

Virtual Map (Singapore) Pte Ltd v Singapore Land Authority and Another Application
[2009] SGCA 2

Case Number : OS 561/2008, CA 55/2008, SUM 2056/2008
Decision Date : 06 January 2009
Tribunal/Court : Court of Appeal
Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s) : Low Chai Chong, Mark Jerome Seah and Alvin Lim Jun Hao (Rodyk & Davidson LLP) for the applicant in Originating Summons No 561 of 2008 and the respondent in Summons No 2056 of 2008; Dedar Singh Gill and Tang Li Ling Yvonne (Drew & Napier LLC) for the respondent in Originating Summons No 561 of 2008 and the applicant in Summons No 2056 of 2008
Parties : Virtual Map (Singapore) Pte Ltd — Singapore Land Authority

Civil Procedure – Appeals – Striking out – Leave – Notice of appeal – Interpretation of s 34(2)(a) Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) – Claim for copyright infringement commenced at the Subordinate Courts at first instance – Whether Notice of Appeal to Court of Appeal should be struck out as requisite leave of court to appeal pursuant to s 34(2)(a) was not obtained – Whether amount or value of subject matter at trial was less than \$250,000 – Whether it was possible to characterise subject matter of action as having no specific monetary value to circumvent s 34(2)(a) – Whether leave of court should be granted – Section 34(2)(a) Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed)

Copyright – Primary infringement – Copying of maps, street directory vector data and address point vector data – Nature of copying – Altered copying – Test of substantiality for altered copying – Whether there was question of general principle or question of importance concerning test of substantiality for altered copying that would justify grant of leave to appeal

Courts and Jurisdiction – Appeals – Right – One tier of appeal as of right for civil cases – Legislative intention of s 34(2)(a) Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) – Whether s 34(2)(a) applied to claims that had to be commenced at first instance in the High Court – Section 34(2)(a) Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed)

6 January 2009

Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 Virtual Map (Singapore) Pte Ltd (“VM”) is a well-known provider of online maps and related services at its popular websites, www.streetdirectory.com and www.streetdirectory.com.sg. However, its online services came to an abrupt halt sometime after the Singapore Land Authority (“SLA”) succeeded in its action for copyright infringement against VM in the District Court (“the copyright suit”) (see *Singapore Land Authority v Virtual Map (Singapore) Pte Ltd* [2007] SGDC 216 (“the DC decision”). On appeal, the High Court judge (“the Judge”) affirmed the decision of the district judge (“the DJ”) and dismissed VM’s appeal on 25 March 2008 (see *Virtual Map (Singapore) Pte Ltd v Singapore Land Authority* [2008] 3 SLR 86 (“the HC decision”). Consequently, VM filed a notice of appeal on 24 April 2008 against the Judge’s decision (“the Notice of Appeal”). SLA in turn applied, via Summons No 2056 of 2008 (“SUM 2056”), to strike out the Notice of Appeal on the basis that VM had not obtained the requisite leave of the court to appeal pursuant to s 34(2)(a) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (“SCJA”). VM’s position is that no leave of the court is required in order for it to appeal against the Judge’s decision. However, without prejudice

to its position, VM has filed Originating Summons No 561 of 2008 ("OS 561") seeking leave from this court to appeal against the Judge's decision. VM had previously applied on 1 April 2008 to the Judge via Summons No 1491 of 2008 ("SUM 1491") for leave to appeal, but that application was dismissed by the Judge on 21 April 2008.

2 What is before us in the present instance is therefore not the substantive appeal against the Judge's decision, but, rather, two applications, *ie*, SUM 2056 and OS 561, concerning the striking out of the Notice of Appeal and the grant of leave by this court for VM to appeal against the Judge's decision, respectively.

The background

3 The detailed facts of this case have already been comprehensively set out in the judgment of the DJ (see [2]–[13] of the DC decision). We thus propose to set out only the salient facts which are necessary for the resolution of the present two applications.

4 Prior to the copyright suit, SLA and VM were parties to seven licensing agreements (collectively, "the licence agreements"), five of which were in respect of SLA's street directory data of Singapore in vector format ("street directory vector data") and two of which were in respect of SLA's address point data of Singapore in vector format ("address point vector data"). By way of a letter dated 10 June 2004, SLA wrote to VM giving it 30 days' notice to terminate the licence agreements (all the licence agreements provided for termination by either party with not less than 30 days' notice). The reason for the termination of the licence agreements is unclear: VM contended that the licence agreements were terminated in anticipation of the launch of SLA's own online map-search service at www.map.gov.sg, while SLA explained that the licence agreements were terminated because it had become aware that VM had taken legal action against several different parties for unauthorised reproduction of VM's online maps and had demanded large payments in exchange for settling those copyright infringement suits, even in cases where the unauthorised reproduction had been minor and had already been removed. What is *undisputed*, however, is that the licence agreements duly came to an end as at 10 July 2004, and VM does not contend that SLA terminated the licence agreements wrongfully (see the DC decision at [9] and the HC decision at [4]).

