhabshi and others) and others
v
Harun bin Syed Hussain Aljunied and others

[2017] SGHC 85

High Court — Originating Summons No 1122 of 1992
(Summons No 600039 of 2015)
Aedit Abdullah JC
11 July 2016

Civil procedure — Parties — Joinder

Civil procedure — Jurisdiction — Inherent

17 April 2017

Aedit Abdullah JC:

Introduction

1 The applicants in this case ("the Applicants") sought leave under O 15 r 6(2)(*b*)(ii) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) and/or the court's inherent jurisdiction to intervene in a matter that was heard and concluded some 25 years ago, in order to set aside the order of court made in relation to that case ("the Original Order") and to make consequential rectifications to the Register of Deeds. They argued, *inter alia*, that such intervention was justified by two High Court decisions in 1997 which purported to identify a defect in the basis of the Original Order, and was indeed necessary to forestall any repercussions

that the said order may have in relation to certain properties that were subject of an ongoing suit, *vide*, Suit No 263 of 2010.

2 Having heard the parties, I declined to grant leave to intervene largely because of the long period of time that had lapsed since the erstwhile conclusion of those proceedings. The Applicants have appealed.

Background

3 This application for leave to intervene was one chapter in a long-drawn litigation over the estate ("the Estate") of Syed Ahmad Bin Abdulrahman Bin Ahmat Aljunied ("the Testator"). The Estate consisted of certain properties located in the Upper Dickson Road area which were subject of ongoing dispute between the parties ("Disputed Properties").

The parties

4 In the present application, the Applicants were the administrators of several estates which purported to hold leasehold interests in the Disputed Properties.[1]

5 The respondents consisted primarily of the former and present trustees of the Estate ("the Respondents"). In particular, the fourth to seventh respondents were former trustees of the Estate, while the first and second respondents were the present trustees of the same. As the fourth to seventh respondents were all undischarged bankrupts, summons for this application was also served on the Official Assignee.[2] The third respondent was a company to

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1 Applicants' 1st Affidavit dated 29 June 2015 at para 1.

2 Applicants' Affidavit of Service dated 24 May 2016 at para 9.

which the fourth to seventh respondents as former trustees purportedly conveyed the reversionary and leasehold interests in the Disputed Properties in 1994. The third respondent had, however, been struck off the Register of Companies sometime in 2010.[3] In the circumstances, only the first, second, and sixth respondents actively participated in this application.

Consolidated Suit No 263 of 2010

6 The present application was related to another matter, *vide*, Consolidated Suit No 263 of 2010 ("Suit 263"), which I had dealt with separately in *Syed Ahmad Jamal Alsagoff v Harun bin Syed Hussain Aljunied* [2016] 3 SLR 386. In Suit 263, the plaintiffs sought, *inter alia*, a declaration that their leasehold interests in the Disputed Properties subsisted and had not been validly terminated by the defendants. I granted the declaration, although the plaintiffs' claims in fraud, conspiracy, and intermeddling as trustees *de son tort* were dismissed. The parties to Suit 263 and the present application were the same – the Applicants here were the plaintiffs in Suit 263, and the Respondents here were the defendants in that case. The heart of the Applicants'/plaintiffs' contention in the two proceedings also remained consistent – that the Respondents/defendants had deprived them of their rightful entitlement to leasehold interests in the Disputed Properties.

Originating Summons No 1122 of 1992

7 In this application, the Applicants sought leave to intervene in a concluded matter, *vide*, Originating Summons No 1122 of 1992 ("Original Proceedings"). In that case, the fourth and fifth respondents had obtained on an *ex parte* basis the Original Order, dated 27 November 1992, which was

[3] Applicants' Affidavit of Service dated 24 May 2016 at para 6.

thereafter registered against the Disputed Properties in the Registry of Deeds. The Original Order granted three prayers in terms of the application, which may be summarised as follows:[4]

> (a) That the fourth and fifth respondents be appointed as trustees of the Estate;
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> (b) That the Original Order be registered in the Registry of Deeds, and that upon such registration, the appointment of sixth and seventh respondents as trustees to the Estate in the Deed of Appointment of New Trustees dated 24 July 1992 be confirmed; and
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> (c) That the "land hereditaments and premises described in the schedule annexed hereto subject to the trusts of the said Will of [the Testator]… do vest in the said [fourth to seventh respondents] for the estate therein which would now be vested in [their derivative predecessors if they or any one of them were now living]".

