Woon Brothers Investments Pte Ltd *v* Management Corporation Strata Title Plan No 461 and others
[2011] SGCA 43

Case Number	: Originating Summons No 499 of 2010 (Registrar's Appeal No 300 of 2010)
Decision Date	: 25 August 2011
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; V K Rajah JA
Counsel Name(s)	: Nicholas Lazarus (Justicius Law Corporation) for the Appellant; Boo Moh Cheh (Kurup & Boo) for the First Respondent; Philip Fong, Justin Chia and Kylie Peh (Harry Elias Partnership LLP) for the Second to Fifth Respondents
Parties	: Woon Brothers Investments Pte Ltd — Management Corporation Strata Title Plan No 461 and others

Civil Procedure – Originating Processes

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2011] 2 SLR 405.]

25 August 2011

Chao Hick Tin JA:

Introduction

1 This appeal arose out of an originating summons ("the OS") taken out by a subsidiary proprietor of a unit within the building known as "International Plaza" against the building's management corporation, three of the management corporation's members and the building's developer. The latter four respondents applied to convert the OS into a writ of summons ("the writ") but their application was dismissed by an Assistant Registrar ("AR"). However, the AR's decision was reversed upon appeal to a judge in chambers ("the Judge"). This appeal was from the Judge's decision which we heard and dismissed on 11 April 2011. As the procedural questions raised in the appeal are of some general interest, these grounds are accordingly issued.

Background

2 Woon Brothers Investments Pte Ltd ("the Appellant") is the subsidiary proprietor of Unit #46-15 in International Plaza, 10, Anson Road, Singapore 079908 ("the Building"). It filed the OS against the respondents. The respondents in this Appeal are the defendants in the OS. Management Corporation Strata Title Plan No 461 ("the First Respondent"), a body corporate established under the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) ("the Strata Act"), consists of the subsidiary proprietors of all the units in the Building. It is the function of the First Respondent to manage the Building. The executive body of the First Respondent is the Council. Its members are elected by the subsidiary proprietors from among themselves as provided in s 53 of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("the BMSMA").

3 The second to fifth respondents applied to convert the OS into a writ. Cheong Keng Hooi ("the Second Respondent"), Cheong Hooi Hong ("the Third Respondent") and Cheong Sim Lam ("the Fourth Respondent") are brothers and at the material time were members of the Council. The Third

Respondent was the Chairman of the First Respondent. By the time the OS was instituted, the Fourth Respondent had ceased to be a member of the Council although his other two brothers remained on the Council. The Second and the Third Respondents are shareholders of International Associated Company Pte Ltd ("the Fifth Respondent"), which was the developer of International Plaza. They are also shareholders in Seiko Architectural Wall Systems Pte Ltd, Tian Teck Realty Pte Ltd and Ka$h International Pte Ltd, companies which were also the subjects of allegations made by the Appellant in the OS.

4 In the OS, which was filed on 20 May 2010, the Appellant alleged, *inter alia*, fraud, misappropriation of funds belonging to International Plaza's subsidiary proprietors, the failure to act honestly and with reasonable diligence, and for taking advantage of their positions as Council Members to gain various benefits, against the Respondents. The Appellant averred that the Respondents had acted in breach of the obligations imposed upon them by BMSMA and the Strata Act. The Respondents denied these allegations.

5 On 18 June 2010, the Second to Fifth Respondents applied, under Summons No 2788 of 2010 and pursuant to O 28 r 8 and O 5 rr 2 and 4 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the ROC"), to convert the OS into a writ and for consequential directions arising from the conversion. In support of this application, the Third Respondent deposed in an affidavit that an OS was not an appropriate process to resolve the dispute, given the numerous contested factual issues in the present action.

6 The AR, who heard the application, dismissed it for two main reasons. First, she was unconvinced that there was a substantial dispute of facts sufficient to warrant a conversion of originating process. Second, she held that in any event, a dispute on facts did not automatically necessitate a conversion of an OS into a writ as the court had the option under O 28 r 4(4) of ordering deponents of affidavits filed to be cross-examined.

