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

**[2023] SGHC 164**

Originating Claim No 416 of 2022 (Summons No 1161 of 2023 and Registrar's Appeals Nos 70 and 71 of 2023)

Between

Horizon Capital Fund

… *Claimant*

And

Ollech David

… *Defendant*

---

# JUDGMENT

---

[Civil Procedure — Stay of proceedings]
[Civil Procedure — Summary judgment]
[Civil Procedure — Admission of new evidence on appeal]
[Conflict of laws — Choice of law — Whether presumption of similarity applies in interlocutory proceedings that finally dispose of an action]

## TABLE OF CONTENTS

# Horizon Capital Fund
# v
# Ollech David

**[2023] SGHC 164**

General Division of the High Court — Originating Claim No 416 of 2022
(Summons No 1161 of 2023 and Registrar's Appeals Nos 70 and 71 of 2023)
Goh Yihan JC
16 May 2023

8 June 2023 Judgment reserved.

**Goh Yihan JC:**

1 There are two appeals before me. First, HC/RA 71/2023 ("RA 71") pertains to Ollech David's ("the defendant") application for a stay of HC/OC 416/2022 ("OC 416") ("the Stay Application"). Second, HC/RA 70/2023 ("RA 70") relates to Horizon Capital Fund's ("the claimant") application for summary judgment in the same case ("the Summary Judgment Application"). The learned Assistant Registrar Deborah Tang ("the AR") dismissed the Stay Application and allowed the Summary Judgment Application. In other words, the defendant failed in both applications below. He now appeals against the AR's decisions. In addition to both appeals, the defendant also applies, via HC/SUM 1161/2023 ("SUM 1161"), for permission to admit new evidence for the appeals.

2 Having taken some time to consider the matter after hearing the parties, I dismiss the defendant's application in SUM 1161. I also dismiss the defendant's appeals in RA 71 and RA 70. I explain the reasons for my decision in this judgment.

## Background facts

3 I turn first to the background facts. These facts are common to both RA 71 and RA 70, as well as SUM 1161.

### *The Facility Agreement and the Guarantee*

4 The dispute between the parties started because of a Specific Credit Facility which the claimant had granted to Lemarc Agromond Pte Ltd ("LAPL") pursuant to an agreement on 24 May 2022 ("the Facility Agreement"). The Facility Agreement is governed by Swiss law. By the Facility Agreement, the claimant extended a loan of US$1,500,000 ("the Facility Sum") to enable LAPL to repay a debt it owed to Yueyang Guansheng Investment Development Company Limited. In particular, the Facility Agreement provided for interest at the rate of 8.5% per annum on the Facility Sum. The Facility Sum plus interest must be repaid by 31 July 2022.

5 The Facility Agreement also provided that the defendant, the defendant's father ("Daniel"), and one Mr William Rooz are to execute personal guarantees securing LAPL's indebtedness to the claimant under the Facility Agreement. Thus, the defendant executed a guarantee in favour of the claimant on 24 May 2022 ("the Guarantee"). The terms of the Guarantee provided that the claimant is entitled to an indemnity from the defendant for costs and expenses incurred in various circumstances. Daniel also executed a guarantee in almost identical terms as the Guarantee ("Daniel's Guarantee").

6 Pursuant to cl 1 of the Guarantee, the defendant guaranteed the payment of any moneys for which LAPL may be liable to the claimant. This is, however, limited to the aggregate of the principal sum of US$1,500,000 and such further sums comprising interest at 8.5% per annum on the principal amount ("the Guaranteed Sum"). The Guaranteed Sum was to be payable on the claimant's written demand.

***The claimant commenced OC 416 against the defendant in Singapore***

7 In the end, LAPL failed to repay the Facility Sum and interest by 31 July 2022. The claimant issued a written demand to the defendant for payment of the Guarantee Sum on 18 August 2022 ("the First Demand"). The defendant did not respond to the First Demand. The claimant instructed its solicitors to issue another demand for the Guaranteed Sum on 7 October 2022 ("the Second Demand"). The defendant also did not respond to the Second Demand.

8 On 24 November 2022, the claimant commenced OC 416 against the defendant in Singapore on the basis that he failed, refused, or otherwise neglected to repay the debt that has arisen under the Guarantee.

***The 16 Dec Letter and the defendant's assertion that his liability under the Guarantee is discharged***

9 The defendant filed his Defence in OC 416 on 19 December 2022. In it, he relied on a letter that LAPL had sent to the claimant three days before on 16 December 2022 ("the 16 Dec Letter") and alleged that his liability under the Guarantee had been discharged. The 16 Dec Letter was written by one Mr Chow Wai San ("Mr Chow"), who is a director of LAPL. In so far as it is relevant to the present appeals, Mr Chow claimed to have been informed of the following matters.

(a) The claimant and LAPL had entered into a Memorandum of Understanding dated 20 March 2020 ("the MOU").