5 After the termination of the licence agreements, SLA's solicitors wrote to VM on 20 July 2005 to demand that the latter cease using materials that contained reproductions of SLA's works. VM denied having breached SLA's copyright. A flurry of correspondence between the parties followed, which eventually culminated in SLA commencing the copyright suit. SLA's claim in the copyright suit is that VM had infringed its copyright by virtue of the fact that VM's online maps were reproductions of:

- (a) "the maps in the Singapore Street Directory 1st Edition (1954) until the 21st Edition 2002/2003 (current [e]dition)"[\[note: 1\]](#) (for ease of reference, we shall use the term "the *Singapore Street Directory*" to denote these various editions);
- (b) SLA's street directory vector data; and
- (c) SLA's address point vector data.

The above items will hereafter be referred to collectively as "the works".

6 At first instance, the DJ found that SLA was the owner of the copyright in the works as the requirement of originality laid down in s 27 of the Copyright Act (Cap 63, 1999 Rev Ed) for copyright to subsist in the works had been met (see the DC decision at [41] and [44]). She also found that

there had been “widespread or wholesale copying” (*id* at [91]) by VM of SLA’s street directory vector data and address point vector data (collectively, these two sets of data will be referred to as “the copyright works”) in VM’s online maps, given especially the numerous “fingerprints” of copying found in those maps. These “fingerprints” consisted of, *inter alia*, deliberate errors inserted by SLA in the copyright works (see generally the DC decision at [76]–[85]). The DJ, however, found that there was “insufficient evidence” (*id* at [87]) to demonstrate that VM had copied the maps in the *Singapore Street Directory* since the evidence of copying advanced by SLA had primarily been in respect of the copyright works.

7 The DJ rejected VM’s contention that its online maps were the result of independent creation using global positioning system (“GPS”) data and high-resolution satellite imagery, which was then validated on the ground and continuously revised and updated (“the GPS survey”), and not the result of copying the copyright works. This was because, in addition to the fact that no cogent explanation was proffered by VM for the presence of the “fingerprints” in its online maps (see the DC decision at [119]), she found (crucially) that VM’s map-making process was very much based on the copyright works (*id* at [116]):

[I]n reality, VM’s map-making process was heavily dependent on the raster maps in VM Space, the origins of which was SLA’s vector data, and VM’s vector data which, again, was derived from SLA’s vector data. Vincent [VM’s expert witness] spoke about the advent of “new age” mapping using GIS [geographic information systems] software. I had no qualms with all the facets of map-making in the “new age”. Unfortunately, however dynamic such new mapping methods are, the truth which VM simply could not escape from was that its actual map-making process was heavily dependent ultimately on SLA’s vector data to provide the backbone or “skeleton” of its own online maps. [emphasis in original omitted; emphasis added]

8 In the final analysis, the DJ held that “VM [had] clearly modelled its online maps on SLA’s vector data” (*id* at [122]) and the nature of the copying done by VM constituted a substantial reproduction of the copyright works. Accordingly, VM had infringed SLA’s copyright in the copyright works (*ibid*).

9 With regard to VM’s defence that the licence agreements expressly and impliedly entitled VM to use the works in the creation of its (VM’s) online maps (including subsequent versions of those maps), the DJ held that, on a construction of the express terms of the said agreements, there was nothing which gave VM the contractual right to retain and continue using its online maps, irrespective of whether those maps infringed SLA’s copyright (*id* at [134]). She also held that the alleged implied term that “VM was allowed to keep any maps created under the licence agreements (as well as subsequent versions of the same) and to continue to maintain and market, distribute, sell or offer to sell or otherwise deal with the same” (*id* at [137]), as contended by VM, “flew in the face of the express terms of the licence agreements” (*ibid*), and there was simply “no ‘business efficacy’ to speak of” (*ibid*) that could justify implying such a term, which would “effectively undermine SLA’s legal right to have its intellectual property rights protected in accordance with the law and which would be contrary to the expressed intentions of the parties to the contract” (*ibid*). The DJ also dismissed VM’s defence based on estoppel on the ground that “[t]here was no evidence that SLA had lulled VM into a false sense of security or into thinking that SLA had abandoned any intention to pursue a claim against it” (see the DC decision at [145]).

10 In the light of her findings, the DJ granted all the reliefs asked for by SLA (save the prayer for full discovery of certain information and documents), including an injunction to restrain VM from infringing SLA’s copyright in the copyright works and an order for the delivery up and/or destruction of all of VM’s documents, the continued retention and/or use of which would be a breach of the

injunction (*id* at [148]–[149]).

11 VM appealed to the High Court against the whole of the DJ’s decision. At the hearing of the appeal, VM informed the Judge that it was prepared to accept that SLA had copyright in the copyright works, but maintained that there had been no copying or substantial reproduction of those works (see the HC decision at [6]). The Judge eventually dismissed the appeal. He agreed with the findings made by the DJ at first instance, as well as her reasons as to why copyright infringement had been established in the instant case (*id* at [62]). Effectively, the Judge affirmed the DJ’s decision, not just on the point of copying and substantial reproduction, but also on the construction of the licence agreements as well as the issue of estoppel.