7 The Second to Fifth Respondents appealed to the Judge against the AR's decision, by way of Registrar's Appeal No 300 of 2010. The Judge allowed the appeal: see *Woon Brothers Investments Pte Ltd v Management Corporation Strata Titles Plan No 461 and Ors* [2011] 2 SLR 405. The Judge converted the OS for three main reasons. First, as the application to court was not an application made under the BMSMA, it was not mandatory to commence the proceedings by OS. Second, there was a high likelihood of substantial disputes of fact. Third, the alternative to conversion of an OS into a writ, by resorting to O 28 r 4 of the ROC of having the deponents of affidavit cross-examined, was unsatisfactory.

The relevant legal provisions

8 We will begin by referring to the relevant statutory provisions. The first provision is s 124(1) of the BMSMA which reads:

> Legal proceedings
>
> 124. — (1) Every application to the court under this Act shall be by originating summons.

9 The other relevant provision is O 5 of the ROC which governs the commencement of legal proceedings.

> ...

Proceedings which must be begun by writ (O. 5, r. 2)

2. Proceedings in which a substantial dispute of fact is *likely* to arise shall be begun by writ.

Proceedings which must be begun by originating summons (O. 5, r. 3)

3. Proceedings by which an application is to be made to the Court or a Judge thereof *under any written law* must be begun by originating summons.

...

[emphasis added]

10 The Second to Fifth Respondents' application to convert the OS into a writ was made pursuant to O 28 r 8 of the ROC which reads:

Continuation of proceedings as if cause or matter begun by writ (O. 28, r. 8)

8.—(1) Where, in the case of a cause or matter *begun by originating summons*, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that pleadings shall be delivered or that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

...

(3) This Rule applies *notwithstanding that the cause or matter in question could not have been begun by writ*.

...

[emphasis added]

11 Where appropriate, instead of converting an OS into a writ, the courts may give directions for the filing of evidence and attendance of deponents for cross-examination on specific areas. These are provided for in O 28 r 4 of the ROC:

Directions, etc., by Court (O. 28, r. 4)

...

(2) Unless on the first hearing of an originating summons the Court disposes of the originating summons altogether or orders the cause or matter begun by it to be transferred to a District Court or makes an order under Rule 8, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(3) Without prejudice to the generality of paragraph (2), the Court shall, at as early a stage of the proceedings on the originating summons as appears to it to be practicable, consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal

of the proceedings can accordingly best be secured by hearing the originating summons on oral evidence or mainly on oral evidence and, if it thinks fit, may order that no further evidence shall be filed and that the originating summons shall be heard on oral evidence or partly on oral evidence and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.

(4) *Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination and any other directions*.

[emphasis added]

Issues

12 Before us, the Appellant's basic contention was that since a party who wishes to make an application under s 124(1) of the BMSMA is required to do so by way of an OS, the court does not have the discretion to convert such an OS into a writ. The alternative argument of the Appellant was that even if the court had the discretion to convert the OS into a writ, the Judge had, in the circumstances of this case, wrongly exercised her discretion in so ordering a conversion. Accordingly, the following two issues were raised in this appeal:

(a) Whether, notwithstanding s 124(1) of the BMSMA, the court has the jurisdiction to convert the OS into a writ ("the jurisdiction issue").

(b) If the court has the jurisdiction, whether the court's discretion should, in the present circumstances, be exercised to convert the OS into a writ ("the discretion issue").

The jurisdiction issue

13 The jurisdiction issue raised by the Appellant necessitates a consideration of s 124(1) of BMSMA and O 28 rr 8(1) and 8(3) of the ROC (see [10] above). Order 28 r 8(3) clearly provides that an OS may be converted into a writ notwithstanding the fact that the proceeding could not be commenced by writ. This rule notwithstanding, the Appellant contended that it does not apply in the present case. Its reasoning was that the ROC, being a piece of subsidiary legislation, should not be allowed to prevail over the BMSMA, an Act of Parliament. In support of this argument, the Appellant cited s19(c) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("the Interpretation Act") which reads:

General provisions with respect to power given to any authority to make subsidiary legislation

19. When any Act confers powers on any authority to make subsidiary legislation, the following provisions shall, unless the contrary intention appears, have effect with reference to the making and operation of the subsidiary legislation:

...

(c) no subsidiary legislation made under an Act shall be inconsistent with the provisions of any Act.