(b) Pursuant to the MOU, the claimant had agreed to provide LAPL with financing for various commodities transactions and shall not unreasonably withhold such financing for a period of five years. In this connection, para 1.1 of the MOU provides as follows:[1]

> 1.1. In consideration for [LAPL] entering into the PACA, [the claimant] has agreed to provide [LAPL] with certain financing for the purpose of financing imports related to various commodities transactions, each transaction with a tenor of up to a maximum period of One Hundred and Eighty (180) days and subject to [the claimant's] Sub-funds investment strategy(ies). [The claimant] confirms that it shall not unreasonably withhold financing form [*sic*] [LAPL] throughout the term of this arrangement. This arrangement shall continue for a duration of 5 years and will be subject to reasonable satisfactory terms and conditions for both Parties, which the Parties shall use their best endeavours to reasonably negotiate.

(c) LAPL's former directors and management had requested financing from the claimant pursuant to the MOU on multiple occasions between September 2020 and July 2022.

(d) The claimant breached para 1.1 of the MOU when it rejected these requests for financing without using its best endeavours to reasonably negotiate with LAPL's former directors and management on the terms of such financing.

---

[1] Joint Bundle of Documents for HC/RA 70/2023, HC/RA 71/2023 and HC/SUM 1161/2023 ("JBOD") Vol 1 at p 140.

(e) The claimant is liable under the MOU to pay LAPL damages of US$2.25m per year for each full year that the claimant fails to provide financing. In this connection, para 1.2 of the MOU provides as follows:[2]

> 1.2. In the event that [the claimant] does not abide by its obligation contained in Paragraph 1.1 of this MoU, [the claimant] agrees to pay [LAPL] the sum of USD 2.25 Million Dollars per year for each full year that [the claimant] does not provide financing to [LAPL] pursuant to Paragraph 1.1.

(f) As such, the claimant is liable to pay LAPL a sum of US$4.5m ("the Alleged Claim").

10 Significantly, the 16 Dec Letter then stated LAPL would be applying this alleged right to damages to set off and fully discharge its debt to the claimant under the Facility Agreement. On this basis, the defendant claimed that his liability under the Guarantee has been discharged. Apart from this defence, it is important that the defendant does not dispute that, if LAPL is liable to the claimant for the Facility Sum plus interest, then the defendant would be liable to the claimant as well for the Guaranteed Sum on the basis of the Guarantee.

### *The Summary Judgment Application*

11 On 16 January 2023, the claimant filed the Summary Judgment Application. In opposition to the application, the defendant's solicitors filed the defendant's affidavit in draft under their covering affidavit. In his draft affidavit, the defendant relied on the same reason in the 16 Dec Letter to show cause against the Summary Judgment Application, *ie*, that the claimant allegedly breached paragraph 1.1 of the MOU by unreasonably withholding financing to

---

[2] JBOD Vol 1 at p 140.

LAPL, thereby entitling LAPL to set off the sum it owed under the Facility Agreement and discharging the Guaranteed Sum. To support his defence, the defendant alleged one instance where the claimant had rejected a request by LAPL on 18 November 2021 to finance a trade of Ukrainian corn.

***Daniel commenced OC 55 against the claimant in Singapore***

12 On 27 January 2023, Daniel commenced HC/OC 55/2023 ("OC 55") against the claimant. Daniel had done this instead of joining the defendant in OC 416 because Daniel enjoyed the benefit of an Indemnity Agreement dated 9 April 2019 ("the Indemnity Agreement"). By the Indemnity Agreement, LAPL is obliged to bring proceedings against any third party asserting a claim against Daniel. Since LAPL refused to bring an action against the claimant pursuant to the Indemnity Agreement, Daniel commenced OC 55 against the claimant, and joined LAPL as a defendant. Daniel had joined LAPL as a defendant because it is a necessary party to show that the debt under the Facility Agreement had been discharged. The defendant joined OC 55 as a claimant because both him and Daniel gave similarly worded guarantees. As of the hearing of the present appeals, the claimant has yet to be served with OC 55.

***The Stay Application and the AR's decision***

13 After OC 55 was commenced, the defendant filed the Stay Application on 15 February 2023 seeking, among others, a stay of OC 416 until the determination of OC 55. The Summary Judgment Application and the Stay Application were both heard by the AR on 23 March 2023.

14 At the hearing of the Stay Application, the defendant changed his position and requested that the court consolidate OC 416 and OC 55 instead if it was not inclined to grant the stay of OC 416. The defendant further took the

position that if consolidation was granted as an alternative relief, then the hearing of the Summary Judgment Application should not proceed on that day.

15 The AR dismissed the Stay Application and the alternative relief of consolidation sought by the defendant. The AR then granted the Summary Judgment Application in full after finding that the defendant's defence was bare, lacking in particulars, and unsubstantiated by evidence. The AR further found that the 16 Dec Letter was insufficient to support the alleged defence and was contradictory both internally and against external documents.

