

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

[2025] SGHC(A) 25

Appellate Division / Civil Appeal No 38 of 2025 (Summons No 41 of 2025)

Between

Purwadi

... Appellant

And

MBF Northern Securities Sdn
Bhd (in liquidation)

... Respondent

JUDGMENT

[Civil Procedure — Appeals — Leave — Whether permission to appeal required]

[Civil Procedure — Judgments and orders — Enforcement — Whether stay of enforcement amounts to stay of proceedings]

[Civil Procedure — Jurisdiction — Paragraph 3(1) Fifth Schedule Supreme Court of Judicature Act 1969 (2020 Rev Ed)]

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND FACTS	3
ISSUES TO BE DETERMINED	6
OUR DECISION: THE NOTICE OF APPEAL SHOULD BE STRUCK OUT AS NO PERMISSION TO APPEAL HAS BEEN OBTAINED	7
THE APPLICATION FOR A STAY OF ENFORCEMENT IS AN INTERLOCUTORY APPLICATION.....	10
THE ORDER TO GRANT A CONDITIONAL STAY IS AN INTERLOCUTORY ORDER	13
THE APPLICATION FOR A STAY OF ENFORCEMENT DOES NOT CONCERN A STAY OF PROCEEDINGS AND REQUIRES PERMISSION TO APPEAL.....	13
CONCLUSION.....	20

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Purwadi
v
MBF Northern Securities Sdn Bhd (in liquidation)

[2025] SGHC(A) 25

Appellate Division of the High Court — Civil Appeal No 38 of 2025 and
Summons No 41 of 2025

Ang Cheng Hock JCA and See Kee Oon JAD
7 November 2025

15 December 2025

Ang Cheng Hock JCA (delivering the judgment of the court):

Introduction

1 The statutory framework for appeals underwent a major amendment in 2010 to streamline and restrict appeals arising from interlocutory applications (*Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 at [24] and [44], citing Singapore Parl Debates; Vol 87, Sitting No 9; Col 1368; [18 October 2010] (Ho Peng Kee, Senior Minister of State for Law)). Since then, further amendments have been made to delineate matters that are non-appealable and appealable only with permission. The current Fifth Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the “SCJA”) reflects the changes made by way of the Supreme Court of Judicature (Amendment) Act 2019 (No 40 of 2019) to set out decisions that are appealable only with permission. The case before us involves an appeal against an order for a stay of

enforcement of a registered foreign judgment pending a setting aside application before a foreign court. As there is no published judgment on whether permission is necessary to appeal against a decision of a High Court judge on such applications, we take this opportunity to clarify the legal position.

2 Before the judge below (the “Judge”), the appellant was granted a conditional stay on the enforcement of three Malaysian judgments registered under the repealed Reciprocal Enforcement of Commonwealth Judgments Act 1921 (2020 Rev Ed) (which continues to apply to judgments obtained in Malaysia before 1 March 2023), pending the disposal of the appellant’s application in Malaysia to impeach those Malaysian judgments on account of fraud (the “Impeachment Application”). The appellant has since appealed in AD/CA 38/2025 (“AD 38”) contending that the Judge should have granted an unconditional stay instead. In support of AD 38, the appellant has also filed AD/SUM 41/2025 (“SUM 41”) seeking to adduce further evidence on the developments in the Impeachment Application and other related applications in Malaysia.

3 We strike out the Notice of Appeal in AD 38 on the anterior procedural issue on jurisdiction. Correspondingly, we make no order as to SUM 41. The order for a conditional stay of enforcement amounts to an “interlocutory order” made in an “interlocutory application”, which requires permission to appeal pursuant to s 29A(1)(c) read with paragraph 3(l) of the Fifth Schedule to the SCJA. We reject the appellant’s case that his application for a stay of enforcement is an application for a “stay of proceedings”, which is among the specified exceptions to the general requirement for permission to appeal under paragraph 3(l). As the appellant failed to seek and obtain permission to bring AD 38, this Court is not seised of jurisdiction to hear the appeal. We set out our reasons in greater detail below.