The issues before us

12 As mentioned at the outset of this judgment (see [1] above), SLA applied in SUM 2056 to strike out the Notice of Appeal on the basis that the court’s leave to appeal was required pursuant to s 34(2)(a) of the SCJA (which provides that the court’s leave is required if “the amount or value of the subject-matter at the trial is \$250,000 ... or less” (see further [15] below)), and that such leave had not been obtained by VM prior to the filing of the Notice of Appeal. SLA’s primary contention was that, since the copyright suit had been commenced in the District Court (where the civil jurisdiction of the court is capped at \$250,000 (see ss 19–21 read with s 2 of the Subordinate Courts Act (Cap 321, 1999 Rev Ed), which was the applicable edition of that Act at the time the copyright suit was commenced)), “the amount or value of the subject-matter at the trial” (*per* s 34(2)(a) of the SCJA) was less than \$250,000 in the present case, and, therefore, leave of the court was required before VM could appeal to the Court of Appeal.[\[note: 2\]](#) Counsel for SLA, Mr Dedar Singh Gill, also argued at the hearing before us that s 34(2)(a) of the SCJA should be read together with those provisions of the Subordinate Courts Act which delineated the upper limit of the District Court’s civil jurisdiction, and that effect must be given to the parliamentary intention behind s 34(2)(a) of the SCJA, *viz*, that there should only be one tier of appeal *as of right* (*ie*, without the need to obtain the court’s leave to appeal).

13 In contrast, for reasons that will be elaborated in full later (see [21] below), VM contended that no leave of the court pursuant to s 34(2)(a) of the SCJA was required for its appeal against the Judge’s decision. However, as mentioned (see [1] above), VM also applied via OS 561, “without prejudice to [its] position that no leave of Court [was] required in order to appeal”,[\[note: 3\]](#) to this court for leave to appeal. VM further argued that, even if the court’s leave were required, such leave should be granted as the requirements for obtaining the court’s leave to appeal had been met in the present case.

14 Following from the parties’ arguments, there are two issues for our consideration:

- (a) whether the court’s leave under s 34(2)(a) of the SCJA is required for VM to appeal to the Court of Appeal against the Judge’s decision (if this question is answered in the affirmative, a corollary issue would arise as to whether the Notice of Appeal should be struck out in the given circumstances); and
- (b) if leave to appeal must indeed be obtained from the court, whether such leave should be granted to VM.

Whether leave to appeal under section 34(2)(a) of the SCJA is required

General principles

15 We will start by examining s 34(2)(a) of the SCJA, which provides as follows:

(2) Except with the leave of the Court of Appeal or a Judge [*ie*, “a Judge of the High Court” (*per* s 2 of the SCJA)], no appeal shall be brought to the Court of Appeal in any of the following cases:

(a) where the *amount or value of the subject-matter at the trial* is \$250,000 or such other amount as may be specified by an order made under subsection (3) or less ...

[emphasis added]

16 The operative phrase in s 34(2)(a) of the SCJA is “the amount or value of the subject-matter at the trial”. In *Tan Chiang Brother’s Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd* [2002] 2 SLR 225 (“*Tan Chiang Brother’s Marble*”), this court interpreted the corresponding phrase in s 34(2)(a) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) (“the 1999 SCJA”), which is *in pari materia* with s 34(2)(a) of the SCJA, to mean the *entire* claim of the plaintiff at the trial, regardless of the actual amount awarded by the trial judge or the part(s) of the trial judge’s decision appealed against by the appellant (see also the decision of this court in *Teo Eng Chuan v Nirumalan V Kanapathi Pillay (No 2)* [2003] 4 SLR 442 (“*Teo Eng Chuan*”) at [20]–[23]; *Singapore Civil Procedure 2007* (G P Selvam chief ed) (Sweet & Maxwell Asia, 2007) at para 57/16/8; and *Singapore Court Practice 2006* (Jeffrey Pinsler gen ed) (LexisNexis, 2006) at para 56/3/9). Thus, in *Tan Chiang Brother’s Marble*, although the appellant appealed in respect of only that part of the claim in which it had not succeeded and the counterclaim, the total monetary value of which (taken together) did not exceed \$250,000, it was held that no leave of the court to appeal under s 34(2)(a) of the 1999 SCJA was required, given that the total amount of the appellant’s claim at the trial well exceeded \$250,000 (*id* at [14] and [25]). In the subsequent case of *Teo Eng Chuan*, this court reiterated that it was not the amount in dispute on appeal which would determine whether the leave of the court under s 34(2) (a) of the 1999 SCJA was required (*id* at [20]–[21]):

20 *The approach ... of only looking at the quantum which a party would be disputing before the Court of Appeal to determine if leave is required, not only ignores the plain words of s 34(2) (a) and our ruling in Tan Chiang Brother’s Marble, but will also give rise to anomalies.*

21 Take a case like the present commenced in the High Court, [where,] apart from special damages, the quantum of general damages which the injured would be entitled to would be at large. Of course, at the trial itself, the plaintiff would have to state how much he is claiming for general damages. That, together with the special damages, would be the value of the subject matter. *Assuming that altogether it is more than \$250,000 and supposing the High Court (whether it be a decision of the High Court itself or a decision on appeal from the Registrar on assessment) awards the plaintiff a total sum of \$200,000 as damages*, isn’t the plaintiff entitled as of right to appeal to the Court of Appeal for a sum claimed which is in excess of \$250,000? *We do not think such an appeal would require [the] leave of [the] court. ...*

[emphasis added]

17 On the same basis that it was the quantum of the entire claim of the plaintiff at the trial that mattered, it was held in *Teo Eng Chuan* (at [23]) that:

Even if the plaintiff had exaggerated his claim and the High Court had only awarded him less than \$250,000, there is no reason why the defendant, who had no hand in the action being instituted in the High Court, should be denied an opportunity to appeal if he is dissatisfied with even that

lower award. [emphasis added]

However, a plaintiff who unreasonably inflates his claim and commences his action in the High Court (when it could very well have been commenced in the Subordinate Courts instead) may be penalised in costs (see *Tan Chiang Brother's Marble* at [24]; see also the Singapore High Court decision of *Cheong Ghim Fah v Murugian s/o Rangasamy (No 2)* [2004] 3 SLR 193 at [12]).