Two subsequent decisions of the High Court

8 The Applicants heavily relied on two decisions of the High Court concerning assets of the Estate, which were decided subsequent to the conclusion of the Original Proceedings.

9 First, in *Syed Salim Alhadad v Dickson Holdings Pte Ltd* [1997] 1 SLR(R) 228 ("*Dickson Holdings*"), the plaintiffs as purported trustees of the Estate sought to forfeit the defendants' leases over four properties in the Estate. These properties, while part of the same estate, did not overlap with the

[4] Order of Court dated 27 November 1992.

Disputed Properties. The defendants objected to the plaintiffs' title to sue on the ground that, despite the Original Order, the plaintiffs were not the properly appointed trustees of the Estate. The High Court held that the defendants could intervene in the Original Proceedings and set aside the Original Order to the extent that it related to the four properties there disputed, on grounds that, *inter alia*, the plaintiffs failed to make full and frank disclosure of material facts to the court in the Original Proceedings. The salient parts of the court's decision warrant reproduction in full:

> 41 … I accept that in the ordinary case, any change in the ownership or trusteeship of the reversion does not affect or concern the leaseholder… However, in the absence of an estoppel, the tenant or the leaseholder is not prevented from challenging the title of the landlord… In this case, the plaintiffs rely on the court order to assert that they are the properly appointed trustees of the testator's estate. It is open to the defendants to challenge that assertion. If this challenge involves a review of the propriety of the court order and the manner in which that order was procured, I am sure it is open to the defendants to ask the court to undertake such a review. They have a sufficient interest to question the propriety of the application in the 1992 proceedings and the consequent order in so far as they affect the four properties owned by them…
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> 42 I do not think that it matters that the defendants were not joined as parties to the 1992 proceedings. If they have a sufficient interest in the subject matter of the proceedings the court will allow them to intervene in those proceedings. I also do not accept Mr Chung's point that the defendants have waited too long to question the validity of the order. I accept Mr Dyne's explanation that time was required for them and their advisers to investigate the matter, which has such an involved history, to put them in a position to show what was wrong with the proceedings.
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> 43 Where there is a wrong, there is a remedy, or there ought to be one. I have no doubt that, given the circumstances in which the order was procured, it is open to being set aside, at least in so far as it relates to the four properties concerned…

10 Notably, the High Court in *Dickson Holdings* opined that the defendants had taken "too timid a position when they say that they cannot apply to set the

order aside because they were not a party to those proceedings" (at [43]), and invited them to file an application to intervene and set aside the Original Order to the extent of the four properties there disputed to "put the procedural aspects in order", without need for further evidence or submissions (at [44]).

11 The second decision was *Koh Beng Swee v Syed Jafaralsadeg bin Abdul Kadir Alhadad* [1997] SGHC 317 ("*Koh Beng Swee*"). Here, the plaintiffs sought a declaration of their leasehold entitlement to certain properties of the Estate, which did not overlap with the Disputed Properties or with the properties subject of *Dickson Holdings*. In respect of the issue of the defendants' capacity to act as trustees of the Estate and defend the proceedings, the High Court relied on *Dickson Holdings* for the proposition that the defendants' appointment was defective and opined as follows (at [81]):

> … Like Dickson Holdings Pte Ltd in Suit No. 1837 of 1994 and other leaseholders whose interests have been adversely affected thereby, the plaintiffs should take steps to intervene in OS 1122 of 1992 before applying to set aside the 1992 Order made against the properties.

12 Accordingly, the High Court in *Koh Beng Swee* granted the various declarations sought by the plaintiffs on the ground that the defendants' title "had been impugned [and] their capacity to act as trustees for the [Estate] is questionable" (at [93]).