16 With the above background facts in mind, I turn to consider SUM 1161 before turning to RA 71 and RA 70.

**SUM 1161: Application to admit new evidence**

***The parties' positions***

17 I first consider SUM 1161, which is the defendant's application to admit evidence in his third affidavit consisting of: (a) various WhatsApp messages ("the WhatsApp Messages") between Daniel and one Mr Dimitri Rusca ("Mr Rusca"), who is the Chief Executive Officer of SCCF Structured Commodity & Corporate Finance SA ("SCCF"), which is in turn the claimant's agent and Facility Administrator; and (b) his explanation of the meaning and effect of the WhatsApp Messages. While it appears that the new evidence is more relevant to RA 70 (*ie*, the appeal in the Summary Judgment Application) as it concerns the merits of the claimant's claim, the application is made to admit the new evidence for *both* RA 71 and RA 70. I accordingly deal with SUM 1161 at this juncture.

18 As to why the new evidence should be admitted, the defendant says the following. First, the WhatsApp Messages were not in his possession prior to the hearing before the AR. This is because Daniel could not locate the WhatsApp Messages prior to the hearing despite the defendant having asked for them. Second, the new evidence is directly relevant to the determination of RA 70, as it squarely addresses the AR's reasoning that the 16 Dec Letter is insufficient and contradictory, both internally and as against external documents. Third, the defendant has explained on affidavit that the WhatsApp Messages have been given in their native format and hence should be regarded as credible. Fourth, whether the WhatsApp Messages are material should be fully investigated at trial, as opposed at this stage of the proceedings.

19 In response, the claimant first submits that the applicable test to determine the admission of new evidence should be applied stringently given that both the Stay Application and the Summary Judgment Application are more similar to proceedings having the full characteristics of a trial. Second, the new evidence could have been obtained with reasonable diligence. Third, the new evidence is not material because the defendant's primary defence in RA 70 is legally unsustainable and, in any case, the new evidence does not support this defence. Fourth, the new evidence is not credible or reliable.

### *The applicable law*

20 The applicable law is not in dispute. Under O 18 r 8(6) of the Rules of Court 2021 ("ROC 2021"), it is provided that:

> **Powers of appellate Court (O. 18, r. 8)**
>
> **8.**—(6) Subject to any written law, the appellate Court has power to receive further evidence, either by oral examination in court, by affidavit, by deposition taken before an examiner, or in any other manner as the appellate Court may allow, but no

> such further evidence (other than evidence relating to matters occurring after the date of the decision appealed against) may be given except on special grounds.

21 Although the term "special grounds" in O 18 r 8(6) is not defined either in the ROC 2021 or the Supreme Court of Judicature Act 1969 (2020 Rev Ed), the courts have consistently interpreted the term to refer to the threefold requirements set out in the seminal English Court of Appeal decision of *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") (see, *eg*, the Court of Appeal decisions of *Toh Eng Lan v Foong Fook Yue and another appeal* [1998] 3 SLR(R) 833 at [34], *ARW v Comptroller of Income Tax and another and another appeal* [2019] 1 SLR 499 at [99], and *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 ("*Anan Group*") at [21]). In this regard, the three requirements in *Ladd v Marshall* are:

(a) first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial or hearing;

(b) second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; and

(c) third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.

These three requirements have often been referred to, respectively, as the criteria of non-availability, relevance, and credibility.

22 I also observe, following the Court of Appeal's comments in *Anan Group* at [35], that the cases applying the *Ladd v Marshall* requirements should be analysed as lying on a spectrum. On one end of the spectrum are appeals

against trials or hearings having the full characteristics of a trial, where the requirements would apply with full rigour. On the other end, there are appeals against decisions not touching upon the merits at all, such as interlocutory applications, where the requirements, taken together, would serve as a guideline which the court is entitled but not obliged to refer to in the exercise of its unfettered discretion.

***My decision: SUM 1161 is dismissed***

23 Leaving aside the issue of whether the defendant could have obtained the WhatsApp Messages earlier with reasonable diligence, I dismiss SUM 1161 on the primary ground that the new evidence sought to be introduced is not relevant. In other words, I do not think that the evidence would have an important influence on the result of the appeal.

24 First, the WhatsApp Messages do not show that the claimant breached para 1.1 of the MOU by unreasonably withholding financing from LAPL, which is the main plank of the defendant's defence. Indeed, the WhatsApp Messages do not show clearly that there was any withholding of financing to begin with. They also do not evidence the defendant's sole example of the alleged instance where the claimant had unreasonably rejected a request by LAPL on 18 November 2021 to finance a trade of Ukrainian corn. This is because the contents of the WhatsApp Messages end as of March 2021 and therefore do not evidence anything about an event that allegedly occurred on 18 November 2021. Moreover, while the 16 Dec Letter, which the defendant relies on, alleges that financing requests were made between September 2020 and July 2022, there are also no messages that cover the alleged financing requests for 2022.

25 More significantly, I find that the WhatsApp Messages do not contradict the claimant's account of the process by which financing requests from LAPL were approved. The claimant's case is that all financing requests from LAPL were processed in accordance with a formal process and not through WhatsApp. The WhatsApp Messages not only do not contradict this account but support it. For example, in the messages dated 24 March 2020, Mr Rusca had advised Daniel to "[j]ust send deals" to one "Sahil",[3] who was the claimant's employee who handled LAPL's financing requests. Further, in Daniel's message dated 1 April 2020 at 4.37pm, he also alluded to a process where the claimant would "review the documents".[4] Ultimately, this shows that the financing requests are not processed by WhatsApp messages.