14 What is set out in s 19 of the Interpretation Act is clear: an authority empowered by an Act to

make subsidiary legislation cannot make rules or regulations which are inconsistent with that Act or any other Act. The logic for this provision makes absolute sense as otherwise, it would mean that the authority empowered to make subsidiary legislation can override the will of Parliament which is reflected in the Act. In the modern legislative context, it is the practice of Parliament to delegate the power to make subsidiary legislation to implement the objects of the Act to a subsidiary authority like a Minister. Therefore the question which we need to consider here is whether what is provided in O 28 r 8(1) and (3) is inconsistent with s 124(1) of BMSMA. In this regard, it is vitally important not to lose sight of the fact that the ROC are a specific set of rules made by the Rules Committee, pursuant to the Supreme Court of Judicature Act (Cap 322), to regulate the conduct of civil litigation in court. O 28 r 8(1) and (3) is a specific rule within that set of rules.

15 In *Thomas & Betts (SE Asia) Pte Ltd v Ou Tin Joon and another* [1998] 1 SLR(R) 380 ("*Thomas Betts*") at [6] – [7], this court had the occasion to address the question of how the ROC ought to be read with an Act of Parliament. There this court stated:

> 6 It was further argued on behalf of the appellants that s 80 of the [Supreme Court of Judicature] Act [(Cap 322) ("the Act")] by sub-s (2)(a) empowers the Rules Committee to make Rules of Court prescribing, [*inter alia*], the time within which an application under the Act is to be made. The Rules Committee have made the Rules of Court, which by O 56 r 2 prescribe the time for making an application for further arguments under s 34(1)(c) of the Act. *While the Act provides the substantive right of appeal, the Rules lay down the procedure as to how and the time within which an appeal is to be initiated and pursued. The Act and the Rules are to be read consistently, and thus read, matters such as the procedure, manner and the time for making an application under the Act are governed by the Rules of Court*. Since the Rules of Court apply, the period of time for making the application under s 34(1)(c) for further arguments should be computed in accordance with the Rules.
>
> 7 *This argument of the appellants would be valid, if s 34(1)(c) is silent as to the time within which the application for further arguments is to be made*. But the section is specific in terms of the time for making the application, and in view of the specific time that has been provided in that section it is not open to the Rules Committee to make any rule prescribing a time which is at variance or inconsistent with such time. In our judgment, whatever may be the time prescribed by the Rules, the time specified in the Act must prevail.
>
> [emphasis added]

16 In *Thomas Betts*, the court was dealing with a situation where the applicable rule of the ROC was clearly inconsistent with an express provision of an Act. But can that be said to be the position with regard to the present matter? Section 124(1) of BMSMA merely provides that every application under that Act "shall be by originating summons". The Appellant emphasised the fact that s 124(1) used the term "shall be by" instead of "shall commence by" or "shall [be] begun by" and that, it said, could only mean that Parliament intended the entire proceeding which was commenced as an OS must continue as an OS. On the other hand, the Second to Fifth Respondents pointed out that s124(1) employed the word, "application", and not "proceeding" and thus Parliament could not have intended that once an application was made by way of an OS, it must continue as an OS right up to final adjudication by the court.

17 Reference was also made by the Second to Fifth Respondents to the fact that the heading to s 124 uses the expression "legal proceedings" whereas s 124(1) refers to "application". They thus submitted that the word "application" in s 124(1) should bear a narrower sense, it really being a subset of "proceedings". In support thereof, they referred to the meanings ascribed to these two

words in *Black's Law Dictionary* (West Publishing, 8th Ed, 2004) at 108 and 1241, with "application" to mean "[a] request or petition" and "proceeding" to mean:

> **1**. The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment.
>
> **2**. Any procedural means for seeking redress from a tribunal or agency.
>
> **3**. An act or step that is part of a larger action.
>
> **4**. The business conducted by a court or other official body; a hearing.
>
> **5**. *Bankruptcy*. A particular dispute or matter arising within a pending case – as opposed to the case as a whole.
>
> [emphasis in original]

18 It is plain that these two words do not mean the same thing, with "application" meaning the commencement of proceeding and "proceeding" encompassing the entire process of litigation from commencement to final judgment.