Originating Summons No 69 of 1998

13 In 1998, in light of the ensuing litigation over the validity of appointment of the fourth to seventh respondents as trustees under the Original Order, the first respondent and one Sharifah Fatimah Binte Abdul Kader Aljunied ("Sharifah"), who were beneficiaries of the Estate, applied to court to be

substituted as trustees.[5] By an order of court dated 10 February 1998 ("the Subsequent Order") made in Originating Summons No 69 of 1998, the first respondent and Sharifah were so appointed as the new trustees of the Estate in substitution of the fourth to seventh respondents who were discharged and removed as trustees.[6] The fourth to seventh respondents were named as respondents in this application, but they did not object to the substitution.[7]

The Notice of Appointment of New Trustees in 2009

14 In 2009, the trustees of the Estate under the Subsequent Order, *ie* the first respondent and Sharifah, together with the second respondent, filed a Notice of Appointment of New Trustees dated 19 October 2009 with the Registry of Deeds, the terms of which provided for the voluntary discharge of Sharifah as trustee and the appointment of the second respondent as her replacement.[8] A copy of the Indenture of Appointment was also filed with the Inland Revenue Authority of Singapore.[9] The first and second respondents thus stood as the new co-trustees of the Estate, a state of affairs which appeared thereafter to be unchanged until the matter came before the court in this application and Suit 263.

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5 Joint Affidavit of Sharifah Fatimah Binte Abdul Kader Aljunied & Harun Bin Syed Hussain Aljunied @ Harun Aljunied dated 16 January 1998 in Originating Summons No 69 of 1998.

6 1st and 2nd Respondents' Bundle of Documents dated 19 March 2016 at pp 27-37.

7 1st and 2nd Respondents' Bundle of Documents dated 19 March 2016 at p 27.

8 1st and 2nd Respondents' Bundle of Documents dated 19 March 2016 at pp 40-55.

9 1st and 2nd Respondents' Bundle of Documents dated 19 March 2016 at pp 56-71.

The Applicants' case

15 The Applicants sought leave to intervene in the Original Proceedings in order to set aside the Original Order, which they alleged was defective, and make consequential amendments to the Registry of Deeds. They mounted a two-pronged argument in support. First, they argued that intervention was justified as the Original Order was defective. The purported defects had been identified in *Dickson Holdings* and *Koh Beng Swee*,[10] to which the fourth to seventh respondents were parties, and which decisions were not appealed.[11] Further, they alleged that the applicants in the *ex parte* Original Proceedings (*ie* the fourth to seventh respondents here) had not been full and frank in their disclosure to the court. Secondly, they contended that intervention to set aside was necessary in order to rectify the records and forestall any interference by the first and second respondents (or their successors in title) in their interest in the Disputed Properties.[12] This threat of interference, they submitted, was exacerbated by the ambiguous scope of the Original Order.[13]

16 While the Applicants did not initially identify the basis of their application, they later confirmed their reliance on O 15 r 6(2)(*b*)(ii) and/or the inherent jurisdiction of the court as alternative grounds.[14] In addition to the above arguments, they contended that the requirement that it must be just and convenient to determine the intended intervener's issue as between the existing parties to the cause did not apply in this case, as the Original Proceedings had

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10 Applicants' Submissions dated 10 May 2016 at paras 8-11.

11 Applicants' 1st Affidavit dated 29 June 2015 at para 7.

12 Applicants' Submissions dated 10 May 2016 at paras 13, 15-16.

13 Applicants' Submissions dated 10 May 2016 at para 14.

14 Applicants' Reply Submissions dated 24 May 2016 at paras 7-8.

been heard *ex parte*.[15] Further, they submitted that their leasehold interest in the Disputed Properties constituted an interest directly related to or connected with the subject matter of the Original Proceedings.[16]

The first and second respondents' case

17 A preliminary issue related to the standing of the first and second respondents to resist this application to intervene as they had not been parties to the Original Proceedings. Instead, the applicants in the Original Proceedings had been the fourth to seventh respondents in this present application, who were the former trustees of the Estate. Nevertheless, the Applicants served the present summons on the first and second respondents on the basis that they as present trustees had been complicit with their predecessors, *ie*, the fourth to seventh respondents as former trustees, in interfering with the Applicants' interest in the Disputed Properties.[17] The Applicants also sought costs for this application against the first and second respondents.[18] No application was, however, made to join the first and second respondents as parties to the Original Proceedings. Considering the circumstances, including the role of the first and second respondents in relation to the Disputed Properties, the allegations made against them by the Applicants, the fact that the Applicants had on his own initiative served the present summons on them, and the status of the other respondents, I took the position that the first and second respondents were entitled to be heard