18 The decided cases have also clarified the scope of s 34(2)(a) of the SCJA, as follows:

(a) The phrase "the amount or value of the subject-matter at the trial" in s 34(2)(a) of the SCJA does not include non-contractual interest and costs as these are merely consequential matters (see *Abdul Rahman bin Shariff v Abdul Salim bin Syed* [1999] 4 SLR 716, which actually concerns the words "the amount in dispute or the value of the subject-matter" in s 21(1) of the Supreme Court of Judicature Act (Cap 322, 1985 Rev Ed, 1993 Reprint), but which, in our opinion, is equally applicable to s 34(2)(a) of the SCJA).

(b) The expression "trial" includes any judicial hearing, whether in open court or in chambers (see *Tan Chiang Brother's Marble* at [20] and *Spandek Engineering (S) Pte Ltd v Yong Qiang Construction* [1999] 4 SLR 401 ("*Spandek Engineering*") at [17]). Further, *vis-à-vis* an appeal to the Court of Appeal against the order of a High Court judge in a registrar's appeal, the hearing before the registrar and the "appeal" to the judge against the registrar's decision effectively constitute one hearing (given that the judge hears the matter *de novo*) for the purposes of the word "trial" (see *Teo Eng Chuan* at [10]–[14] and *Hailisen Shipping Co Ltd v Pan-United Shipyard Pte Ltd* [2004] 1 SLR 148 ("*Hailisen Shipping Co Ltd*") at [14]).

One tier of appeal as of right for civil cases

19 In *Tan Chiang Brother's Marble* ([16] *supra*), this court explained that s 34(2)(a) of the 1999 SCJA was a process to screen appeals to the Court of Appeal as the legislative intention was to allow only one tier of appeal *as of right* for civil claims up to a certain amount or value (in this case, the limit of \$250,000). At [13] of *Tan Chiang Brother's Marble*, this court explained:

Decisions of the High Court can either be in relation to an action commenced in the High Court or in relation to an action commenced in the [S]ubordinate [C]ourts which comes on appeal before the High Court. *The jurisdictional [limit] of the [D]istrict [C]ourt is \$250,000 or less.* A claim exceeding that limit must be commenced in the High Court. *Implicit in the scheme of things is that there should, as a rule, be only one tier of appeal. In 1998, when the figure in s 34(2)(a) of the SCJA [ie, the Supreme Court of Judicature Act (Cap 322, 1985 Rev Ed, 1993 Reprint)] was raised to make it fall in line with the enhanced civil jurisdiction of the [D]istrict [C]ourt, the Minister [for] Law, Prof S Jayakumar, in his second reading speech in Parliament when moving an amendment Bill to the SCJA, said:*

In view of the enhanced District Courts' jurisdiction [of] \$250,000 in civil matters, the Chief Justice has proposed that the existing \$30,000 limit in section 34(2)(a) be raised to \$250,000. In other words, bring its limit in line with the enhancement. If the limit is not raised to \$250,000, District Court cases of less than \$250,000 can first go on appeal to the High Court and then [the] Court of Appeal. This would strain the limited resources of the Court of Appeal.

[emphasis added]

Referring to its earlier decision in *Spandek Engineering*, this court proceeded to observe as follows (see [19] of *Tan Chiang Brother's Marble*):

[A]s the limit of \$250,000 in s 34(2)(a) was also the upper limit of the [D]istrict [C]ourt's jurisdiction, the objective of s 34(2)(a) was to ensure that where appeals from the decision of the [D]istrict [C]ourt had been heard and disposed of by the High Court, there should be no further appeals therefrom to the Court of Appeal unless (on sufficient grounds [being] shown) leave of either the High Court or this court [ie, the Court of Appeal] was obtained. The provision provide[d] for a process to screen appeals to be brought to this court, thus preventing the clogging up of this court by all kinds of appeals. What was contemplated by the legislature in relation to an action commenced in the [D]istrict [C]ourt was that there should be only two tiers of hearing – the first instance hearing and an appeal. A further appeal to the Court of Appeal was only possible with leave. [emphasis added]

In a similar vein, this court reiterated in *Teo Eng Chuan* ([16] *supra*) that (*id* at [23]):

It is vitally important to bear in mind the scheme of things for civil appeals under the [1999] SCJA. Generally, there should be one tier of appeal, whether it is a case from the District Court, or from the High Court. [emphasis added]

20 Nonetheless, some, including VM in the present case, have suggested that this court's decision in *Hailisen Shipping Co Ltd* (which we will elaborate in detail below at [26]–[30]) has laid down a general rule or an exception that, where no monetary value can be placed on the subject matter of the trial or where the issue on appeal does not involve a monetary value, the matter does not come under the purview of s 34(2)(a) of the 1999 SCJA (and likewise s 34(2)(a) of the SCJA) and no leave of the court is required (see *Singapore Civil Procedure 2007* ([16] *supra*) at para 57/16/8 and *Singapore Court Practice 2006* ([16] *supra*) at para 56/3/9). As will be demonstrated shortly, a proper reading of *Hailisen Shipping Co Ltd* does not, in fact, support this unqualified proposition.

