

Leave Application No. 08(i)-1-01/2023 (W)

Dato' Sri Mohd Najib Bin Hj Abd Razak

V

1. SRC International Sdn Bhd
2. Gandingan Mentari Sdn Bhd

Quoram:

Justice Nallini Pathmanathan, FCJ

Justice Nordin bin Hassan, FCJ

Justice Abu Bakar bin Jais, FCJ

Broad Grounds of Judgment

1. The issue before this Court for the purposes of determining whether leave ought to be granted under **section 96(a) CJA**, turns on whether the second limb of the test currently used by the Courts and as set out in **S & F International Ltd v Trans-Con Engineering Sdn Bhd [1985] CLJ (Rep) 280 at 283 ('S & F')**, and which has been relied upon for some 40 years, requires revisiting by the Court to clarify the same, as a point of public importance. The thrust of the Applicant's grievance underlying this motion for leave is that the High Court conflated the two limbs of the 3 limb test by utilising the same evidence to determine the second limb of a real risk of dissipation of assets. This, it is contended, warrants this Court restating and revisiting this limb of the test.
2. Having perused the case law as a whole and having heard learned counsel we are satisfied that there is no necessity for this Court to revisit the test laid down for a 'real risk of dissipation' which has more than satisfactorily been set out in **S & F**. The distinction between the first limb and the second limb are clear – one relates to a good and arguable cause of action while the second relates to a real risk of dissipation. However, the evidence that is required to satisfy each limb while it may be similar or even the same evidence, should be considered separately in respect of each limb, as separate issues, before a Court can determine whether each of these limbs is satisfied. The law on this is clear in **S**

& F, as well as the recent COA case of Lee Kai Wuen v Lee Yee Wuen [2022] 7 CLJ 505.

- 3. The English COA case of Lakatamia Shipping Company Ltd v. Toshiko Morimoto [2019] EWCA Civ 2203 ('Lakatamia') does not alter the test and we are not satisfied that this Court should restate the principles on the basis of Lakatamia. The application of the test as propounded in S & F will vary from case to case premised on the facts of each particular case.**
- 4. It appears to us that the learned Judge appreciated this difference and applied it accordingly relying on the lack of probity gleaned from the complex factual matrix as being sufficient to go to the heart of the question of dissipation. Accordingly a revisiting of the test is unwarranted.**
- 5. For these reasons we dismiss the motion with costs of RM30,000 to the Respondents subject to allocatur.**

Date: 5 October 2023