Background facts

4 On 17 September 1998, MBF Northern Securities Sdn Bhd (in liquidation) (“MBF”), the respondent in AD 38, commenced a suit in the High Court of Malaya at Kuala Lumpur (the “Malaysian High Court”). MBF brought the suit against Mr Henry Purwadi (“Mr Purwadi”), the appellant in AD 38, for losses incurred on his share trading account with MBF.

5 In a judgment dated 28 December 2010, the Malaysian High Court allowed MBF’s claims against Mr Purwadi. Mr Purwadi’s appeal was dismissed with costs by the Court of Appeal Malaysia (Appellate Jurisdiction) in an order dated 4 January 2019. His motion for permission to appeal to the Federal Court of Malaysia was also dismissed with costs in an order dated 28 September 2020. The three decisions are collectively referred to as the “Malaysian Judgments”.

6 On 20 May 2022, MBF obtained an order in HC/OA 130/2022 (“OA 130”) for the registration of the Malaysian Judgments as judgments of the General Division of the High Court of Singapore (the “Registration Order”). This was done by way of an originating application without notice.

7 From July 2022 to November 2024, MBF took preparatory steps for the enforcement of the judgment debt under the Registration Order in Singapore. MBF obtained an order for examination of enforcement respondent against Mr Purwadi, and this was served on him by way of substituted service in September 2023. Mr Purwadi failed to turn up for the examination hearings. Thereafter, in February 2024 and April 2024, MBF served a statutory demand on Mr Purwadi pursuant to an order for substituted service. There was no response from him.

8 On 16 August 2024, MBF commenced bankruptcy proceedings against Mr Purwadi in HC/B 3028/2024 under the Registration Order (the “Bankruptcy Proceedings”). Mr Purwadi finally appeared through counsel at the first bankruptcy hearing and was granted an adjournment.

9 On 18 November 2024, Mr Purwadi filed HC/SUM 3366/2024 seeking to stay the Bankruptcy Proceedings on the ground that he intended to set aside the Malaysian Judgments and/or the Registration Order (“SUM 3366”).

10 On 16 January 2025, Mr Purwadi filed the Impeachment Application in the Malaysian High Court to set aside the Malaysian Judgments, or alternatively, for a fresh trial to be commenced. This was on the ground that there was new evidence showing that the Malaysian Judgments had been tainted by “fraud and/or perjury”.

11 On 21 January 2025, Mr Purwadi’s application for a stay in SUM 3366 was refused. Instead, he was granted a six-month adjournment in light of the Impeachment Application.

12 On the same day, Mr Purwadi filed HC/SUM 202/2025 for a stay of enforcement of the Registration Order pending the full and final adjudication of the Impeachment Application (“SUM 202”). This application was brought under O 22 r 13(1) of the Rules of Court 2021 (the “ROC 2021”) which provides that a party liable under any court order may apply for a stay of enforcement if there is a “special case” making it inappropriate to enforce the court order immediately.

13 On 27 January 2025, MBF filed an application in the Malaysian High Court to strike out the Impeachment Application on the ground, amongst others,

that no permission had been obtained to bring the application against MBF even though it was already undergoing liquidation.

14 On 24 February 2025, an Assistant Registrar (the “AR”) dismissed SUM 202. Mr Purwadi then appealed against the AR’s decision.

15 On 18 April 2025, at the hearing of MBF’s application to strike out the Impeachment Application, the Malaysian High Court ordered by consent that Mr Purwadi file an application for permission to commence the Impeachment Application given that MBF was in liquidation. On 9 May 2025, Mr Purwadi filed a motion for permission to commence the Impeachment Application and an application to stay the Malaysian Judgments in Malaysia.

16 On 22 May 2025, in HC/RA 48/2025 (“RA 48”), the Judge allowed the appeal against the AR’s decision in part and granted Mr Purwadi a conditional stay. The Judge held that the fact that MBF was in liquidation was sufficient to constitute special circumstances warranting a stay, but that conditions should be imposed to balance the parties’ interests (*MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 (“GD”) at [38], [64] and [74]).