Our decision on whether leave to appeal is required

21 VM's reply to SLA's application in SUM 2056 to strike out the Notice of Appeal was twofold. First, VM argued that, as it was appealing, *inter alia*, against the DJ's order that it deliver up to SLA and/or destroy (among other items) all its maps and products containing its maps, those maps and those products were part of the subject matter of the copyright suit. In this connection, VM contended that it had spent millions of dollars developing its maps, the actual value of which far exceeded \$250,000, and, thus, the monetary value of the subject matter at the trial before the DJ exceeded \$250,000 as far as VM's appeal to the Court of Appeal was concerned. Hence, no leave of the court under s 34(2)(a) of the SCJA was required. Second, VM argued, relying on this court's decision in *Hailisen Shipping Co Ltd* ([18] *supra*), that no specific monetary value could be placed on the subject matter at the trial in the context of the present proceedings and, accordingly, no leave of the court to appeal was required.

22 With respect to the second argument, we should point out that, in VM's application to the Judge for leave to appeal against his decision (*ie*, SUM 1491 (see [1] above)), VM had argued that the following matters were the subject matter at the trial in the context of the present proceedings: [\[note: 4\]](#)

- a. whether an injunction ... should be granted to [SLA];
- b. whether [VM] would have to deliver up to [SLA], or destroy all its [*ie*, VM's] maps and

products containing its maps; and

c. whether damages payable by [VM] to [SLA] should be assessed.

Before us, VM repeated this argument. It submitted that “[t]he subject matter of the trial, when viewed in totality, must refer to *all* of the relief that SLA sought”[\[note: 5\]](#) [emphasis in original] and, since no monetary value could be placed on such relief, no leave of the court was required for an appeal to the Court of Appeal.

23 In so far as VM’s first argument at [21] above is concerned, we find, as a matter of fact, that it is without merit. There is no evidence before the court, save for a bare assertion, that VM has expended millions of dollars developing its maps. VM’s only evidence in this regard was a reference to *Virtual Map (Singapore) Pte Ltd v Suncool International Pte Ltd* [2005] 2 SLR 157, where Lai Kew Chai J (“Lai J”) had referred (at [8]) to the District Court’s decision in *Virtual Map (Singapore) Ltd v Suncool International Pte Ltd* [2004] SGDC 190, in which the District Court had (in turn) referred (at [9]) to the fact that VM *had said* that it had spent \$3m developing, creating and maintaining its online map provision services. No evidence was adduced before Lai J or in the present proceedings on the amount of money which VM had actually spent in that regard.

24 In any event, we are of the view that it is not open to VM to now argue that the monetary value of the subject matter of the trial in the present case exceeded \$250,000 since it had proceeded to trial on the basis of SLA’s claim being within and limited to the jurisdiction of the District Court. By accepting that the District Court had jurisdiction of the matter, VM is now *estopped* from asserting that the monetary value of the said subject matter exceeded \$250,000. At the time of the trial, as far as SLA was concerned, VM’s maps had no value because they were counterfeit, whereas, as far as VM was concerned, the maps had substantial value because they were not counterfeit and therefore could be used for commercial purposes. Be that as it may, if VM considered its maps to be worth an amount in excess of the jurisdictional limit of the District Court, it should have applied to have the entire action transferred to the High Court. That was not done. VM cannot be allowed to blow hot and cold in the same action by now asserting that its maps have a monetary value in excess of \$250,000.

25 In contrast, VM’s second argument that leave of the court to appeal under s 34(2)(a) of the SCJA is not required because the subject matter at the trial in the present case has no specific monetary value (see [21] above) cannot be dismissed out of hand, and it is necessary for us to examine the decision in *Hailisen Shipping Co Ltd* ([18] *supra*) in some detail.

26 In that case, Pan-United Shipyard (“PUS”) contracted with Castle Shipping Company (“Castle”) to repair and supply equipment to Castle’s vessel, *Dilmun Fulmar* (“the vessel”). Castle failed to pay part of the bill, and PUS arrested the vessel. A settlement agreement (“the settlement agreement”) was subsequently reached under which Castle agreed to pay PUS, in three instalments, a total of \$310,000 in full and final settlement of the debt which it owed to the latter. The vessel was released after the first instalment of \$140,000 was paid. Castle then sold the vessel to Hailisen Shipping Co Ltd (“Hailisen”). After the sale, Castle failed to make the remaining instalment payments under the settlement agreement. PUS thus commenced an *in rem* action for the balance sum of \$170,000 (“the *in rem* action”) and arrested the vessel once again. Hailisen applied as an intervener to the *in rem* action to set aside the warrant of arrest and sought damages for wrongful arrest. Subsequently, the assistant registrar set aside the warrant of arrest, but did not award Hailisen any damages for wrongful arrest. On appeal by both PUS (against the setting aside of the warrant of arrest) and Hailisen (against the assistant registrar’s refusal to award damages), Belinda Ang Saw Ean J (“Ang J”) affirmed the assistant registrar’s decision to set aside the warrant of arrest (see *The*

Dilmun Fulmar [2004] 1 SLR 140); she also allowed Hailisen's appeal and held that Hailisen was entitled to damages to be assessed. PUS, in turn, appealed against Ang J's decision. Hailisen argued that PUS was not entitled as of right (*ie*, without first obtaining the leave of the court) to appeal against Ang J's decision since the claim in the *in rem* action was only for \$170,000. Hailisen thus applied to have PUS's appeal struck out on the ground that PUS had failed to apply for the court's leave as required by s 34(2)(a) of the 1999 SCJA.