19 In this regard, we note that there is an established presumption of statutory interpretation that the same word is to bear the same meaning throughout the Act. This was reaffirmed in *Madras Electric Supply Corporation Ltd v Boarland (Inspector of Taxes)* [1955] AC 667 ("*Madras Electric*") at 685 and *Hounslow London Borough Council v Thames Water Utilities Ltd* [2003] 3 WLR 1243 at 1264. This follows from the reasoning that the Parliamentary draftsman would not indulge in elegant variation, but would keep to a particular term when wishing to convey a particular meaning. But when different words are adopted in a statute, that must mean that those words should mean different things. There is nothing in s 124 to indicate that the two words should not bear their respective plain ordinary meanings.

20 It seems to us that the critical question to ask here is whether there is anything in s 124(1) to suggest that Parliament, by prescribing that every application under the BMSMA "shall be by" OS, intended to take away the inherent jurisdiction of the court to deal with procedural issues which may arise in connection with the case, in particular in relation to how an OS instituted thereunder should thereafter progress in court. Clearly there is nothing in that brief subsection to indicate that Parliament had intended to interfere, or take away, the court's inherent jurisdiction to administer judicial proceedings, after they have been commenced, in accordance with the ROC. The point we would underscore is that s 124(1) is neither patently nor implicitly inconsistent with O 28 r 8(1) and (3).

21 In this regard, we note that BMSMA was enacted by Parliament in 2004. At the time, O 28 r 8(1) and (3) was already part of the ROC. Parliament must be deemed to have known what were laid down in the ROC. If Parliament had intended by the enactment of s 124(1) to override what was provided in O 28 r 8(1) and (3), we would have expected Parliament to say so more explicitly. It did not do so. There is, therefore, simply no basis for this court to hold that s 124(1) is inconsistent with O 28 r 8(1) and (3). The Appellant placed emphasis on the expression "shall be by" in s 124(1) (see [16] above). In the context, we think that expression should sensibly be construed to mean "shall be commenced by". What the Appellant would like this court to do was to read those words to effectively mean "shall be commenced by an OS and shall continue as such until judgment of the court". There is simply nothing in s 124(1) to justify such an expanded reading of those three simple

words.

22 Another presumption which had been argued to be relevant here is that Parliament would not have intended a statute to give rise to an absurd, unworkable or inconvenient result. Lord Millett stated in *R (on the application of Edison First Power Ltd) v Secretary of State for the Environment, Transport and the Regions* [2003] UKHL 20 at [116] – [117]:

> 116 ... The Courts will presume that Parliament did not intend a statute to have consequences which are objectionable or undesirable; or absurd; or unworkable or impracticable; or merely inconvenient; or anomalous or illogical; or futile or pointless.
>
> 117. But the strength of these presumptions depends on the degree to which a particular construction produces an unreasonable result. The more unreasonable a result, the less likely it is that Parliament intended it: see (in a contractual context) *Wickman Machine Tool Sales Ltd v L Schuler AG* [1974] AC 235 at p 251 *per* Lord Reid. ...

It cannot be disputed that matters relating to the administration of judicial proceeding are, as they ought to be, within the exclusive domain of the courts. There are sound policy reasons for this. There is no reason why Parliament should want to impose a system which would be inconvenient or impracticable to the courts in their administration of justice. Adopting the argument of the Appellant here would mean that the courts are required to continue managing a case in a manner which the courts themselves consider to be inexpedient or inconvenient.

23 For the record, we note that there are precedents where an OS commenced under a provision similar to s 124(1) of BMSMA had been converted into a writ. In *Management Corporation Strata Title Plan No 1786 v Huang Hsiang Shui* [2006] SGDC 20, the District Court converted an OS into a writ in the context of s 121 of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) which was identical in wording to s 124(1) of the BMSMA. In *Hillwood Development Pte Ltd v Mariam Binte Amir & Anor* [1999] SGHC 106 , the High Court converted an OS into a writ, notwithstanding s74(2) of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed), which was also similar in wording to s 124(1) of the BMSMA. However, we would hasten to add that these cases did not go into a detailed examination of the jurisdiction issue. Quite clearly, the courts there must have taken a *prima facie* view that nothing in those provisions (which were similar to s 124(1) of BMSMA) precluded the court from exercising its discretion under O 28 r 8(1). The courts there must have been of the view that Parliament did not intend by those similar provisions to interfere with the courts' inherent jurisdiction to administer judicial proceedings in a manner which would best enable the courts to dispense justice.

