IN THE FEDERAL COURT OF MALAYSIA

CIVIL APPEAL NO.02(f)-122-10/2017(W)

BETWEEN

1.Tengku Dato' Kamal Ibni Sir Sultan Abu Bakar
2. Lt. Kol. Tengku Dato' Kamarul Zaman
Ibni Almarhum Sultan Sir Abu Bakar
3. Abdul Rahim bin Sendiri ……Appellants

AND

Bursa Malaysia Securities Bhd ……..Respondent

[In the Court of Appeal Malaysia

(Appellate Jurisdiction)

Civil Appeal No.: W-02(IM)(NCC)-1394-08/2016

Between

1.Tengku Dato' Kamal Ibni Sir Sultan Abu Bakar
2. Lt. Kol. Tengku Dato' Kamarul Zaman
Ibni Almarhum Sultan Sir Abu Bakar
3. Abdul Rahim bin Sendiri ……..Appellants

And

Bursa Malaysia Securities Bhd ……..Respondent]

[In the High Court of Malaya at Kuala Lumpur, Wilayah Persekutuan

Civil Suit No. No. D-24NCC-168-2010

Between

Bursa Malaysia Securities Bhd …….Plaintiff

And

1.Tengku Dato' Kamal Ibni Sir Sultan Abu Bakar
2. Lt. Kol. Tengku Dato' Kamarul Zaman
Ibni Almarhum Sultan Sir Abu Bakar
3. Kassim bin Mohammed Ali
4. Abdul Rahim bin Sendiri …….Defendants]

CORAM

VERNON ONG LAM KIAT, FCJ

ZALEHA YUSOF, FCJ

ZABARIAH MOHD YUSOF, FCJ

SUMMARY JUDGMENT

[1] This appeal arises from an application by the plaintiff for an order of committal against the defendants which is premised upon the High Court Order dated 28.12.2010 and as varied by the Court of Appeal Order dated 16.8.2012. The said Order read as follows:

(a) That within 30 days of the Court of Appeal Order, that D1 and D2, jointly and severally, restore to Cepatwawasan Group Berhad (Cepatwawasan) the RM 13 million paid to Opti Temasek Sdn Bhd;

(b) That within 30 days of the Court of Appeal Order, the defendants, jointly and severally, restore to Cepatwawasan the RM 3 million paid to Sheikh Abdul Rahim.

(hereinafter referred to as "the section 360 CMSA Order").

Aggrieved by the decision of the Court of Appeal, the defendants filed an application to appeal to this Court.

[2] On 16.10.2017, the Federal Court granted leave to appeal on the following questions:

(i) Where there is non-compliance of an order for the refund of monies which is a money judgment and not a judgment requiring the performance of an act, whether a court can find that there is contempt for the said non-compliance?

(ii) Where proceedings are commenced for orders under section 360, Capital Markets and Services Act 2007 ("CMSA") against a bankrupt, whether the Plaintiff is obliged to obtain leave pursuant to section 8(1), Bankruptcy Act 1967; and

(iii) Where committal proceedings are commenced to enforce an order made under section 360, CMSA, against a bankrupt

whether the applicant is obliged to obtain leave pursuant to section 8(1), Bankruptcy Act 1967.

[3] In this judgment we will refer to parties, as they were, in the High Court.

OUR DECISION:

Question 1:
Where there is non-compliance of an order for the refund of monies which is a money judgment and not a judgment requiring the performance of an act, whether a court can find that there is contempt for the said non-compliance?

[4] We have to remind ourselves that the appeal before us is against the decision of the Court of Appeal which had upheld the decision of the High Court in issuing an order of committal against the defendants pursuant to 0 45 r 5 (1) of the Rules of Court 2012. The issue herein is whether the defendants had refused to comply with the section 360 CMSA Order.

[5] The section 360 CMSA order reads as follows:

> " That within 30 days of the Court of Appeal Order, the 1st and the 2nd appellants, jointly and severally, restore to Cepatwawasan Group Berhad (Cepat Wawasan) the RM 13 million paid to Opti Temasek Sdn Bhd ; and
>
> That within 30 days of the Court of Appeal order, the appellants, jointly and severally, restore to Cepatwawasan the RM 3 million paid to Sheikh Abdul Rahim."

[6] Question 1 posed by the defendants raises the issue of whether monetary judgment can be enforced via committal proceedings. Hence the submissions of parties with regard to the divergent views as expressed by the Court of Appeal in ***Hong Leong Bank Berhad v Phung Tze Thiam John Phung*** [2008] 4 CLJ 742, and ***Hong Kwi Seong v Ganad Media Sdn Bhd*** [2013] 2 MLJ 251.