17 On 4 June 2025, Mr Purwadi brought the present appeal in AD 38 against the Judge’s decision to grant a conditional stay. Mr Purwadi also filed SUM 41 to adduce additional evidence on the developments in the proceedings in Malaysia (at [15] above).

18 For completeness, on 26 August 2025, MBF filed HC/SUM 2428/2025 seeking an order that the conditional stay of enforcement be lifted on the basis that Mr Purwadi had failed to comply with the conditions imposed by the Judge.

As Mr Purwadi did not challenge the application, the Judge lifted the conditional stay on 10 September 2025.

Issues to be determined

19 Mr Purwadi’s case in AD 38 is that an unconditional stay of enforcement should have been granted. He seeks this Court’s permission to adduce further evidence (*via* SUM 41), as it allegedly rebuts the key concerns which led the Judge to impose a conditional stay. As for the preliminary point raised by MBF, *ie*, that permission to appeal should have been obtained, Mr Purwadi disagrees. According to Mr Purwadi, an application to stay the enforcement of an order is an interlocutory application for a “stay of proceedings” for which no permission to appeal is required under the SCJA.

20 MBF makes two main submissions. First, MBF argues that the Notice of Appeal in AD 38 should be struck out because none of the exceptions for permission to appeal are applicable and Mr Purwadi failed to seek permission. Second, assuming that the Appellate Division of the High Court is properly seised with jurisdiction to deal with the merits of the appeal, MBF argues that the high threshold for appellate intervention is not satisfied, as the Judge applied the correct legal principles, considered all the relevant factors, and made a reasonable and balanced decision on the conditions to be imposed. MBF does not object to SUM 41 if AD 38 is to be considered on its merits, but seeks to adduce further evidence in response to Mr Purwadi’s new evidence should SUM 41 be allowed.

21 Following from the above, there are three issues for determination:

- (a) as a preliminary point, whether the Notice of Appeal in AD 38 should be struck out on the ground that permission to appeal was required but had not been obtained;
- (b) if the first issue is answered in the negative, then whether SUM 41 should be allowed so that further evidence may be adduced for the purposes of AD 38; and
- (c) finally on AD 38, whether appellate intervention is warranted in relation to the Judge's exercise of discretion to impose a conditional stay.

22 As mentioned at the start of this judgment, our decision on the first issue is dispositive of the appeal.

Our decision: The Notice of Appeal should be struck out as no permission to appeal has been obtained

23 An appellate court is a creature of statute. It is seised of the jurisdiction conferred upon it by the statute that creates it or by such other statute which may confer upon it additional jurisdiction (*PricewaterhouseCoopers LLP and others v Celestial Nutrifoods Ltd (in compulsory liquidation)* [2015] 3 SLR 665 at [25]). The applicable statutory provision in the present case is s 29A(1)(c) of the SCJA. It provides that, subject to any exception specified in the Fifth Schedule to the SCJA, permission is required before an appeal may be brought against a decision of the General Division of the High Court for a case specified in paragraphs 3, 4(1) and 5(1) of that Schedule. MBF correctly refers to paragraph 3(1), which states:

- 3. Subject to paragraph 4(2) [which concerns an appeal against a decision of the Family Division of the High Court involving the exercise of its appellate civil jurisdiction], the permission of the

appellate court is required to appeal against a decision of the General Division in any of the following cases:

...

(l) where a Judge makes ***an order at the hearing of any interlocutory application other than an application for any of the following matters:***

- (i) for summary judgment;
- (ii) to set aside a default judgment;
- (iii) to strike out an action or a matter commenced by an originating claim or by any other originating process, a pleading or a part of a pleading;
- (iv) to dismiss an action or a matter commenced by an originating claim or by any other originating process;
- (v) for further and better particulars;
- (vi) for permission to amend a pleading;
- (vii) for security for costs;
- (viii) for discovery or inspection of documents;
- (ix) for interrogatories to be varied or withdrawn, or for permission to serve interrogatories;
- (x) ***for a stay of proceedings;***

...