15 Applicants' Reply Submissions dated 24 May 2016 at para 12.

16 Applicants' Reply Submissions dated 24 May 2016 at paras 8-9.

17 Applicants' Reply Submissions dated 24 May 2016 at para 4.

18 Applicants' 1st Affidavit dated 29 June 2015 at para 9.

in respect of this application.[19] Accordingly, submissions were filed by the first and second respondent. No issue on standing was also taken in the arguments.

18 The first and second respondents' primary argument was that O 15 r 6(2)(*b*)(ii) did not and should not apply. First, there did not "exist a question or issue" by the time of application to intervene, because the Original Order, regardless whether it ought to be set aside, had been superseded by the Subsequent Order and the 2009 Notice.[20] Further, the Applicants were unnecessary and improper parties to the Original Proceedings as their issue was not sufficiently related or connected to the relief or remedy claimed in the Original Proceedings.[21] Secondly, it was not "just and convenient" to grant leave to intervene as the Applicants had not stated with sufficient particularity the rights that they wished to protect through this intended intervention.[22] Thirdly, O 15 r 6(2) required that the intervention be made "at any stage of the proceedings", which could not be satisfied here as the Original Proceedings had concluded.

19 Further, the first and second respondents maintained that the Applicants failed to satisfy O 15 r 6(3) as they did not state in their supporting affidavit their interest in the matters in dispute in the cause in which intervention was sought.[23] The Original Order was also merely a procedural or administrative

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19 1st and 2nd Respondents' Submissions dated 19 March 2016 at para 14.

20 1st and 2nd Respondents' Submissions dated 19 March 2016 at paras 39-42.

21 1st and 2nd Respondents' Submissions dated 19 March 2016 at para 43.

22 1st and 2nd Respondents' Submissions dated 19 March 2016 at paras 51-53.

23 1st and 2nd Respondents' Submissions dated 19 March 2016 at para 37; 1st and 2nd Respondents' Reply Submissions dated 27 May 2016 at para 33.

step that did not change the ownership or trusteeship of the reversion.[24] As such, if there were concerns about the protection of their interests, the Applicants should make the necessary applications for declarations, and not intervene and set aside the Original Order.[25]

20 In relation to *Dickson Holdings* and *Koh Beng Swee*, it was argued that these cases did not assist the Applicants, as their reliance on the facts of these cases, rather than their *ratio decidendi*, was impermissible at common law and under s 45 of the Evidence Act (Cap 97, 1997 Rev Ed).[26]

The sixth respondent's case

21 The sixth respondent, in person, strenuously resisted the application to intervene. He argued that the Applicants had no interest or standing in the Original Proceedings.[27] The two cases relied on by the Applicants also did not concern the Disputed Properties, and in any event, had been decided without the benefit of an important Deed Poll which the former trustees' solicitors had mistakenly failed to admit in those proceedings, which would have shown the fourth to seventh respondents' beneficial entitlement to the Estate and their proper appointment as trustees in the Original Proceedings.[28] Accordingly, he submitted that the application should be dismissed with costs on an indemnity basis.[29]

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24 1st and 2nd Respondents' Submissions dated 19 March 2016 at para 62.

25 1st and 2nd Respondents' Reply Submissions dated 27 May 2016 at para 19.

26 1st and 2nd Respondents' Submissions dated 19 March 2016 at paras 73-86; 1st and 2nd Respondents' Reply Submissions dated 27 May 2016 at paras 29, 73-87.

27 6th Respondent's Written Submissions dated 17 May 2016 at para 2.

28 6th Respondent's Written Submissions dated 17 May 2016 at paras 5-6.

29 6th Respondent's Written Submissions dated 17 May 2016 at Conclusion.