However, before we address this issue, it is important to understand the scope of the section 360 CMSA Order, upon which the committal order against the defendants was premised on.

[7] The plaintiff is the frontline regulator of the Malaysian capital market and is tasked with maintaining the integrity of the stock exchange by ensuring compliance with the Listing Requirements and ensuring proper governance. The plaintiff had found that the defendants' conduct in causing Prolific Yield Sdn Bhd to make payments to Opti Temasek Sdn Bhd and Sheikh Abdul Rahim were in breach of the financial assistance provisions in the plaintiff's Listing Requirements. Hence the section 360 Order against the defendants.

[8] Section 360 of the CMSA allowed the plaintiff to seek appropriate orders from the court so that persons in breach of the Listing Requirements can be compelled by the courts to remedy the breach. This the plaintiff did through the section 360 Order.

[9] Looking at the terms of the section 360 CMSA Order, the terms does not require the defendants to pay the plaintiff. Instead it **compel** the defendants, (who having breached the Listing Requirements), to **restore** to Cepatwawasan monies which were wrongly paid out to one Opti Temasek Sdn Bhd and one Sheikh Abdul Rahim. This is not a typical debt

between the plaintiff and the defendant per se, where the court direct the defendants to make payments to the plaintiff.

[10] The defendants failed to comply with the section 360 CMSA Order both at the High Court and affirmed by the Court of Appeal. It is to be noted that the defendants have not given any reasonable explanation as to why they could not comply with the section 360 CMSA Order at the hearing of the committal proceedings.

[11] The order does not require the defendants to make payment to the plaintiff within a stipulated time or otherwise but rather to restore to Cepatwawasan monies which were wrongfully paid out by D1 and D2, as directors of the defendant company, within a stipulated time period.

[12] The plaintiff is not in a debtor and creditor relationship with the defendant. In other words, the plaintiff is not the beneficiary to the payment to be made by the defendants.

[13] Coming back to Question 1 posed by the defendants, the issue as to whether it is a monetary judgment or not befitting a committal proceedings from being instituted against the defendants, has not been raised in the courts below. Nowhere did the defendants raised this issue nor canvassed before the Judge who heard the committal proceedings and neither was it raised in the Court of Appeal. The judges in the High Court and the Court of Appeal had not addressed their minds to this issue and it would be presumptuous for this court to guess what the High Court and the Court of Appeal would have decided.

[14] In other words, Question 1 posed does not relate to a matter in respect of which a determination has been made by the Court of Appeal (See ***Meidi-Ya Co Ltd, Japan & Anor v Meidi (M) Sdn Bhd*** [2009] 2 MLJ 14).

[15] Question posed before this court must be couched to incorporate a point of law which, if answered in the affirmative or negative has the effect of reversing the conclusions made by the Court of Appeal without any evaluation of the evidence. As the Court of Appeal did not make any determination on this issue, answering the question would not have any effect on the appeal of the defendants.

[16] In ***The Minister for Human Resources v Thong Chin Yoong and another appeal*** [2001] 4 MLJ 225, at p. 232, the Federal Court decline to answer the question framed for its determination when it was asked to consider an issue which was not determined by the High Court as well as the Court of Appeal. Haidar Mohd Noor FCJ (as he then was) in delivering the judgment of the Federal Court has this to say:

> " It seems to us that the Federal Court was asked to consider an issue which was not determined by the High Court as well as the Court of Appeal. To that extent the proper order that we should make would be regrettably decline to answer the question…."

[17] Similarly in the present case, this court was asked to answer an issue which was not determined by the High Court and the Court of Appeal. This court in ***Tan Heng Chiew & Ors v Tan Kim Hor & Ors*** [2006] 5 MLJ 313 had encountered such an occasion when it granted leave to

appeal on one question of law. In the course of arguments, the appellants therein took a completely new stand seeking to argue on a new ground which had never been raised previously in the court below. Abdul Hamid FCJ held that:

> "[12] …...The proposed test had not been argued and considered in the courts below. The findings of facts made by the High Court and confirmed by the Court of Appeal would be rendered superfluous and irrelevant. The respondents now have a new case to meet. Had the proposed test been argued and accepted by the High Court, **we do not know what the learned judge's findings of facts relevant to the test and what his decision would have been……The truth is that both the High Court and the Court had not addressed their minds to the issue…….**
>
> [14] …… I am now of the view that this court (in which I was a member) should not have granted leave to appeal. However, leave having been granted, the issue is whether this court should now answer the question, in the circumstances mentioned above. I am of the view that this court should not do so.
>
> [15] **I have given serious thought whether, I should nevertheless consider the question and give an answer to it. I think I should not. Otherwise, I would be making assumptions of what the learned High Court and Court of Appeal judges would have decided, on facts and law. ….**
>
> [16] Lastly, I would like to clarify that this judgment is not on the ground that the appeal falls outside the provisions of s 96(a) of the Courts of Judicature Act 1964. On the other hand, it is on the ground that the appeal has taken a new turn completely and to answer the question posed (which issue was never canvassed in the courts below) would be a pure academic exercise which requires this court to assume that the facts required to answer the question had been proved, when the courts below had not even

addressed their minds to them. Neither should this court assume that they had been proved."

[18] Premised on the aforesaid, we therefore decline to answer Question 1.

[19] In addition, cloaked under Question 1, the defendants argued that the section 360 CMSA Order can be challenged collaterally in committal proceedings, and sought to introduce the following arguments which are outside the scope of this appeal:

(i) That D1 and D3 cannot be said to have mens rea to refuse to obey the section 360 CMSA order;
(ii) The plaintiff was not empowered to direct the defendants to restore monies wrongfully paid out in breach of the plaintiff's Listing Requirement;
(iii) The High Court was not empowered to make the restoration orders;
(iv) The plaintiff did not have the necessary locus standi to initiate proceedings for contempt by reason of the Consent Judgment between the defendants and Cepatwawasan;
(v) It is not in the public interest for the plaintiff to seek to enforce the section 360 CMSA order.

[20] The plaintiff submitted that the above issues were canvassed as questions of law at the application for leave to appeal stage at the Federal Court. The Federal Court had considered and declined to grant leave to those questions of law on 16.10.2017 which encompassed the issues raised as stated in paragraphs [49] (i) to (v) above. In the written submissions the plaintiff has reproduced the proposed questions of law

which comprised the 5 issues as stated in in paragraphs [49] (i) to (v) above.

[21] As leave was not granted by this court on those questions and issues, the defendants are not permitted to argue on the same before this court. In this regard Rule 47 of the Rules of the Federal Court 1995 is relevant, which is the starting point in determining the scope of this appeal:

> "Rule 47. Appeal to be by notice
>
> (4) The hearing of the appeal shall be confined to matters, issues or questions in respect of which leave to appeal has been granted."

Raus Sharif CJ in ***Spind Malaysia Sdn Bhd v Justrade Marketing Sdn Bhd & Anor*** [2018] 4 CLJ 705 held on a similar issue and ruled that::

> " The appeal should be confined only to the questions as determined by this court in granting leave to appeal, and other grounds which are necessary to decide on those questions. As this court has held in Sababumi (Sandakan) Sdn Bhd v Datuk Yap Pak Leong [1998] 3 CLJ 503…
>
> ….
>
> The parties should confine their submissions to the questions of law posed, and are not entitled to seek a complete rehearing to review the concurrent findings of facts made by the courts below…"

[22] The submissions put forward by counsel for the defendants in support of those issues raised are in effect seeking for a reversal of the finding on the validity of the section 360 CMSA order, which is not permitted at this stage. The defendants have exhausted their avenue to challenge the validity of the section 360 CMSA order until the Federal

Court, in which their application for leave to appeal was dismissed. The section 360 CMSA Order was appealed upon and upheld in the High Court and the Court of Appeal. Arguments were mounted on the powers of the plaintiff to grant the section 360 CMSA order.

[23] The argument to challenge the powers of the plaintiff in directing restitution to be made by the defendants has been superseded by the court granting the section 360 CMSA order. It is this precise order that was being enforced through the committal proceedings.

[24] The High Court had original jurisdiction in granting the section 360 CMSA Order and this was considered and affirmed by the Court of Appeal speaking through Ramli Ali JCA (as he then was) in ***Tengku Dato' Kamal Ibni Sir Abu Bakar & Ors v Bursa (M) Securities Bhd and another appeal*** [2013] 1 MLJ 158. His Lordship found that the plaintiff could move the court under section 360 CMSA for the orders sought and that it was incumbent on the courts to satisfy itself that there was a breach of the relevant Listing Requirements. The court then concluded that there was a breach of the requirements by the defendants, being directors of Cepatwawasan, given the provisions of section 360 CMSA and the role of the plaintiff when His Lordship said:

> "[25] The court has the power to make the various orders as set out in s 360 of the CMSA, including for the present purposes, an order requiring a person to do anything he is required to do under a relevant requirement and the giving of directions concerning compliance with or enforcement of the rules of stock exchange.