26 I also dismiss SUM 1161 on the secondary ground that the WhatsApp Messages do not appear credible or reliable. For one, there are references to "emails" from Sahil (see, *eg*, message on 1 April 2020 at 4.36pm).[5] It seems odd that the defendant would choose to rely on the WhatsApp Messages if there appears to be underlying emails to substantiate the discussion. Moreover, the WhatsApp Messages are presented in the format of lines that appear to have been typed out on a page. They are not presented in the form of screenshots taken from Daniel's mobile phone nor in a comprehensive and continuous chat log. It is therefore not possible to conclude that these are reproductions of WhatsApp messages that were actually exchanged between Daniel and Mr Rusca. Moreover, the WhatsApp Messages are isolated examples of conversations between Daniel and Mr Rusca. Many of the WhatsApp Messages

---

3 JBOD Vol 2 at p 56.

4 JBOD Vol 2 at p 57.

5 JBOD Vol 2 at p 57.

are cut off at inexplicable points. Indeed, there is no real context to them, and they do not reveal what the parties discussed before and after the immediate conversation. While counsel for the defendant, Mr Jordan Tan ("Mr Tan"), explained during the hearing that the defendant had tried to be concise in the messages tendered so as not to inundate the court with too many messages, the fact remains that the messages that were selected must be thought to be relevant. If the defendant nonetheless chose to advance incomplete messages, then that must be the basis on which the court should assess their credibility and reliability.

27 Having decided that SUM 1161 should be dismissed, I now consider RA 71 and RA 70 without reference to the new evidence sought to be introduced by SUM 1161.

**RA 71: Appeal in the Stay Application**

28 For the reasons that follow, I dismiss the defendant's appeal in RA 71 against the decision of the AR in the Stay Application below.

***RA 71 should not be determined as an application for a consolidation but for a stay***

29 I begin with a preliminary point. At the hearing before me, the defendant advanced the primary case that OC 416 and OC 55 should instead be *consolidated* pursuant to O 9 r 11 of the ROC 2021. This departs from his prayer below for a *stay* of OC 416, which he now relegates to a secondary prayer. The defendant justifies this approach by reference to the AR's comment below that her order in relation to the Stay Application was to be "without prejudice to any

application for consolidation or for the actions to be tried together or one immediately after another pursuant to O 9 r 11".[6]

30 In so far as this is a correct characterisation of what the defendant is seeking to do in RA 71, I disagree. While the AR did say that her order is without prejudice to any subsequent application for consolidation, this appeal is nevertheless in respect of a *stay* application. The defendant cannot slip in a new *consolidation* application. This remains the case even if the grounds for consolidation and stay are largely similar and premised on the grounds in O 9 r 11 of the ROC 2021. Indeed, it is clear that summons filed below for the Stay Application had prayed specifically for a stay and not a consolidation. Moreover, the affidavit that was filed below in support of the Stay Application was expressly stated to be "in support of … application for a stay of proceedings in OC 416 pending the outcome of [OC 55]".[7] Accordingly, I will not decide this appeal on the basis that the defendant's application is for OC 416 and OC 55 to be consolidated. If the defendant wishes for that outcome, he will need to take out a fresh application.

***The parties' positions***

31 I now set out the parties' respective positions in relation to the defendant's request for a stay. First, the defendant submits that he comes within two of the grounds in O 9 r 11 because (a) there are common questions of law that arise in both OC 416 and OC 55; and/or (b) the reliefs claimed in both OC 416 and OC 55 arise out of the same factual situation. In relation to ground (a), the defendant submits that the common question of law in both

---

6 Certified Transcript of 23 March 2023 at p 14.

7 Ollech David's 2nd Affidavit dated 30 March 2023 at para 4.

OC 416 and OC 55 is the issue of whether the defendant's and Daniel's liabilities under their respective guarantees have been set off by the claimant's liability for damages flowing from the alleged breach of the MOU. In respect of ground (b), the defendant similarly contends that the reliefs sought in both actions arise out of the claimant's alleged breach of the MOU and the supposed set-off that would result from it, which will be relied upon in both OC 416 and OC 55.

32 Second, on the basis that at least one of the grounds of O 9 r 11 is satisfied, the defendant submits that an order for a stay in OC 416 will save costs, time, and effort. He raises four reasons in that regard. First, the defendant says that the issues in both actions are practically identical as they involve guarantees with "practically the same terms" entered into in respect of the Facility Agreement. Second, the defendant argues that the parties in both actions are also similar. In particular, the defendant points out that any decision in relation to the extinguishment of the debt between LAPL and the claimant, who are both parties to OC 55, would have a direct impact on the liabilities of Daniel and the defendant under their respective guarantees. Therefore, any decision in OC 55 would also resolve the dispute in OC 416. Third, given the substantial overlap, a stay of OC 416 would avoid the risk of prejudging the merits of OC 55, as well as the risk of inconsistent judgments. Fourth, as both OC 416 and OC 55 are at relatively early stages, there would be no substantial delay to one action or the other if a stay were granted.