The decision

Intervention under O 15 r 6

22 Generally, an application for leave to intervene by a non-party is governed by O 15 r 6(2), the material portions of which provide as follows:

> **Misjoinder and nonjoinder of parties (O. 15, r. 6)**
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> 6.—(1) […]
>
> (2) Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter, the Court may, on such terms as it thinks just and either of its own motion or on application —
>
> (*a*) […]
>
> (*b*) order any of the following persons to be added as a party, namely:
>
> (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon;
>
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.
>
> (3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.
>
> (4) […]

23 The broad objects of the joinder provisions under O 15 r 6(2)(*b*) are: (a) to prevent multiplicity of actions and to enable the court to determine disputes

between all parties to them in one action; and (b) to prevent the same or substantially the same questions or issues being tried twice with possibly different results (*Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 ("*Wee Soon Kim*") at [19]; Foo Chee Hock (gen ed), *Singapore Civil Procedure 2017, Vol 1* (Sweet & Maxwell, 2017) ("*White Book*") at para 15/6/8).

24 In the present case, parties agreed that the relevant sub-provision was O 15 r 6(2)(*b*)(ii), which permits a non-party to be added to "any cause or matter" if (*Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 ("*AHPETC*") at [39]):

> (a) the question or issue between that non-party and one of the parties is linked, factually or otherwise, to the relief or remedy claimed in the cause or matter; and
>
> (b) the court is of the view that it would be "just and convenient" to order a joinder or allow an intervention.

25 Although O 15 r 6(2)(*b*)(ii) was intended to widen the court's power to join a non-party to an action (*White Book* at para 15/6/8; Jeffrey Pinsler (gen ed), *Singapore Court Practice 2017* (LexisNexis, 2016) ("*Singapore Court Practice*") at para 15/6/9), the Applicants could not avail themselves of this provision for at least two distinct reasons.

The relevant time period for intervention

26 First, the chapeau of O 15 r 6(2) uses the phrase "*at any stage of the proceedings* in any cause or matter" [emphasis added], which implies that leave to intervene will generally be granted only if it is filed during the pendency of

the cause or matter in which intervention is sought. The learned authors of *Singapore Court Practice* stated the rule as follows (at para 15/6/6):

> An application to intervene after a judgment is given or a final order is made will not be entertained as the proceedings can no longer be said to be pending as required by O 15 r 6(2): *United Asian Bank v Personal Representative of Roshammah, deceased* [1994] 3 MLJ 327, at 335; *Hong Leong Finance v Staghorn* [1995] 2 MLJ 847. However, there may be circumstances in which matters remain to be resolved after judgment, in which case the court has a discretion to add a party for this purpose. In *The Duke of Buccleuch* [1892] P 201, an order for joinder after liability had been determined at trial was affirmed as damages and the persons to receive them had yet to be assessed. Although the case involved admiralty proceedings, the judgments indicate that the court has a discretion to join a party after the determination of liability where this is appropriate:
>
> > I base my decision upon the words 'at any stage of the proceedings' … They apply, in my opinion, as long as anything remains to be done in the case. In this case there remains the assessment of damages. In this instance the names of other persons are necessary to settle the questions at issue … It is the duty of the court to add the names of the right plaintiffs. [Per Fry LJ at 212; also see 208.]

27 Two cases were cited as authorities by the first and second respondents in support of this rule limiting the time period during which an application to intervene may be filed. The first was *United Asian Bank Bhd v Personal representative of Roshammah (decd) & Ors* [1994] 3 MLJ 327 ("*Roshammah*"), in which the court stated that an intervention application would be in time only if it was filed before the final order had been made:

> Intervention to be legitimate must qualify with the conditions prescribed by O 15 r 6(2)(*b*)(i) or (ii)… It may be permitted at any stage of the proceedings. This means it must be applied for before the final order is made, not after it has been perfected and extracted.