….

[34] …….the listing committee of the respondent had correctly founded that Prolific Yield, a wholly subsidiary of Cepatwawasan (a listed issuer) had lent or advance RM 16 million to Opti Temasek and one Sheikh Abdul Rahim (who was a driver to the 1st appellant) in contravention of the said para 8.23 (1) of the LR, and by virtue of paras 16.10-16.11 of the LR, all the appellants as directors of Cepatwawasan at the material times were liable for the breach. There is no indication to show that the lending or advancing of the money to these entities falls under any of the permitted acts under para 8.23 (1) of the LR.

[35] All the appellants, being directors of Cepatwawasan at the relevant times were responsible of the said breach.

….

[37] Under para 16.17 of the LR, there are various penalties that can be imposed by the respondent on a listed company and its directors for any breach of the LR. These include issuance of caution letter, issuance of private or public reprimand, a direction to rectify the non-compliance, suspension of trading, delisting, imposition of fine not exceeding RM 1 million and any other action which the respondent may deem appropriate."

[25] On the contention of the defendants that the plaintiff's recourse is not within section 360 of the CMSA and that the CMSA only provides for power of enforcement of penalties only to Securities Commission and not the plaintiff; was also addressed by His Lordship at paras [52] and [53] and concluded that the fines imposed were in accordance with the relevant Listing Requirements by the plaintiff as the stock exchange, not by the Securities Commission. If the plaintiff wishes to enforce the penalties, section 354 of the CMSA is inapplicable. It is section 360 (1)

(c) CMSA which provides for "an application by an exchange holding company, a stock exchange a futures exchange or an approved clearing house as the case may be, if it appears to the court that any person has contravened a relevant requirement."

[26] On the issue of the Consent Judgment entered into by the defendants with Cepatwawasan, His Lordship in ***Tengku Dato' Kamal Ibni Sir Abu Bakar & Ors v Bursa (M) Securities Bhd and another appeal*** had also addressed it when His Lordship said that:

> "[66] Public interest is best served by the respondent directing the return of the monies paid out in breach of the LR. Notwithstanding the settlement between the parties in the 1168 Suit, public interest and investor's confidence must be protected by ensuing *(sic)* that the respondent can still take action to rectify the breach by directing the return of the monies wrongly paid. The respondent's action based on a breach of the LR does not overlap with the 1168 Suit's cause of action. Therefore, in continuing to maintain the direction that the monies are to be repaid, the respondent is merely carrying out its statutory duty under the CMSA 2007 and enforcing the principles of the LR."

The application for leave to appeal to the Federal Court on the section 360 CMSA Order by the defendant, was also dismissed.

[27] It is to be borne in mind that the power to order restitution by the plaintiff is provided for under section 360 (1) (c) (ii) (M) of the CMSA. Hence there is no issue that the court has the authority and jurisdiction to make the section 360 CMSA Order. In any event it is superfluous to raise the issue whether the plaintiff has the jurisdiction to direct the

defendants to restore the monies to Cepatwawasan as the Court had issued the section 360 CMSA order.

[28] In addition this court is not the proper forum to address this issue as the proper forum to raise the same is at the Judicial Review Proceedings. It has in fact being raised there and it was rejected.

[29] Be that as it may, the plaintiff has relied on paragraph 16.17 (1) (b) of the Listing Requirement when it directed the defendants to make restitution to Cepatwawasan, which has been paid out in breach of paragraphs 8.3, 8.23, and 16.10 of the Listing Requirements. Paragraph 16.7 (1) (b) (v) of the plaintiff's Listing Requirements empowered the plaintiff to "issue a letter directing the person in default to rectify the non-compliance, which direction will remain in force until it is revoked."

[30] Hence to attack the section 360 CMSA order by raising it in this present appeal, which is an appeal against the committal order, is a collateral attack, which the Federal Court on 16.10.2017 refused to grant leave to the defendants to pursue this question of whether they can collaterally attack the section 360 CMSA order. It is trite law that an order of the court cannot be collaterally attacked in a separate proceedings without it being set aside.