27 Chao Hick Tin JA, delivering the judgment of this court, held that the subject matter of the *in rem* action was not PUS's claim of \$170,000. He explained (at [15] of *Hailisen Shipping Co Ltd*):

[T]he question to ask is what was the "subject matter" before Ang J. Here, we must observe that while PUS was only claiming for \$170,000, which ordinarily should have been [claimed by way of an action] commenced in a District Court, [PUS's claim] had to be commenced in the Singapore High Court because it was an in rem action. What was before Ang J was not the claim of \$170,000 of PUS but the questions of whether the warrant of arrest of the vessel should be set aside and, if so, whether there should be an order for an assessment of damages. Both these questions were the "subject-matter" before Ang J which she answered in the affirmative. Neither of them bore any specific value. Indeed, the damages to be assessed [were] wholly at large. The claim of PUS in the main action [ie, the in rem action] could in no way limit the damages suffered by Hailisen due to the wrongful arrest. Therefore, the matter did not fall within s 34(2)(a) [of the 1999 SCJA] and no leave was required. [emphasis added]

28 At face value, it is difficult for us to disagree that VM's characterisation of the subject matter in the present case (which is, essentially, an unquantified claim for damages (as well as for the non-monetary remedies of an injunction and an order for the delivery up and/or destruction of infringing materials) in respect of breach of copyright) is supported by the decision of this court in *Hailisen Shipping Co Ltd*. However, it does not, in our view, necessarily follow that *Hailisen Shipping Co Ltd* is applicable to the present case. There is a material difference between the jurisdictional context in which the claim in *Hailisen Shipping Co Ltd* was brought and that in which SLA's claim in the copyright suit was brought. In the present case, SLA made its claim in and within the jurisdiction of the District Court, thereby limiting its damages to \$250,000 and no more. In contrast, in *Hailisen Shipping Co Ltd*, the claims (*ie*, PUS's claim for the balance sum of \$170,000 and Hailisen's claim for damages for wrongful arrest) were made in the High Court, which has unlimited jurisdiction, and Hailisen was not obliged to limit its claim for damages to a particular quantum. In our view, the decision in *Hailisen Shipping Co Ltd* cannot be used as authority to found an argument that no leave of the court is required for an appeal to the Court of Appeal where the subject matter of the trial from which the appeal stems does not have a specific monetary value. The answer to VM's second argument as set out at [21] above is that the subject matter of the copyright suit in the present case did have a monetary value that was fixed by the jurisdiction of the District Court, *viz*, a monetary value not exceeding \$250,000.

29 In our view, there is a simpler answer to the problems associated with characterising the subject matter of an action and then trying to put a monetary value on it for the purposes of determining whether s 34(2)(a) of the SCJA applies. In the District Courts, the monetary value of the subject matter of an action is limited by the jurisdictional limit of \$250,000. In the High Court, there is no such limit. Therefore, the question arises as to whether s 34(2)(a) of the SCJA was ever intended to deal with admiralty claims, such as that arising in *Hailisen Shipping Co Ltd* ([18] *supra*), which, because of the special nature of their subject matter, are governed by a special statute, *viz*, the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed) ("HCAJA"), and have to be pursued in the High Court. Prior to the enactment of s 34(2)(a) of the SCJA in its present form to limit appeals as of right to the Court of Appeal in relation to claims which do not exceed \$250,000 in value (in a

legislative framework intended to provide only one tier of appeal as of right), any admiralty action, regardless of the monetary value of the claim therein, could form the basis of an appeal to the Court of Appeal *as of right*. Given the legislative policy of having only one tier of appeal as of right for civil cases and, in particular, of limiting appeals as of right from the District Courts to only the High Court (see the speech by the Minister for Law, Prof S Jayakumar ("Prof Jayakumar"), during the second reading of the Supreme Court of Judicature (Amendment) Bill 1998 (Bill 40 of 1998) (*Singapore Parliamentary Debates, Official Report* (26 November 1998) vol 69 at col 1629); see also [19] above, where [13] of *Tan Chiang Brother's Marble* ([16] *supra*), which sets out the relevant part of Prof Jayakumar's speech, is quoted in full), it is difficult to imagine that Parliament had intended s 34(2)(a) of the SCJA to cut down the one-tier right of appeal in admiralty actions without expressly providing for that. Moreover, there could conceivably be no reason for Parliament to do so. Other examples of actions in which there is a vested statutory right of appeal to the Court of Appeal, which entitlement would be affected by a literal reading of s 34(2)(a) of the SCJA, would be proceedings under the Companies Act (Cap 50, 2006 Rev Ed) and the Trade Marks Act (Cap 332, 2005 Rev Ed) that are required to be commenced in the High Court. There is no reason why we should interpret s 34(2)(a) of the SCJA so as to blow away, by a side wind, a party's statutory right to appeal, without first obtaining the court's leave, to the Court of Appeal, which right previously vested (and still vests) in respect of (*inter alia*) the aforementioned types of actions.