33 In response, the claimant first submits that, as regards whether one or more of the grounds of O 9 r 11 is satisfied, the overlap between OC 416 and OC 55 that the defendant alleges is contrived. This is because OC 416 has no connection to Daniel. Thus, the reliefs that Daniel is claiming under OC 55 have nothing to do with the defendant and, consequently, OC 416.

34 Further, the claimant submits that a stay of OC 416 will not save costs, time, and effort. In a related vein, the claimant says that a stay of OC 416 is simply not necessary. This is because a stay is an alternative relief to be granted only if other more convenient measures are not desirable or appropriate given the circumstances. In this regard, the defendant has not shown why the other measures are not desirable or appropriate. Also, the claimant says that a stay of OC 416 will deny the claimant of its right to fairly advance its claim. There is no telling when OC 55 will be determined, and the claimant will be prejudiced by being shut out of its claim in OC 416 in the meantime. Finally, the claimant argues that the alleged risk of inconsistent judgments is predicated on OC 416 and OC 55 continuing apace because there is always the risk that OC 55 may be struck out.

### *The applicable law*

35 I turn now to the applicable law. The starting point is O 9 r 11 of the ROC 2021, which states:

> **Consolidation, etc., of causes or matters (O. 9, r. 11)**
>
> **11.** The Court may order 2 or more actions to be consolidated, or order them to be tried together or one immediately after another, or order any of them to be stayed pending the determination of the other action or actions, if the Court is of the opinion that –
>
> (*a*) there is some common question of law in the actions;
>
> (*b*) the reliefs claimed in the actions concern or arise out of the same factual situation; or
>
> (*c*) it is appropriate to do so.

36 In this regard, the parties rely on the two-step framework laid down in the High Court decision of *Yeo Su Lan (alias Yang Shulan) v Hong Thomas and others* [2023] SGHC 44 ("*Yeo Su Lan*") that sets out the applicable principles governing this provision. In *Yeo Su Lan*, which concerned O 4 r 1(1) of the

Rules of Court (2014 Rev Ed) ("ROC 2014"), I observed (at [17]) that O 4 r 1(1) is framed in substantively the same terms as O 9 r 11 of the ROC 2021. I then said that there was no reason why the well-established principles in relation to O 4 r 1(1) of the ROC 2014 should not, subject to the Ideals in O 3 r 1 of the ROC 2021, apply equally to O 9 r 11 of the ROC 2021. I take the opportunity in the present case, which concerns O 9 r 11, to state definitively that the well-established principles in relation to O 4 r 1(1) of the ROC 2014 do indeed apply to O 9 r 11 of the ROC 2021.

37 Accordingly, I hold that the applicable framework to assess an application for two or more actions to be consolidated, tried in a particular sequence, or stayed pursuant to O 9 r 11 should proceed as follows:

(a) First, an applicant has to show that he or she satisfies one of the three alternative grounds provided in O 9 r 11. While the grounds in O 9 r 11(*a*) and O 9 r 11(*b*) are largely self-explanatory, it should be noted that the clause in O 9 r 11(*c*) is a catch-all meant to cater for any other relevant ground. However, in the spirit of a harmonious interpretation of O 9 r 11, the ground advanced under O 9 r 11(*c*) must obviously be of a similar grain to the grounds expressly provided for in O 9 r 11(*a*) and O 9 r 11(*b*).

(b) Second, even if an applicant can come within one of the three grounds in O 9 r 11, he or she would still need to convince the court that for the actions to be consolidated, tried in a particular sequence, or stayed would satisfy the purpose of O 9 r 11, which is principally "to save costs, time and effort and for reasons of convenience" (see the High Court decision of *Lee Kuan Yew v Tang Liang Hong and another and other actions* [1997] 2 SLR(R) 141 ("*Lee Kuan Yew*") at [4]). In

> particular, even if there is a common issue in the two matters, it may still be inappropriate to exercise the powers conferred under O 9 r 11 where there are distinctive differences between the matters in issue, having regard to the different defences put forward (see the English Court of Appeal decision of *Daws v Daily Sketch & Daily Graphic Ltd and another* [1960] 1 WLR 126 at 130).

38 In addition, I am also of the view that the second stage of the framework should be subject to the Ideals in O 3 r 1 of the ROC 2021. As I had the occasion to observe in the High Court decision of *Dai Yi Ting v Chuang Fu Yuan (Grabcycle (SG) Pte Ltd and another, third parties)* [2022] SGHC 253 (at [13]–[14]), these Ideals are "akin to constitutional principles by which the parties and the Court are guided in conducting civil proceedings" and they are "to be read conjunctively" (see *Civil Justice Commission Report* (29 December 2017) at p 6 (Chairperson: Justice Tay Yong Kwang) ("*Civil Justice Commission Report*")). In sum, these Ideals relate to the promotion of expeditious (O 3 r 1(2)(*b*)) and cost-effective proceedings (O 3 r 1(2)(*c*)) that are achieved by the efficient use of court resources (O 3 r 1(2)(*d*)). They are all ultimately tailored towards the achievement of fair and practical results (O 3 r 1(2)(*e*)), which ensures fair access to justice (O 3 r 1(2)(*a*)). In the context of O 9 r 11, this emphasises the importance of the second stage of the applicable framework, which relates to the saving of costs, time, and effort. Additionally, as I will explain below, it is also important to consider whether an application under O 9 r 11 is (a) necessary, (b) an abuse of process to stifle the ordinary course of justice, and (c) prejudicial to the respondent's ability to advance his or her case fairly and expeditiously.