[emphasis in bold italics added]

24 The legislative intention underlying paragraph (e) of the Fifth Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (the “2007 SCJA”) – which is the predecessor to paragraph 3(l) of the Fifth Schedule of the current SCJA – is that a party’s right to appeal an interlocutory matter should “depend on the importance of that matter to the substantive outcome of the case” (*Telecom Credit Inc v Midas United Group Ltd* [2019] 1 SLR 131 (“*Telecom*”) at [6]). That is why an order refusing a stay of proceedings or granting unconditional permission to defend any proceedings is not appealable except with permission, as these orders send the matter along the ordinary route to trial

where the parties’ substantive rights will be decided. However, an order granting summary judgment or striking out the action is appealable as of right as it directly affects the substantive outcome of the case.

25 To determine if permission to appeal is required under paragraph 3(l) of the Fifth Schedule, the court will first consider if the application is an “interlocutory application”, and if so, whether the “order” made is an “interlocutory order” (*Telecom* at [18] and [19]).

26 We find that the present case falls under paragraph 3(l) of the Fifth Schedule for the following reasons:

(a) First, we accept MBF’s submission that an application for a stay of enforcement of an order or judgment is an “interlocutory application”, as the determination of the stay application does not finally determine MBF’s rights to the judgment debt under the Registration Order.

(b) Second, while MBF has not specifically addressed this point, we find that the conditional stay order made by the Judge is an “interlocutory order”. As clarified in *Telecom* (see [25] above), the requirement for permission to appeal in the first line of paragraph 3(l) of the Fifth Schedule is only applicable where the order made in an interlocutory application is “interlocutory” in nature. Here, a conditional stay order is interlocutory, as it delays MBF’s rights to enforce the Registration Order and hence does not conclusively determine the parties’ substantive rights to the judgment debt.

(c) Finally, as MBF submits, none of the exceptions to permission to appeal are applicable. In particular, we do not accept Mr Purwadi’s submission that an application for a stay of enforcement of the

Registration Order amounts to an application for a “stay of proceedings”, which would not require permission to appeal.

27 We address each of the points in turn.

The application for a stay of enforcement is an interlocutory application

28 An application is “interlocutory” if its determination “may or may not finally determine the parties’ rights ‘in the cause of the pending proceedings in which the application is being brought’” (*Telecom* at [26], citing *The “Nasco Gem”* [2014] 2 SLR 63 at [16]). An interlocutory application is *not* limited to an application that is made before a judgment is rendered. In other words, an interlocutory application may: (a) be peripheral to the main hearing; (b) occur between the initiation of an action and trial; or (c) occur after a judgment has been given (*Telecom* at [26]). That an application can be characterised as being “interlocutory”, even after a judgment or order is made determining parties’ substantive rights, is relevant to the case before us.

29 For context, we set out some cases where interlocutory applications were made in a post-judgment context:

(a) The first case is *PT Bakrie Investindo v Global Distressed Alpha Fund 1 Ltd Partnership* [2013] 4 SLR 1116 (“*PT Bakrie*”), which MBF has referred to. In *PT Bakrie*, the judgment creditor obtained an order in Singapore registering an English judgment, as well as an order to examine the former chairman of the judgment debtor on the latter’s assets. The judgment debtor applied to set aside both orders. The judgment debtor also applied to adjourn the hearing for the examination of the former chairman until the disposal of those setting aside applications. The adjournment application was dismissed by the

assistant registrar and then by the judge on appeal. The judgment debtor appealed against the judge's decision. The Court of Appeal held that permission to appeal should have been obtained under paragraph (e) of the Fifth Schedule of the 2007 SCJA. The application to adjourn the hearing for examination of the judgment debtor's former chairman was an interlocutory application as it "did not finally determine" any of the judgment debtor's claims to set aside the registration order and the examination order (*PT Bakrie* at [13]).

(b) Relying on *PT Bakrie*, the Court of Appeal in *Telecom* overruled the decision of the High Court in *Chen Chun Kang v Zhao Meirong* [2012] 1 SLR 817 ("*Chen Chun Kang*"). In *Chen Chun Kang*, it was held that no permission was required to appeal an order by a Judge of the High Court to adjourn the hearing of an application to enforce a default judgment, as an interlocutory application is one "typically sought in the course of obtaining final judgment" (at [33]). It was clarified by the Court of Appeal in *Telecom* that an application in the course of enforcement proceedings, although occurring *after* the main hearing, may also amount to an interlocutory application (at [24]). Indeed, as in *PT Bakrie*, an application to adjourn the hearing of a matter does not finally determine the parties' rights.