24 The foregoing should suffice to dispose of the jurisdiction issue. However, we must at this juncture refer to s 41A(1) and (2) of the Interpretation Act, which provisions were not alluded to by any of the parties in their submissions to us. These provisions are highly relevant to the jurisdiction issue and they confirm the construction which this court has sought to place on s 124(1) BMSMA and O 28 r 8. The provisions read:

> Process for making applications to Court in civil proceedings
>
> 41A.—(1) Where any written law which provides for an application in any civil proceedings to be made to a Court —
>
> > (a) does not prescribe the process by which the application is to be made; or
> >
> > (b) prescribes that the application is to be made by way of a petition, a motion, an

originating motion or a summons in chambers,

that written law shall, in relation to any such application that is made thereunder on or after 1st January 2006, be deemed to require that the application shall be made —

(i) by way of an originating summons, if it commences the proceedings; or

(ii) by way of a summons, if it is made in proceedings that are pending.

(2) Where pursuant to subsection (1) an application is made to a Court under any written law by way of an originating summons or a summons —

(a) the application shall be *made in accordance with the Rules of Court*;

(b) the Court may give to the parties to the application such directions as the Court thinks just and expedient for the purpose of facilitating the progress of the application as an application made by originating summons or summons, as the case may be; and

(c) *any provision in that written law which relates to the practice and procedure for making such an application and which is inconsistent with this section or with the Rules of Court shall, to the extent of the inconsistency, have no effect in relation to that application*.

[emphasis added]

25 We should explain that s 41A of the Interpretation Act was enacted (by way of Statutes (Miscellaneous Amendments) (No 2) Act 2005) and brought into force on 1 January 2006. On the same day as s 41A was brought into force, other amendments to the ROC were also introduced to simplify the civil litigation process. Thereafter there are only two processes to initiate legal proceedings, the writ or the originating summons. Other originating processes like petition or originating motion had been abolished. Section 41A(1) was obviously a consequential amendment. Henceforth, the commencement of legal proceedings under any written law can only be made by way of an originating summons or by way of a summons where there is already a pending proceeding. What is more significant are the provisions in s 41A(2)(b) and (c). Under s 41A(2)(b) it is expressly provided that in respect of an OS or summons so initiated under any written law, the court is empowered to give directions to facilitate the progress of the application. Under s 41A(2)(c), as far as practice and procedure of court are concerned, the ROC would prevail over any inconsistent provision in any such written law. Thus the ROC is expressly accorded precedence over any other written law (including an existing Act) as far as court practice and procedures are concerned. In the light of what is provided in s 41A(2)(b) and (c), it is clear that an application made by way of an OS under any written law can be converted into a writ action if the court should deem it fit to do so.

26 Before we move on to consider the second issue on the exercise of discretion, we would mention that another reason given by the Judge for granting an order converting the OS into a writ was that, even if it were correct to hold that s 124(1) prohibits the converting of an OS into a writ, the provision would not apply to the present OS because the subject matter of the application was not one made under the BMSMA. An allegation of fraud is a common law claim and it could form the basis of an action independently of BMSMA. On the other hand, fraud could also be a ground to base a claim under BMSMA.As we have already held above that the court had the jurisdiction to convert the OS into a writ, we do not think it necessary for us to examine further whether the present application by the Appellant, where voluminous allegations of wrongdoings have been made by the Appellant against the Respondents, was one made under the BMSMA or otherwise. What we wish to

clarify at this juncture is only this. At [23] of the Judge's Grounds of Decision, she seemed to suggest, upon citing the respondents' submissions, that only applications made to court under ss 32(1), 36 and 76 to 83 of the BMSMA would fall within s 124(1). It would be clear, on a plain reading of s 88, that an application made pursuant to that section would also fall within s 124(1).