***My decision: RA 71 is dismissed***

39 Having considered the parties' submissions, I dismiss RA 71. While I find that there are some common questions of law in the actions and that the reliefs claimed in the actions concern or arise out of the same factual situation, I do not think that it is appropriate to exercise my discretion to order a stay of OC 416 pending the determination of OC 55.

*First stage of the applicable framework: the grounds in O 9 r 11 are met*

40 Beginning with the first step of the applicable framework, I find that O 9 r 11(*a*) and O 9 r 11(*b*) of the ROC 2021 are on their face satisfied. As regards O 9 r 11(*a*), I am of the view that the two actions broadly turn on the questions of whether the respective guarantees in each action have been satisfied and discharged as a result of the claimant's alleged breach of the MOU. The answers to these questions are in turn contingent on the common legal issues of whether there was a breach of the MOU to begin with and, if so, whether the damages that are allegedly due to LAPL as a result of this breach can be set off against the sums that were due by Daniel and the defendant under their respective guarantees. In respect of O 9 r 11(*b*), I find that the common factual situation pleaded in both the Defence in OC 416 and the Statement of Claim in OC 55 is that there was a MOU that LAPL and the claimant entered into, and that this MOU was allegedly breached because the claimant had unreasonably withheld financing to LAPL.

41 Notwithstanding my conclusion at the first step of this framework, I would parenthetically observe that it is unsatisfactory for the defendant in this case to now rely on its own conduct in bringing duplicative proceedings to argue that the limbs in O 9 r 11(*a*) and O 9 r 11(*b*) are satisfied. In this regard, the rules of civil procedure should not be used to delay the determination of a

dispute without good cause. This is especially if multiple applications and/or proceedings are brought with the sole purpose of stymying a good claim. In such cases, while there might be a technical adherence to the conditions listed in O 9 r 11, a court may nevertheless have the power to find that the conditions enlivening the court's discretion under O 9 r 11 are not satisfied if doing so would facilitate an abuse of process or some other injustice. Indeed, this position finds support from O 3 r 2(1) of the ROC 2021, which provides that "all requirements in these Rules are subject to the Court's discretion to order otherwise in the interests of justice". However, I should qualify that I do not go so far as to say that the defendant's conduct in the present case warrants a finding that the present appeal in RA 71 amounts to an abuse of process. Accordingly, for the purposes of this decision, I will proceed on the basis that the first step of the applicable framework under O 9 r 11 is satisfied.

*Second stage of the applicable framework: the defendant has not shown that a stay will save costs, time, and effort*

42 I go on to consider the second step of the applicable framework. At this stage of the inquiry, I do not think that an order for a stay of OC 416 will fulfil the purpose underlying O 9 r 11, which is principally "to save costs, time and effort and for reasons of convenience".

(1) There is no saving of costs, time, and effort

43 Primarily, it should be recalled that OC 416 is at a more advanced stage than OC 55, which has not even been served on the claimant as of the hearing of these appeals. More specifically, OC 416 is already at the post-pleadings and summary judgment stage. Therefore, even if I were to agree with the defendant that there is an overlap in questions of law and/or facts in both OC 416 and OC 55, then what would really result in a saving of costs, time, and effort is to

allow OC 416 to be determined before OC 55. By that approach, time would be saved because OA 416, by virtue of already being at a more advanced stage, would be determined earlier than OC 55. And if there were truly overlaps in issues between the two actions, then the determination of those issues would resolve the same in OC 55, leading to further savings of costs, time, and effort. Yet, the defendant has not asked for OC 416 to be tried before OC 55.

44 Instead, the defendant has asked for the *very* relief in O 9 r 11 that does *not* achieve a saving of costs, time, and effort. This is curious because a stay lengthens rather than shortens the resolution of the dispute between the parties. Indeed, as the claimant rightly points out, if the defendant's claim in OC 55 is dismissed after trial, then OC 416 would continue from where the parties last left it, which is at the post-pleadings and summary judgment stage. The parties would then have to resume OC 416 and be put through two sets of proceedings one after the other. The fact is that the defendant cannot be certain that he will prevail in OC 55. If there is such an uncertainty in the outcome of OC 55 – as there surely must be – then it is clear that a stay of OC 416 is not the relief under O 9 r 11 that would lead to a saving of costs, time, and effort.