(c) Reverting to *Telecom*, the judgment creditor in that case obtained a provisional garnishee order against the garnishee, who was then required to show cause why the order should not be made absolute. The High Court judge ordered a trial to determine the liability of the garnishee to pay a debt allegedly owed to the judgment debtor. The Court of Appeal in *Telecom* held that garnishee show cause proceedings were interlocutory in nature because their determination would not

necessarily determine the parties' rights. More specifically, the court hearing the garnishee show cause proceedings may: (i) discharge the provisional order; (ii) make it absolute; or (iii) order a trial – and if the last option were adopted, then the substantive rights of the judgment creditor and the garnishee would not yet have been finally determined (*Telecom* at [31]).

30 Turning back to the facts of this case, we find that the application in SUM 202 (which was reheard by the Judge in RA 48) for a stay of enforcement of a judgment satisfies the above definition of “interlocutory application”. This is because the outcome of SUM 202 would not finally determine the parties' rights in the cause of the pending proceedings in which the application is brought. This case must be viewed in its proper context. The effect of the Registration Order is that the Malaysian Judgments have, through the process of registration, become enforceable as judgments of the General Division of the High Court. Mr Purwadi has launched proceedings in Malaysia to set aside the Malaysian Judgments. If he succeeds, that will lead to the Registration Order being set aside here. As such, the “cause of the pending proceedings” in this case refers to the parties' rights to the judgment debt under the Registration Order, which is dependent on the outcome of the Impeachment Application in the Malaysian courts.

31 If a stay is granted pursuant to SUM 202, all that means is that MBF's rights to enforce the Registration Order would be delayed. If Mr Purwadi succeeds in setting aside the Malaysian Judgments in the Impeachment Application, then the basis for the Registration Order, and MBF's rights to enforce the same, would fall away. If the Impeachment Application fails, then the stay would be lifted and MBF would be able to start or continue with enforcement proceedings in respect of the Registration Order. On the other

hand, if the court hearing SUM 202 refuses to grant a stay, MBF may start or continue with enforcement proceedings in respect of the Registration Order. But those enforcement proceedings merely permit MBF to recover the amount due under the Registration Order, which has not been set aside. MBF's entitlement to retain the judgment debt is ultimately dependent on the outcome of the Impeachment Application in Malaysia, as already explained.

The order to grant a conditional stay is an interlocutory order

32 We turn to our second point that the Judge's conditional stay order is an "interlocutory" order. An order is "interlocutory" if it "does not finally dispose of the rights of the parties" (*Telecom* at [19(b)]). Here, the rights of the parties hinge on the validity of the Registration Order. This in turn depends on the validity of the Malaysian Judgments which, as noted at [30] above, is to be determined in the pending Impeachment Application. As MBF's entitlement to enforce the Registration Order and retain the judgment debt is not finally resolved by the Judge's order to grant a conditional stay, the order made is an interlocutory order.

The application for a stay of enforcement does not concern a stay of proceedings and requires permission to appeal

33 As there is an interlocutory order made in an interlocutory application, the stay application here falls under the first line in paragraph 3(I) of the Fifth Schedule to the SCJA. Mr Purwadi does not appear to dispute this point. Rather, as indicated above, his contention is that an application for a stay of enforcement is an interlocutory application for a "stay of proceedings". An order made at the hearing of an interlocutory application for a stay of proceedings does not require permission to appeal (paragraph 3(I)(x) of the Fifth Schedule to the SCJA (see [23] above)). It is one of the exceptions carved out of the general requirement

that permission to appeal is required for an interlocutory order made in an interlocutory application. Mr Purwadi asserts that enforcement actions are clearly “proceedings” within the meaning of paragraph 3(l)(x), referring to “[g]arnishee, bankruptcy and seizure and sale” as examples of enforcement “proceedings”.