- ***Ann Joo Steel Bhd v Pengarah Tanah dan Galian Negeri Pulau Pinang & Anor and another appeal*** [2020] 1 MLJ 689;
- ***Tenaga Nasional Bhd v Bandar Nusajaya Development Sdn Bhd*** [2017] 1 MLJ 689.

Question 2:

Where proceedings are commenced for orders under section 360 Capital Markets and Services Act 2007 ("CMSA") against a bankrupt, whether the Plaintiff is obliged to obtain leave pursuant to section 8(1), Bankruptcy Act 1967.

[31] Question 2 only relates to D1 as he was a bankrupt at the time the Committal Proceedings was commenced. D2 is not a bankrupt and D3 was only made a bankrupt after the section 360 Order was obtained.

[32] We agree with the submissions by the plaintiff that this question seek to challenge the validity of the section 360 CMSA order.

[33] At the time when the filing of the proceedings to obtain the section 360 order was instituted by the plaintiff, D1 was already a bankrupt. However, at that point in time, D1 failed to disclose the fact that he was a bankrupt and therefore did not seek the necessary sanction and approval to appoint solicitors to represent him in those proceedings. In those proceedings D1 never at all raised the fact that he was a bankrupt.

[34] The appeal before us is on the determination by the courts below on the orders of committal against the defendants made by the High Court on **1.7.2016** and affirmed by the Court of Appeal on **13.2.2017**. It is never to consider whether the section 360 CMSA order was valid or not.

[35] Hence it is not for this court to consider the validity of the section 360 CMSA order (which was dated 28.12.2010) at this stage, when this issue was never addressed at all in the court below. The validity of the section 360 CMSA order was affirmed by the Court of Appeal on 16.12.2010 and leave to appeal to the Federal Court was dismissed on 28.12.2013. It is not for this court to reverse the decision of the courts below premised on the question posed when the issue raised in the question was never addressed, argued nor canvassed by the parties before the courts below which had not made any determination on the issue in question.

[36] Essentially, the manner in which Question 2 is framed also amounts to a collateral attack on the section 360 CMSA order, which the law does not permit, given that D1 attempted and failed to challenge the section 360 CMSA order in the High Court and the Court of Appeal. He has exhausted all avenues of appeal right up to the Federal Court to challenge the validity of the section 360 CMSA order but failed. Hence the section 360 CMSA order, for all intents and purposes are valid and binding. The Federal Court in ***Ann Joo Steel Bhd v Pengarah Tanah Dan Galian Negeri Pulau Pinang & Anor and another Appeal*** [2020] 1 MLJ 689 was instructive in this regard:

> " [59] It cannot be opened to any person to decide upon himself whether an order of a court which binds him is wrongly issued and does not require his obedience. Until such time it is set aside or varied the order of court is entitled to the obedience and respect from all parties. Any person who fails to obey an order of court runs the risk of being held in contempt with all its attendant consequences (see Wee Chee Keong v MBf Holdings Bhd & Anor and another appeal [1993] 2 MLJ 217)

[60] It must be borne in mind that, there is a legal presumption that an order of a court is validly made, unless it was obtained by fraud, etc. It bears repeating that the 1995 order was made by the High Court with unqualified participation of all relevant parties. The parties were also represented by their respective counsel as disclosed in the 1995 order itself. A court order regularly made cannot be ignored on the belief of a party that is a nullity. Any such attempt would militate against the basic legal position as pronounced in the various earlier cases on the subject, that a regularly made order of court must be observed at all costs.

……

[66] It is, therefore, a long established principle of law that one may apply to set aside an order of a superior court but it must be made in a direct and specific proceeding filed for that purpose be it in the same proceedings or a separate one. It cannot be contested merely by raising it as defences in a suit as being undertaken in these appeals. The underlying reason for this legal jurisprudence to be adhered to, is not difficult to appreciate. It is to preserve the sanctity as well as the finality of an order of court.…"

[37] Given the aforesaid, we decline to answer Question 2.

Question 3:

Where committal proceedings are commenced to enforce an order made under section 360, CMSA, against a bankrupt whether the applicant is obliged to obtain leave pursuant to section 8(1), Bankruptcy Act 1967.

[38] Section 8 (1) of the BA provides:

"Effect of receiving order

8. (1) On the making of a receiving order the Director General of Insolvency shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, **no creditor** to whom the **debtor**

> **is indebted** in respect of any **debt provable in bankruptcy** shall have any remedy against the property or person of the debtor in respect of the debt, or shall proceed with or commence any action or other legal proceeding in respect of such debt unless with the leave of the court and on such terms as the court may impose.