28 The second authority was *Hong Leong Finance Bhd v Staghorn Sdn Bhd* [1995] 2 MLJ 847 ("*Staghorn*"), in which the court affirmed Fry LJ's statement in *The Duke of Buccleuch* [1892] P 201 that an application for intervention would qualify as being made "at any stage of the proceedings" "as long as anything remains to be done in the case", such as an assessment of damages (at 212). Accordingly, the court in *Staghorn* applied the test of whether "anything remained to be done" to the facts of that case as follows:

> We are of the view that after 18 February 1991, when the certificate of sale was issued by the registrar of the High Court, nothing further remained to be done in the proceedings. There were no proceedings in existence after that date. The court would have had no jurisdiction thereafter to make any order under O 15 r 6(2). The proceedings came to an end upon the issuance of the certificate of sale on 18 February 1992, and therefore the order for intervention which was made on 30 January 1995, or the summons for leave to intervene which was filed on 4 December 1993, had not been made or issued 'at any stage of the proceedings' as required by O 15 r 6(2). This is because there was no stage of the proceedings in existence after 18 February 1992 as the issuance of the certificate of sale pursuant to s 259(3)(a) of the Code was the final stage of the proceedings for an order of sale under O 83.

29 I accepted the general rule as stated in *Singapore Court Practice*. The positions in *Roshammah* and *Staghorn*, when scrutinised in detail, may not be entirely consistent, but that did not concern us in the present case. I also did not consider *AHPETC* directly applicable to the facts of this case, and indeed neither party made arguments in that regard. In our case, the summons for leave to intervene was filed only in 2015, whereas the Original Proceedings in which intervention was sought had concluded in 1992, with the Original Order being made on 27 November 1992. A whole 23 years had lapsed in the interim between the Original Proceedings and the present application. Even if the Original Proceedings were susceptible to appeal, the time for appeal had long

since lapsed and an extension of time was highly improbable given the considerable length of delay.

30 For these reasons, as the Original Order had been made – and the Original Proceedings had been concluded with nothing remaining to be done – in 1992, O 15 r 6(2) did not apply. The considerable passage of time in this case was not simply a matter of lateness, but went instead to the jurisdictional scope of O 15 r 6(2).

Just and convenient to allow the intervention

31 In any event, O 15 r 6(2) could not assist the Applicants as it was not "just and convenient" in the circumstances of this case to allow the intervention. Generally, this inquiry "requires the court to take into account the interests of the existing parties to the action… as well as that of the party to be joined" (*AHPETC* at [39]). To this end, the lateness of the application to intervene is a relevant factor, particularly if the resisting parties can show satisfaction of "the critical question of prejudice, which is not to be automatically assumed" (*AHPETC* at [39]-[40]). In *Singapore Court Practice*, it was also observed that "[t]he lateness of an application is often a significant factor in determining whether it is 'just and convenient'" (at para 15/6/6; see also *White Book* at para 15/6/2). While principles drawn from, and analogies to, decided cases may be helpful, the issue of whether the proposed intervention would be "just and convenient" must, in the final analysis, be fact and case specific.

32 In the present case, I did not consider the "just and convenient" requirement to be satisfied. First, as mentioned, it had been 23 years since the Original Order was made in 1992. This considerable lapse of time itself militated strongly against allowing the intervention, as the records and

memories would necessarily have deteriorated and intervention after such a long period would effectively reopen the matter after its erstwhile conclusion. Thus, much like the situation in *Chan Kern Miang v Kea Resources* [1998] 2 SLR(R) 85, intervention would result in parties having to "literally start all over again" (at [23]) by filing new affidavits and attending new hearings with new counsel before a different judge.

33 Secondly, the presence of the Subsequent Order also complicated matters for the Applicants, since the first and second respondents as present trustees of the Estate argued that the Subsequent Order had superseded the Original Order and was the court order from which their authority stemmed. This meant that the Applicants' intervention into the Original Proceeding, even if allowed, would not facilitate the clean and convenient resolution of the gravamen of the parties' dispute, but may instead give rise to a series of intractable litigation over the relationship between the Original and Subsequent Orders, and the effect of *Dickson Holdings*, *Koh Beng Swee*, and Notice of Appointment as an additional overlay.

34 Thirdly, it was also relevant that the first and second respondents, who were the main active respondents in this application, had not been parties to the Original Order, though their present interests would ultimately be tied to that Original Order. To allow intervention by the Applicants would thus, in effect, be to countenance a curious situation where two sides litigate in the name of a proceeding to which neither party had been privy or party. There was in these circumstances a real risk that the first and second respondents would be embarrassed in the conduct of their substantive case against setting aside.