34 Mr Purwadi submits that, since the effect of staying the enforcement of the Registration Order is to prevent any enforcement “proceedings” from being commenced or continued, his application to stay enforcement is an application for a “stay of proceedings” under paragraph 3(l)(x) of the Fifth Schedule. However, as explained below, we do not accept that enforcement actions are a sub-set of “proceedings” within the meaning of the SCJA or the ROC 2021.

35 We begin by noting that none of the cases we have cited above provide direct guidance on this issue of whether a stay of enforcement amounts to a stay of proceedings. Both *PT Bakrie* (at [29(a)] above) and *Chen Chun Kang* (at [29(b)] above) concerned *adjournment* applications, and neither pertained to a stay of *enforcement*.

36 We return to Mr Purwadi’s submission that enforcement actions are “proceedings”. At first blush, the word “proceedings” appears broad enough to encompass enforcement proceedings. However, there is a conceptual distinction between a stay of proceedings and a stay of enforcement. A stay of enforcement was referred to under previous versions of the Rules of Court as a stay of execution. The terms “stay of enforcement” or “stay of execution” both mean the same thing. Such an order prevents the party in whose favour the judgment has been made (*ie*, the judgment creditor) from relying on the coercive effect of the judgment to recover, through legal processes, what is due under the judgment to the judgment creditor. In short, it suspends the judgment creditor’s

right to enjoy the fruits of a court's judgment in his favour. On the other hand, a stay of proceedings, once ordered, halts the progression of the action from that point when the order is made. A stay of proceedings does not necessarily affect the enforceability of orders or judgments that have already been made.

37 That there is a distinction between a stay of proceedings and a stay of enforcement is also evident from the differing statutory provisions and principles governing each application. The power to grant a stay of enforcement is provided in O 22 r 13 of the ROC 2021 which is titled "Application for stay of enforcement". To be more precise, O 22 r 13(1) provides that "[t]he party who is liable under any Court order may apply for stay of enforcement or stay of any enforcement order or any part of the order if there is a special case making it inappropriate to enforce the Court order immediately". As the Judge observed, a wide range of applications involving various factual scenarios may be brought under this rule (GD at [30]). While there is no universal list of considerations that applies to all factual scenarios, the overarching test under O 22 r 13(1) is whether there is a "special case" which makes immediate enforcement inappropriate. An example of a "special case" is where the judgment creditor is in liquidation (as in the present case: see GD at [38]). This is because there may be doubts in such cases as to whether the judgment sum, if paid, will be recoverable from the judgment creditor should an appeal against the judgment by the judgment debtor be successful. A stay is granted to temporarily prevent enforcement of a judgment in such cases to obviate the risk that the pending appeal will be rendered nugatory.

38 We turn next to stay of proceedings. In certain contexts, the basis for a stay of proceedings may be found in a specific statute. For instance, a statutory stay of proceedings in favour of arbitration has to be granted under s 6 of the International Arbitration Act 1994 (2020 Rev Ed) upon the satisfaction of the

relevant requirements (see *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 at [63]). A stay of proceedings may also be sought on the ground of *forum non conveniens*, which entails the application of the two-stage test in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 (see *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 at [68]). Another example is a case management stay sought under the court’s inherent powers of case management (see *Rex International Holding Ltd and another v Gulf Hibiscus Ltd* [2019] 2 SLR 682 at [16]). It has also been noted that, in the absence of a directly applicable statutory power, an application for a stay of proceedings may be sought under the general power of the court under O 3 r 2(2) of the ROC 2021 (see *HQH Capital Ltd v Chen Liping* [2023] 4 SLR 885 at [34]). Order 3 r 2(2) of the ROC 2021 is reproduced below for convenience:

Where there is no express provision in these Rules or any other written law on any matter, the Court may do whatever the Court considers necessary on the facts of the case before it to ensure that justice is done or to prevent an abuse of the process of the Court, so long as it is not prohibited by law and is consistent with the Ideals.

39 Broadly speaking, while the central consideration behind a stay of enforcement is the risk of injustice if the judgment is immediately enforced, a stay of proceedings primarily concerns considerations of proper case management, abuse of process, and ultimately, the fair and efficient resolution of the dispute between the parties.