The discretion issue

27 We now turn to the second issue as to whether the Judge had properly exercised her discretion in converting the OS into a writ. In order for the court to exercise the discretionary power to convert an OS into a writ under O 28 r 8(1) of the ROC, the threshold requirement prescribed in O 5 r 2 must be met, namely, that "a substantial dispute of fact is likely to arise". We note the words "likely to arise"; words which are simple and clear in themselves. No further paraphrasing or elucidation is required. This expression may be contrasted with "will arise" or "have arisen". The applicant for conversion need not show that there will be or there already existed a substantial dispute of fact, so long as such a dispute is likely to arise.

28 Contrary to the Appellant's submission, it was abundantly clear to us that the allegations it had made against the Respondents were strenuously disputed. There was not a doubt in our mind that the requirement for conversion had been amply satisfied.

29 However, the Appellant urged this court not to convert the OS into a writ, arguing that the case could proceed just as fairly and expeditiously by the court, pursuant to O 28 r 4(4), giving directions for the filing of evidence and attendance of deponents for cross-examination on specific areas. For several reasons, we declined the Appellant's request. First, O 28 r 4(4) is only meant to be adopted in cases where there are few disputes of fact. This was iterated in *Tan Sock Hian v Eng Liat Kiang* [1995] 1 SLR(R) 730. In the present case numerous allegations of varying natures, including fraud, were levelled against multiple parties. Given the range of factual issues that were in dispute and the number of parties who would be responding to the allegations made against them, the amount of cross-examination which the Court would have to permit in order to be fair to all parties would effectively render the OS a writ in all but name.

30 Second, the writ is usually more appropriate when allegations of fraud are made, as is the case here. In *Malaysian International Merchant Bankers Bhd v Highland Chocolate & Confectionary Sdn Bhd & Anor* [1997] 1 MLJ 102 ("*Highland Chocolate*"), Abdul Malek J cited Ungoed-Thomas J's dicta in *Re 462 Green Lane, Ilford Gooding v Borland* [1971] 1 All ER 315 at 317:

> In those circumstances, therefore, in this case there must be pleadings; there must be discovery; the action must be at least continued as though it had begun by writ. *This is not a technicality; it is a most important matter of substance because it is only by this means that the parties can see perfectly clearly what are the serious issues involved and be sure of having made available to them by discovery all the relevant documentary evidence which generally plays such an important part in these cases*. Commencing the proceedings by writ would in the circumstances of this case involve only the very small additional expenditure of issuing the writ, and on the rules as they stand it seems to me that the requirement does exist that, whereas here there is an allegation of fraud, the proceedings must be so started and cannot be continued as though commenced by writ when in fact commenced by originating summons.
>
> [emphasis added]

When fraud is alleged, more cogent evidence would be required to establish the claim, and therefore, it would usually be more appropriate to proceed by writ in such cases, where the serious factual

issues in dispute can be clearly distilled from the pleadings, and as highlighted in *Highland Chocolate* above, the requisite evidence can be adequately garnered from the discovery regime attendant with the writ process.

31 Third, the Appellant relied heavily on hearsay evidence. There were even instances of double hearsay. By way of illustration, the Appellant's allegations were based on what its manager heard from another subsidiary proprietor, who had in turn said that he heard it from an anonymous Council member. This is contrary to O 41 r 5 which provides that "an affidavit may contain only such facts as the deponent is able of his own knowledge to prove".

32 In the final result, we did not think that the Judge had erred in exercising her discretion to convert the OS into a writ. All considered, the writ was clearly the more suitable process for the present case to continue, having regard to the substantial factual disputes which already presented themselves on the basis of the affidavits filed. The various interlocutory steps which would automatically follow from the filing of a writ would ensure that the Appellant clearly formulates its claim(s), the Respondents know the precise matters which they have to meet, and through the processes of discovery and interrogations, issues could be narrowed down and the trial would then focus on the essentials.

Conclusion

33 In the premises, we saw no merit at all in the Appellant's stance in resisting the application of the Second to Fifth Respondents to convert the OS into a writ. We would reiterate that there were many serious factual issues to be gone into. A trial with witnesses to be called and cross-examined would be necessary. Accordingly, we dismissed the appeal. We awarded the First Respondent costs of $7,500 and the Second to Fifth Respondents costs of $10,000, both inclusive of disbursements. We also ordered the Appellant to file its statement of claim within 6 weeks from the date on which we dismissed this appeal.

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