30 We are of the view that this court's intellectual effort in characterising the subject matter of the action in *Hailisen Shipping Co Ltd* so as to avoid the clutches of s 34(2)(a) of the 1999 SCJA was, with respect, wholly unnecessary. The Court of Appeal in that case could simply have decided the issue on the ground that s 34(2)(a) of the 1999 SCJA had no application to any action commenced under the HCAJA. It would be contrary to Parliament's intention *vis-à-vis* s 34(2)(a) of the SCJA if litigants in admiralty actions have no automatic right of appeal to the Court of Appeal. We note that, besides admiralty cases, there may be other situations where a plaintiff may be obliged to commence his claim in the High Court even though the monetary value of his claim falls below \$250,000 (see [29] above). The present s 34(2)(a) of the SCJA, on a strict literal reading of the words "where the amount or value of the subject-matter at the trial is \$250,000 ... or less", would suggest that, in such cases (as well as in admiralty actions), there is no automatic right of appeal (*ie*, without first having to obtain the court's leave) to the Court of Appeal. In our view, however, if litigants in such actions are not entitled to appeal as of right to the Court of Appeal, it would (as in the case of admiralty actions (see [29] above)) be an affront to the principle that there should be one tier of appeal as of right in civil actions in Singapore. Unsuccessful litigants in such cases should be entitled to appeal as of right to the Court of Appeal.

31 For the above reasons, we are of the view that VM had to obtain the court's leave pursuant to s 34(2)(a) of SCJA before it filed the Notice of Appeal. It should have been clear to VM at the outset that leave to appeal was necessary, given that the copyright suit was commenced in the District Court and given that the appeal against the DJ's decision was subsequently heard and dismissed by the Judge in the High Court. Accordingly, the Notice of Appeal in this case is struck out.

Whether leave to appeal should be granted

32 As mentioned earlier (see [1] above), VM has also made an application (*ie*, OS 561) for leave to appeal to this court against the Judge's decision. The principles governing the grant of leave to appeal are well-established. It suffices, for present purposes, to state that this court has established in *Lee Kuan Yew v Tang Liang Hong* [1997] 3 SLR 489 ("*Lee Kuan Yew*") at [16] (and reaffirmed in *IW v IX* [2006] 1 SLR 135; see also *Singapore Civil Procedure 2007* ([16] *supra*) at para 57/16/14 and *Singapore Court Practice 2006* ([16] *supra*) at para 56/3/8) that there are three limbs which a party can rely upon when seeking leave to appeal (see [16] of *Lee Kuan Yew*):

[T]here are at least three limbs which can be relied upon when leave to appeal is sought: (1) prima facie case of error; (2) question of general principle decided for the first time; and (3) question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

33 In OS 561, VM relied on all three limbs to argue that leave to appeal should be granted to it. In respect of the first limb, VM, in its written submissions and at the hearing before us, spelt out the following list of errors alleged to have been made by the DJ and/or the Judge:

- (a) the Judge and the DJ had asked the wrong legal question in determining if there was substantial copying of the copyright works after establishing that there were “fingerprints” of copying in VM’s online maps;
- (b) the Judge had failed to appreciate that VM’s map-making process was completely different from the traditional map-making process described by SLA’s expert, Mr Calvert;
- (c) the Judge had failed to appreciate that the online maps created by VM through the GPS survey (see [7] above) constituted an independent work, given the evidence before the court; and
- (d) the Judge had misconstrued the licence agreements.

34 In our view, there is no merit in any of these allegations. The DC decision and the HC decision, respectively, have dealt with every one of these matters. The findings made by, respectively, the DJ and the Judge are well-reasoned and amply supported by the evidence before them. We are of the view that their findings are correct in law.

35 In so far as the second and the third limbs for granting leave to appeal (as set out in *Lee Kuan Yew* at [16]) are concerned, VM argued that the alleged copying of the copyright works here constituted “altered copying” and not normal copying, and that the test of substantiality (the requirement of substantiality is prescribed in s 10(1)(b) of the Copyright Act) in cases of “altered copying” was unsettled, given the different approaches to the requirement of substantiality that appeared to have been adopted by Lord Millett and Lord Scott of Foscote in the House of Lords decision of *Designers Guild Ltd v Russell Williams (Textiles) Ltd* [2000] 1 WLR 2416 (“*Designers Guild Ltd*”). In brief, Lord Millett took the view (at 2426) that, in determining the requirement of substantiality:

The pirated part is considered *on its own* ... and its importance to the copyright work assessed. *There is no need to look at the infringing work for this purpose.* [emphasis added]

Lord Scott, on the other hand, was of the view that, for “altered copying” cases, the similarities between the infringing work and the copyright work would actually be determinative of the question of substantiality (at 2430–2432). VM thus submitted that the test of substantiality for “altered copying” cases was a question of general principle of importance that should be decided by this court, as the final appellate court, in the public interest; accordingly, leave to appeal should be granted.