40 At this juncture, we return to O 22 of the ROC 2021 which concerns the enforcement of judgments and orders. As reproduced above, O 22 r 13(1) provides that a party may: (a) apply for a “stay of any enforcement order” where such an order has been made; or (b) apply for a “stay of enforcement” prior to

or pending any enforcement order (as in the present case). An “enforcement order” is in turn defined in O 22 r 2(2) (read with O 22 r 1) as follows:

(2) Subject to any written law, an enforcement order authorises the Sheriff to do one or more of the following:

- (a) in respect of an enforcement order for seizure and sale of property, to seize and sell all property belonging to the enforcement respondent;
- (b) in respect of an enforcement order for delivery or possession of property, to seize and deliver or give possession of property in the possession or control of the enforcement respondent;
- (c) in respect of an enforcement order for attachment of a debt, to attach a debt which is due to the enforcement respondent from any non-party, whether immediately or at some future date or at certain intervals in the future, including where the debt which is due to the enforcement respondent is represented by a deposit of money by the enforcement respondent in a non-party that is a financial institution, whether or not the deposit has matured and despite any restriction as to the mode of withdrawal;
- (d) to do anything specified in the Court order.

41 Notably, O 22 r 2(3) of the ROC 2021 requires an application for an enforcement order to be brought by summons without notice, and *not* by an originating process. This is relevant because O 6 r 1(1) of the ROC 2021 states that “proceedings” may be commenced by an originating process (*ie*, an originating claim or an originating application). As such, enforcement actions, which are to be commenced by way of a summons, are not “proceedings” within the meaning of the ROC 2021. Since the ROC 2021 is subsidiary legislation issued under the SCJA, a consistent meaning should be adopted for the use of the term “proceedings” in paragraph 3 of the Fifth Schedule of the SCJA. It follows that neither the garnishee “proceedings” nor the sale and seizure “proceedings”, which Mr Purwadi has referred to as examples of enforcement “proceedings” (see [33] above), are “proceedings” as referred to in paragraph 3

of the Fifth Schedule of the SCJA. In other words, the “stay of proceedings” referred to in paragraph 3(l)(x) does not refer to stay of enforcement actions.

42 Before turning to the final point, we add some observations on garnishee proceedings. Garnishee proceedings are essentially “new proceedings between the judgment creditor and the garnishee” (*Telecom* at [34]). Despite the use of the word “proceedings”, however, the “garnishee process is a mode of *enforcing* a judgment or order for the payment of money” [emphasis added] (*Telecom* at [29]). The process allows the judgment creditor to recover the judgment sum owed by the judgment debtor from a non-party (*ie*, garnishee) who is indebted to the judgment debtor. The determination of the garnishee’s liability to the judgment debtor is ancillary to the ultimate purpose of enforcing the judgment debt owed to the judgment creditor. In short, the garnishee process is a tool of enforcement (rather than a standalone set of proceedings), and a stay of garnishee proceedings would be considered a stay of enforcement.

43 The final point is that the express language in the SCJA and the ROC 2021 draws a distinction between a stay of proceedings and a stay of enforcement. For instance, in the context of appeals from applications in actions, O 18 r 6(1) of the ROC 2021 states that, unless otherwise directed by the lower court or the appellate court, “an appeal does not operate as a *stay of enforcement or of proceedings* under the decision of the lower Court” [emphasis added]. Another instance where a clear distinction is drawn is in the Seventh Schedule to the SCJA. It sets out cases where the civil jurisdiction of the appellate courts may be exercised by less than three judges. One such case is an application to the Appellate Division or the Court of Appeal “for a stay of execution or enforcement (whether pending or after the appeal) or a stay of proceedings under the decision appealed from” (see paragraphs 2(d) and 4(d) of

the Seventh Schedule to the SCJA). This reinforces our view that a stay of enforcement is conceptually distinct from a stay of proceedings.