35 The Applicants argued that in an *ex parte* context, there was no requirement that it be "just and convenient" to determine the question or issue

as between the existing parties to the cause or matter in which intervention was sought. That may be true, but it does not obviate the "just and convenient" inquiry entirely. The language of O 15 r 6(2) clearly states that the Court must consider it "just and convenient to determine [the issue] as between him and that party *as well as* between the parties to the cause or matter" [emphasis added].

36 The Applicants also relied heavily on the cases of *Dickson Holdings* and *Koh Beng Swee*, which suggested that parties aggrieved by the Original Order may intervene in the Original Proceedings to set it aside. Those cases did not consider O 15 r 6(2). In any event, the inquiry of what is "just and convenient" must depend heavily on the factual context. What may be "just and convenient" in 1997 may no longer be the case in 2017.

37 Accordingly, it was neither just nor convenient for leave to be granted for the Applicants to intervene in the Original Proceedings, and the Applicants' reliance on O 15 r 6(2) as the basis for their application must accordingly fail.

Inherent jurisdiction of the Court

38 The Applicants also invoked the inherent jurisdiction of the court. Indeed, they appeared to have placed primary reliance on this basis. As a matter of principle, I accepted that the court had an inherent jurisdiction to allow an application for intervention or joinder if such an order would be in the interests of justice, even if O 15 r 6(2) did not apply (*Wee Soon Kim* at [20]-[22]; see also *White Book* at para 15/6/10; *Singapore Court Practice* at para 15/6/10).

39 In *Wee Soon Kim*, the Court of Appeal provided the following guidance on how the court's inherent jurisdiction to allow intervention should be exercised:

> 27 It seems to us clear that by its very nature, how an inherent jurisdiction, whether as set out in O 92 r 4 or under common law, should be exercised should not be circumscribed by rigid criteria or tests. In each instance the court must exercise it judiciously. In his lecture on "The Inherent Jurisdiction of the Court" published in *Current Legal Problems 1970*, Sir Jack Jacob (until lately the general editor of the *Supreme Court Practice*) opined that this jurisdiction may be invoked when it is just and equitable to do so and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression and to do justice between the parties. Without intending to be exhaustive, we think an essential touchstone is really that of "need"…
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> …
>
> 30 The question might well be asked, what prejudice would the intervention cause to the complainant/applicant. But we do not think that that is the correct approach upon which to invoke the court's inherent jurisdiction. It may well be that the question of prejudice is relevant to determine whether intervention should be allowed in the circumstances of a case. But that is not to say that once no prejudice is shown, the court should invoke that jurisdiction. There must nevertheless be reasonably strong or compelling reasons showing why that jurisdiction should be invoked.

40 The touchstone of the court's inherent jurisdiction to permit intervention or joinder is the "strict criterion" of necessity (*Family Food Court v Seah Boon Lock* [2008] 4 SLR(R) 272 at [63]). The absence of prejudice, while relevant, does not itself suffice. Due consideration will be given to the concerns of due process and fairness as between the parties. Ultimately, the court's inherent jurisdiction "should only be invoked in exceptional circumstances where there is a clear need for it and the justice of the case so demands" (*Roberto Building Material Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2003] 2 SLR(R) 353 at [17]). This is *a fortiori* the case if there is an existing rule already covering the

situation at hand, whether in statute, subsidiary legislation, or rule of court (*Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 117 at [81]). Indeed, in these situations where there is an existing rule, such as O 15 r 6(2) in the present case, "a party which urges the court to invoke its inherent jurisdiction or power to circumvent the rule has to show that it is in the interests of justice to disregard the rule" (*Lee Siew Ngug v Lee Brothers (Wee Kee) Pte Ltd* [2015] 3 SLR 1093 at [17]).

41 In the present application, I was not satisfied that it would be in the interests of justice to allow the Applicants' intervention. As discussed earlier, the considerable passage of time, the complications over the relevance of the Original Order, and the fact that the Applicants' real dispute was against non-parties to the Original Proceedings, all militated against the exercise of the court's inherent jurisdiction. By reason of these factors, there was a real risk of embarrassment in the first and second respondents' defence against the setting aside of the Original Order if intervention were allowed. The material changes in circumstance since *Dickson Holdings* and *Koh Beng Swee* also meant that I had to consider afresh what would be in the interests of justice.