[39] Section 8 (1) applies to a creditor. The plaintiff in our case is not a creditor where the defendant owes a debt, whether provable in bankruptcy or otherwise.

[40] The section 360 CMSA order does not create a creditor-debtor relationship.

[41] This section is applicable in situation where the plaintiff imposed a fine on those who breached any of the Listing Requirements. In those situations the fines are debts to the plaintiff.

[42] However the section 360 CMSA order directs the defendants to restore monies to Cepatwawasan upon which the committal proceedings are premised. It does not create a debt between the plaintiff and the defendant.

[43] Section 8 (1) also mention “debt provable in bankruptcy” which is defined in section 2 of the BA as ‘any debt or liability by this Act made provable in bankruptcy”. “Debts provable in bankruptcy” are set out in section 40 of the BA:

"Proof of Debts

Description of debts provable in bankruptcy

40. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust shall not be provable in bankruptcy.

(2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the receiving order for **any debt or liability** contracted by the debtor subsequent to the date of his so having notice.

(3) Save as provided in subsections (1) and (2) **all debts and liabilities** present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order shall be deemed to be debts provable in bankruptcy.

Hence, the issue to be determined is whether the monies mentioned in the section 360 CMSA order is "a debt provable in bankruptcy" within the meaning of section 40 of the BA.

[44] The monies as referred to, in the section 360 CMSA order are not debts nor liabilities as envisaged under section 40 of the BA.

[45] Hence section 8(1) has no application whatsoever to our present case as there is no debt owing by the defendant to the plaintiff. The prohibition in section 8 (1) of the BA applies to a creditor which the plaintiff is not, nor is section 360 CMSA order a "debt provable in bankruptcy".

[46] It is to be noted that Question 2 and 3 are not applicable to D2 who is not a bankrupt and those questions are also not applicable to D3 who was only made a bankrupt after the section 360 CMSA was made. In any event this issue was never raised in the courts below.

Therefore we decline to answer Question 3.

Conclusion:

[47] We held that the 3 questions of law posed to us do not relate to the matter in respect of which a determination has been made by the High Court and the Court of Appeal. This is apparent from the High Court and the Court of Appeal Grounds of Judgment and parties' written submissions at the Court of Appeal.

[48] The issues raised in the proposed questions were also not addressed nor argued in the Judicial Review Proceedings nor in the OS 168 Proceedings.

[49] Hence the issues raised in the 3 Questions do not arise from the judgments of the High Court or the Court of Appeal in the committal proceedings.

[50] We take note that leave has been granted by this Court in respect of the 3 Questions, however that does not prevent us from declining to answer those questions based on the aforesaid reasons. Similar stand were taken by this court in:

- ***The Minister of Human Resources v Thong Chin Yoong And Another Appeal*** [2001] 4 MLJ 225;
- ***Raphael Pura v Insas Bhd & Anor*** [2003] 1 MLJ 513,

where, despite leave was granted, that does not prevent the court from declining to answer the Questions posed when the issue/matter raised in the question was not an issue/matter that arose or was decided by the High Court and/or the Court of Appeal.

[51] Answering the questions would not have determinative effect on the appeal before this court. In this regard we reiterate what was said by the Federal Court in ***Dataran Rentas Sdn Bhd v BMC Construction Sdn Bhd*** [2010] 5 MLJ 222 which held that:

> "[10] Such being the case, we held that the questions posed were not properly framed under s 96(a) of the Act. Further, they do not relate to a matter in respect of which a determination has been made by the High Court and the Court of Appeal. Neither is there any evidence that the issue of legality of the contract was ever raised in the Court of Appeal. So, it would be a waste of judicial time and indeed not a proper exercise of authority of this court to engage itself in deciding such questions the answer to which would not have the effect of reversing the judgment of the Court of Appeal. The court would not indulge in a fruitless exercise. Thus, this court has the power to decline to answer the questions posed despite the fact that leave to appeal had been granted. In the result, we decline to answer the questions and dismissed the appeal without considering the merits."

[52] Hence, given the circumstances, we decline to answer the 3 questions posed, despite leave has been granted.

[53] The appeal is hereby dismissed with costs and the decision of the Court of Appeal is affirmed.

-sgd-

Zabariah Mohd Yusof
Judge
Federal Court
Putrajaya
Date: 1st April 2022

COUNSEL:

Malik Imtiaz For the Appellant

[Messrs. Jasbeer Nur & Lee]

Reeta Pillai For the Respondent

[Messrs Skrine]