45 Further, as I said above (at [38]), it is important, in the light of the Ideals, to consider at the second stage of the applicable framework whether an application under O 9 r 11 is (a) necessary, (b) an abuse of process to stifle the ordinary course of justice, and (c) prejudicial to the respondent's ability to advance his or her case fairly and expeditiously. There is no need to consider all of these factors but only those that are relevant in coming to the appropriate decision.

(2) A stay is not necessary

46 Considering these factors, I am first of the view that a stay is not necessary in the present case. In this regard, the claimant has suggested that a court will only order a stay pursuant to O 9 r 11 if the only procedural measures are not desirable or appropriate. In support of this contention, the claimant cites *Lee Kuan Yew* at [5], which reads:

> Where it is not desirable or appropriate to order a consolidation, a court may order that the several actions be tried at the same time or one immediately after the other, or it may order any one of them to be stayed until the determination of the action chosen for determination ahead of the others. Where it is not possible to consolidate several actions and in effect try them as one, the next best alternative way ahead to try multiple actions is to order that they be tried at the same time. …

47 I am unable to agree with the claimant that this passage shows that the courts will only grant a stay as a *last resort*. Instead, the passage suggests that the court in *Lee Kuan Yew* treated a stay to be at least at the same level of desirability as trying several actions in a particular sequence. Be that as it may, I agree with the claimant's submission that the courts only order a stay in limited circumstances.

(a) First, a stay is granted where there are numerous actions by multiple claimants in relation to the same or similar factual matrix. In such a situation, a court will grant a stay of other cases so that one case can serve as a "test case" to set down a ruling of law or finding of fact that will determine the outcome of the other cases (see, *eg*, the English High Court decision of *Amos v Chadwick* (1877) 4 Ch D 869 ("*Amos*") at 872).

(b) Second, a stay is granted where there are "special circumstances", such as where there is the possibility of contradictory

decisions arising between criminal disposal proceedings and civil proceedings (see, *eg*, the Malaysian High Court decision of *HSBC Bank (M) Bhd v Jejak Maju Resources Sdn Bhd & Ors* [2015] 10 MLJ 645 ("*HSBC*") at [28]–[29]).

48 As such, if an applicant is unable to come within such circumstances, then that would *prima facie* show that a stay is not necessary in the case at hand. In the present case, OC 416 is not a "test case" like in *Amos*, nor does it raise the possibility of contradictory decisions in concurrent criminal and civil proceedings as in *HSBC*. Thus, in addition to the reasons I have already explained, this is yet another reason why I consider that a stay is not necessary here.

(3) A stay will prejudice the claimant's ability to advance its case fairly and expeditiously

49 Furthermore, I find that a stay of OC 416 will prejudice the claimant's ability to advance its case fairly and expeditiously. Thus, in the English High Court decision of *Secretary of State for Health v Servier Laboratories Ltd* [2014] EWHC 2720 (Ch) ("*Servier*"), the defendant was sued by the various national health authorities in three separate actions in the English High Court. Given the nature of the claimants, one action was termed the "English proceedings", another action the "Scottish/NI proceedings", and the last action the "Welsh proceedings". The defendant applied to stay the Scottish/NI proceedings on the ground that the defendant should not simultaneously have to face multiple sets of proceedings based on the same underlying facts, with three different legal teams each incurring their own costs and imposing costs on the defendant and its legal representatives (at [17]). This is because, as the learned

judge below observed, there was an almost complete overlap between the Scottish/NI proceedings and the English proceedings (at [12]).

50 The English High Court dismissed the defendant's application for a stay of the Scottish/NI proceedings. Instead, the court took the view at [30] that the right way to deal with the problem of duplicative effort was by active case management of the three actions as they proceeded in parallel. It observed that a blanket stay would, in effect, turn the English proceedings into a test case. In this regard, the court opined that it would be wrong to compel the other claimants to "wait in the wings, probably for several years, until the English proceedings have been finally resolved".

51 In the present case, I agree with the claimant that, following *Servier*, the practical effect of a stay of OC 461 is that the claimant will be precluded from advancing its claim until OC 51 is resolved. In my view, this unfairly prejudices the claimant because it is unclear when OC 51 will be disposed of. As such, this, in combination with the other reasons, shows that the defendant has not shown that a stay will advance the purposes behind O 9 r 11.

52 For all of these reasons, I dismiss the defendant's appeal in RA 71.

**RA 70: Appeal in the Summary Judgment Application**

53 Having dealt with RA 71, I turn now to RA 70, which is the defendant's appeal against the AR's decision to grant summary judgment to the claimant.

***The parties' positions***

54 With the above background facts in mind, the claimant's position is that it has demonstrated a *prima facie* case in relation to its claim on the Guarantee.

