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Service of Originating Process – a new development?



By Jansen Lim

In Singapore, it is the accepted practice for an originating process to be served on a company without solicitors on record by leaving the document at, or sending it by registered post to, the company's registered office.

Halsbury's Laws of Singapore states thus: "*Service of documents at a company's registered office is good service even if the company never receives those documents. Concomitantly, if documents are served other than at the company's registered office, that service is ineffective and a default judgment obtained by a plaintiff may be set aside ex debito justitiae. This is so even if the company has actual notice of the documents.*"

However, in the recent matter of *Alphomega Research Group Ltd v Nanyang Law LLC* [2010], an Assistant Registrar held that service at the "principal office" or "the principal place of business of the corporation" would suffice.

Background to the Alphomega case

Law firm Nanyang Law LLC had provided corporate secretarial services for Alphomega Research Group Ltd (Alphomega): Nanyang Law's chairman had acted as Alphomega's company secretary and the firm's office address had been used for Alphomega's registered office. Following taxation of its solicitor and client costs, Nanyang Law demanded payment from Alphomega. No payment was made, so the firm filed a Writ of Summons and served it on Alphomega at its place of business. The Writ had not been served at Alphomega's registered office because, as at the date of service, Nanyang Law's office was still reflected on the records as Alphomega's registered office. Nanyang Law subsequently obtained a Judgment in Default against Alphomega, who sought to set aside such Judgment arguing, inter alia, that the Writ had not been properly served.

Interpretation of Section 387

This issue turned on the statutory interpretation of Section 387 of the *Companies Act* (Chapter 50) (Section 387), which stipulates

that "[a] document may be served on a company by leaving it at or sending it by registered post to the registered office of the company".

Alphomega argued that Section 387 is prescriptive and sets out the only ways a document, including an originating process, can be served on a company. Nanyang Law contended that Section 387 is merely permissive, so that Section 48A(1)(c)(ii) of the *Interpretation Act* (Chapter 1) – which states that a body corporate may be served at either its registered office or "a principal office" – can be read with the requirement of personal service of originating process under Order 10 and Order 62 of the Rules of Court (Chapter 322 R5), unless a contrary intention is apparent.

Having examined the relevant statutes and considered the predecessor provisions of Section 387, the Assistant Registrar concluded, "it was plausible that the legislative intention behind the enactment of Section 387 was that the provision should not, in itself, operate to preclude other forms of effective service, and that there is no cogent reason for rejecting such an interpretation... since it would not be contrary to a plain reading of the provision."

The Assistant Registrar therefore held that Nanyang Law was entitled to serve the Writ on Alphomega by leaving it at Alphomega's principal office, in accordance with Section 48A(1)(c)(ii) of the *Interpretation Act*, and that such service constituted good service.

It remains to be seen whether this development to established practice will be challenged or sustained. Practically speaking, however, we can expect that prudent solicitors may be reluctant to choose not to serve documents at the registered office of a company, since there is always the possibility of disputes over whether the place of service is a principal office or not.

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