36 “Altered copying” is essentially “copying with modifications” (see, *inter alia*, *Designers Guild Ltd* at 2431 *per* Lord Scott), in contrast to the normal type of copying, where the alleged infringer simply selects a portion of the copyright work and copies it without significant alteration (see Sir Hugh Laddie *et al*, *The Modern Law of Copyright and Designs* (Butterworths, 3rd Ed, 2000) vol 1 at

para 3.135 as well as *Designers Guild Ltd* at 2430–2431 *per* Lord Scott). In cases of “altered copying”, it is often said that the alleged infringer has created a work of his own, but, in so doing, he has made (see *The Modern Law of Copyright and Designs* vol 1 at para 3.135):

... an unfair and improper use of the claimant’s work and has incorporated a substantial part thereof into his own, whether by way of disguising his copying, or saving himself the trouble of doing his own research, or otherwise.

37 The Judge, on appeal against the DJ’s decision, noted in passing that “[i]f there was any copying in the present case, it was ‘altered’ copying because VM’s maps [were] not an exact replica of SLA’s works” (see the HC decision at [14]). However, it is crucial to note that the DJ had made a *finding of fact* at first instance that the nature of the copying here fell readily within *the usual or normal type* of copying (*viz*, where an identifiable part of the original work, but not the whole of it, has been copied), although she noted that such copying could *arguably* also be considered to be a form of “altered copying” *in certain respects*, as follows (see the DC decision at [54]):

Although the approaches taken by Lord Scott and Lord Millett [in *Designers Guild Ltd*] differed in some respects, in that Lord Scott, in determining the test of “substantiality”, distinguished between the first type of copying where an identifiable part of the whole, but not the whole, has been copied and the second type of copying which he referred to as “altered” copying, suggesting that the test set out by Lord Millett (ie, that once copying has been established, the question of substantiality depends on the relationship between what has been copied on the one hand and the original work on the other, and that whether the part taken is substantial must be determined by its quality rather than its quantity) would be suitable only in the first type of copying[,] [f]or the purposes of coming to my decision on this issue, it was not material which test I followed as the conclusion would be the same. *In any case, the nature of the copying by VM, if any, fell readily within the first type of copying articulated by Lord Scott, as was the case in Ladbroke (Football) Ltd [v William Hill (Football) Ltd [1964] 1 WLR 273] (although it could arguably also be a form of “altered copying” in certain respects, such as [in] the shifting of the positions of the building polygons allegedly copied by VM in order to fit in with the altered positions of the roads in VM’s allegedly infringing maps).* Although I would not venture to suggest which approach (ie that of Lord Millett or Lord Scott) is preferred, I would agree with the authors of *The Modern Law of Copyright and Designs* (3rd edition, 2000) at page 148, who submit that:

... the test of infringement in the case of altered copying is, in principle, no different from any other kind. Has the infringer incorporated a substantial part of the independent skill, labour etc contributed by the original author in creating the copyright work, being skill or labour of a literary, dramatic or musical character? If so he has [reproduced] a substantial part.

[emphasis added]

38 In our view, and contrary to VM’s arguments, the present case was simply not one of “altered copying”. Although the Judge remarked, on appeal, that the nature of the copying done by VM was that of “altered copying” (see [37] above), it is apparent from a reading of the HC decision that he was, in fact, endorsing, *in full*, the DC decision (where the DJ had held that the present case was simply one involving *normal* copying (see [54] of the DC decision)). Accordingly, the question of general principle and/or the question of importance concerning the test of substantiality for “altered copying” cases as contended for by VM simply does not arise in the present proceedings.

39 In summary, VM has not satisfied any of the limbs set out in *Lee Kuan Yew* ([32] *supra*) for granting a litigant leave to appeal.

40 In our opinion, the DJ, in her 130-page judgment, set out lucidly and in great detail her analysis of the evidence before her, as well as the findings which she made on the given evidence. She also comprehensively surveyed and considered the relevant and applicable authorities, and arrived at her decision after a careful and well-reasoned application of the law to the factual matrix before her. It is thus unsurprising that the Judge unreservedly endorsed her decision on appeal. As mentioned above (at [34]), we have also concluded above that there are no *prima facie* errors in both the DC decision and the HC decision.

Conclusion

41 For the above reasons, SLA's application in SUM 2056 to strike out the Notice of Appeal is allowed with costs, and VM's application in OS 561 for leave to appeal against the Judge's decision is dismissed with costs. The usual consequential orders are to follow.

[\[note: 1\]](#) See para 4 of SLA's statement of claim filed on 5 October 2005 (at vol 1, p 194 of VM's core bundle dated 24 July 2008).

[\[note: 2\]](#) See para 4 of the affidavit of Lim Ming Khai filed on 8 April 2008 in District Court Appeal No 19 of 2007. (SLA has filed a "Notice of Intention to use Affidavit" dated 16 July 2008 stating its intention to use this affidavit in SUM 2056 and OS 561.)

[\[note: 3\]](#) See OS 561 at p 2.

[\[note: 4\]](#) See para 5 of VM's skeletal submissions filed on 10 April 2008 in respect of SUM 1491.

[\[note: 5\]](#) See para 9 of VM's skeletal submissions filed on 25 July 2008 in respect of SUM 2056.

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