44 For completeness, we address Mr Purwadi’s point that a bankruptcy proceeding, in addition to garnishee proceedings and sale and seizure, is an example of an enforcement “proceeding”. We accept that an application for a stay of bankruptcy proceedings is an application for a stay of proceedings. However, this does not detract from our conclusion that a stay of proceedings is distinguishable from a stay of enforcement. We reject the premise of Mr Purwadi’s submission, namely that a bankruptcy proceeding is a form of an enforcement proceeding.

45 It is trite that a bankruptcy proceeding may be commenced on the ground of an unsatisfied judgment debt (see ss 311(1)(c) and 312(b) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)). However, as Millet J (as he then was) observed in *In re International Tin Council* [1987] 1 Ch 419 at 455–456:

... [I]n my judgment the winding up process is plainly not a method of enforcing a judgment or arbitration award ... Far from enabling any judgment or award to be enforced, the making of a winding up order prevents it. ... Whether the petition is presented by a creditor or by the debtor, its purpose is to obtain an order which will preclude the creditors from enforcing any judgments or awards which they may have obtained, and substitute the right to participate in a *pari passu* distribution out of an insufficient fund in full satisfaction of their claims. That is not the enforcement of their judgments or awards, but the opposite.

In any case, whatever else it may be, the presentation of a winding up petition is not simply a means of enforcing a judgment or award; as Fletcher Moulton LJ said of an application for a bankruptcy notice in *In re A Bankruptcy Notice* [1907] 1 KB 478, 482: “[I]t is not a method of enforcing a judgment. It is the commencement of proceedings of far wider effect.” ...

46 The above remarks apply to both corporate winding up proceedings and bankruptcy proceedings (*Re Rasmachayana Sulistyo (alias Chang Whe Ming), ex parte The Hongkong and Shanghai Banking Corp Ltd and other appeals* [2005] 1 SLR(R) 483 at [40]). In essence, a bankruptcy proceeding is not a mode of enforcement that compels the judgment debtor to make full payment of the judgment debt to the judgment creditor. Rather, it is a distinct proceeding governed by a separate statutory regime for the collective administration of the debtor’s estate for the benefit of all creditors. As such, while a bankruptcy proceeding is referred to as a collective debt “enforcement” mechanism, unlike the enforcement actions such as an application for a garnishee order and seizure and sale order, it is not targeted at realising the specific judgment debt in full. Strictly speaking, enforcement actions are applications for an enforcement order (see [40] above) – namely, an order for seizure and sale, an order for delivery or possession, an order for attachment of debt (*ie*, garnishee order), or an order to do anything specified in the court order.

47 For the above reasons, we find that the phrase “stay of proceedings” in paragraph 3(l)(x) of the Fifth Schedule to the SCJA cannot be read broadly to encompass a stay of enforcement. As the application before the Judge did not concern a stay of proceedings, there is no applicable exception to the requirement for permission to appeal. Given Mr Purwadi’s failure to seek and obtain such permission, this Court is not seised of the jurisdiction to hear AD 38, and the Notice of Appeal in AD 38 should be struck out.

Conclusion

48 We strike out the Notice of Appeal in AD 38 on the ground that no permission to appeal has been obtained. There is no merit in Mr Purwadi’s objection that MBF’s submissions to strike out the Notice of Appeal should

have been raised earlier, such as by filing a separate striking out application. This is because Mr Purwadi's failure to obtain permission to appeal is a jurisdictional defect of AD 38; it renders the Notice of Appeal in AD 38 invalid (*Munshi Rasal v Enlighten Furniture Decoration Co Pte Ltd* [2021] 1 SLR 1277 at [10]). This Court can thus strike out the Notice of Appeal regardless of whether MBF has applied to strike it out.

49 As this Court is not seised with jurisdiction to determine AD 38, the merits of SUM 41 and AD 38 do not arise for our determination. We thus make no order as to SUM 41.

50 We order costs of \$14,000 (all-in) against Mr Purwadi. The usual consequential orders apply.

Ang Cheng Hock
Justice of the Court of Appeal

See Kee Oon
Judge of the Appellate Division

Clement Julien Tan Tze Ming and Leong Wen Jia Nicholas (Nine
Yards Chambers LLC) for the appellant;
Yik Shu Ying and Darius Tan En Han (Lee & Lee LLP) for the
respondent.