42 Critically, the necessity of this entire undertaking was not clear, as the Applicants had in Suit 263 sought, and later obtained, declarations that their leasehold interest in the Disputed Properties had not been extinguished or merged with the Respondents' reversionary interest. This was therefore unlike *AHPETC*, in which the Court of Appeal allowed the joinder as it would otherwise be "a waste of time and expense… [to] require the [non-party] to initiate fresh proceedings that would give rise to the same or similar issues" (at [41]). Permitting intervention here would in fact create a multiplicity of proceedings. The Applicants' fear of possible repercussions arising from the

Original Order if it were not set aside despite my orders in Suit 263, such as the purported possibility that "in another 10 years or so, [the first and second respondents or their successors] would again find alleged cause… to interfere with [their leasehold interests]",[30] was too remote to warrant the invocation of the court's inherent jurisdiction.

43 For these reasons, the Applicants did not establish that this was an exceptional case in which the interests of justice weighed in favour of granting their application to intervene. Their reliance on the court's inherent jurisdiction must accordingly fail.

Other arguments

44 Several other arguments were raised in the submissions by the parties, but were not relevant to the narrow issue at present of whether leave to intervene should be granted to the Applicants. For instance, the Applicants made extensive submissions on the duty of full and frank disclosure in *ex parte* hearings, and relied on *Dickson Holdings* for the proposition that the fourth and fifth respondents had breached such duty in the Original Proceedings as to invoke the court's jurisdiction to set aside the Original Order.[31] In turn, the first, second, and sixth respondents argued that they were valid trustees of the Estate, and had the requisite beneficial interest at the time of the Original Proceedings to support their application for the Original Order, which they hence claimed was validly made.[32] They disputed the relevance of *Dickson Holdings* and *Koh*

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30 Applicants' Submissions dated 10 May 2016 at para 16.

31 Applicants' Reply Submissions dated 24 May 2016 at paras 13-19.

32 1st and 2nd Respondents' Submissions dated 19 March 2016 at paras 65-72; 1st and 2nd Respondents' Reply Submissions dated 27 May 2016 at paras 65-72.

Beng Swee as they characterised the Applicants' reliance on these cases as an impermissible reliance on its factual premises and not its *ratio decidendi*.[33] In fact, they went so far as to suggest that *Dickson Holdings* may itself be set aside if I were to consider certain documents that had not been placed before the court there.[34] In my view, these submissions, while perhaps pertinent if the court were concerned with the propriety of setting aside the Original Order as such, were not relevant to the preliminary issue of intervention.

Conclusion

45 For the foregoing reasons, neither O 15 r 6(2) nor the court's inherent jurisdiction could be relied on by the Applicants in this case. Accordingly, the Applicants' summons for leave to intervene in the Original Proceedings, set aside the Original Order, and make consequential rectifications on the Registry of Deeds was dismissed. It may be that the Applicants have concerns about the impact of the Original Order, but these are best addressed by other proceedings, rather than allowing an intervention here.

46 On the issue of costs, the parties' submissions were considered and the following orders were made:

(a) no indemnity costs are ordered;

(b) from the Applicants to the first and second respondents: $12,000 all in; and

(c) from the Applicants to the sixth respondent (in person): $3000.

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33 1st and 2nd Respondents' Submissions dated 19 March 2016 at paras 73-86; 1st and 2nd Respondents' Reply Submissions dated 27 May 2016 at para 29.

34 1st and 2nd Respondents' Reply Submissions dated 27 May 2016 at para 64.

47 The decision on costs was conveyed by letter dated 7 December 2016. Time limited for appeal was extended to 2 weeks after the court's decision on costs.

Aedit Abdullah
Judicial Commissioner

Tan Teng Muan and Loh Li Qin (Mallal & Namazie) for the applicants;
Kirpal Singh and Osborne Oh (Kirpal & Associates) for the first and second respondents;
The sixth respondent in person.