In this regard, the claimant points out that cll 1, 9, 15, and 16 of the Guarantee provide that the claimant is entitled to payment from the defendant of the Guaranteed Sum. Having established a *prima facie* case, the claimant then says that the defendant's sole defence, which is premised on the breach of the MOU, is without merit as it is completely bare, lacking in particulars, and unsubstantiated by evidence. Relatedly, and in connection with the alleged set-off that the defendant says occurred as a result of the breach of the MOU, the claimant responds in its affidavit dated 2 March 2022 that the Facility Agreement excludes the right of set-off.[8]

55 As for the claimant's claim for other legal costs and expenses, this claim is premised on the terms of the Guarantee that entitle the claimant to an indemnity from the defendant for costs and expenses incurred in various circumstances (see [5] above). In this regard, the claimant says that it has established a *prima facie* case for its claim of S$13,000 on the basis of cll 9(iii) and 16 of the Guarantee. Pursuant to these clauses, the defendant agreed to indemnify the claimant against costs and expenses which the claimant may incur as a result of loans or credit facilities granted to LAPL. These costs and expenses include (a) S$10,000 incurred in relation to HC/CWU 189/2022 ("CWU 189"), and (b) S$3,000 from legal costs incurred before the commencement of OC 416.

56 Finally, as for the claimant's claim for the costs of the Summary Judgment Application and the action in OC 416, the claimant says that it is entitled to costs on an indemnity basis pursuant to cll 1, 9(iii), 15, and/or 16 of the Guarantee. The claimant says that there can be no doubt that under those clauses, the defendant is obliged to indemnify the claimant of all legal costs

---

8 Philippe Berta's Affidavit dated 2 March 2023 at paras 16–17.

incurred in enforcing the Guarantee. The claimant submits that if the defendant's defence founded on the MOU fails, then it must follow that the defendant has no defence to this particular claim for indemnity costs of HC/SUM 110/2023 and OC 416. For completeness, the claimant also argues that it is trite that such indemnity provisions in loan documentation and guarantee documents are enforceable and have been enforced by the courts.

57 The defendant's defence is that the claimant's claim under the Guarantee is discharged if the underlying liability under the Facility Agreement has been set off because the claimant has allegedly breached the MOU. As such, the defendant says that the dispute between the claimant and LAPL in respect of the MOU raises at least the following triable issues in OC 416, namely:

(a) whether the Guarantee imposes secondary liability on the defendant, such that the claimant cannot claim against the defendant under the Guarantee without first establishing LAPL's liability under the Facility Agreement;

(b) whether the claimant breached the MOU;

(c) if the claimant breached the MOU, whether LAPL has a valid right of set-off that has been validly excluded by the Facility Agreement pursuant to Swiss law;

(d) if there was such a right of set-off, whether LAPL validly exercised it in the 16 Dec Letter; and

(e) if so, whether the defendant may avail himself of that right under the Guarantee.

Accordingly, the defendant submits that the court is not in a position to grant summary judgment.

***The applicable law***

58 I first set out the applicable principles governing a summary judgment application under O 9 r 17 of the ROC 2021. Preliminarily, while the specific wording of O 9 r 17 of the ROC 2021 is not the same as that found in O 14 of the ROC 2014, I do not think that the applicable principles under the ROC 2021 are now different. Indeed, there is nothing in the *Civil Justice Commission Report* or the *Report of the Civil Justice Review Committee* (2018) (Chairperson: Indranee Rajah SC) that suggests otherwise. I am therefore of the view that the earlier decisions that have guided the application of O 14 of the ROC 2014 continue to be applicable under the ROC 2021.

59 In this regard, it is trite law that the purpose of the summary judgment procedure is to enable a claimant to obtain a quick judgment where there is plainly no defence to the claim without trial (see the High Court decision of *Ling Yew Kong v Teo Vin Li Richard* [2014] 2 SLR 123 at [30], citing *Singapore Civil Procedure 2013* (G P Selvam gen ed) (Sweet & Maxwell, 2013)). Accordingly, if the defendant's only suggested defence is a point of law and the court can see at once that the point is misconceived (or, if arguable, can be shown shortly to be plainly unsustainable), then the claimant is entitled to summary judgment (see *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 14/1/2).

60 Accordingly, to obtain summary judgment, a claimant must first show that he has a *prima facie* case for his claims. If he fails to do that, his application ought to be dismissed. However, once the claimant shows that he has a *prima*

*facie* case, the tactical burden then shifts to the defendant who, in order to obtain permission to defend, must establish that there is a fair or reasonable probability that he has a real or *bona fide* defence (see the High Court decision of *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 ("*M2B World*") at [17], citing *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 at [43]–[47]). The tactical burden which shifts to the defendant is the burden to provide further evidence to rebut an inference that would otherwise be drawn from the evidence provided by the claimant. The court will not grant permission to defend if the defendant only provides a mere assertion, contained in an affidavit, of a given situation which forms the basis of his defence (see *M2B World* at [19], citing *Prosperous Credit Pte Ltd v Gen Hwa Franchise International Pte Ltd* [1998] 1 SLR(R) 53 at [14]). If the defendant cannot satisfy this tactical burden, the claimant would be entitled to summary judgment.

***My decision: RA 70 is dismissed***

*The claimant has shown a* prima facie *case*

61 Applying this framework, I dismiss RA 70 for the following reasons. First, I am satisfied that the claimant has shown a *prima facie* case for its claims on the basis of the terms in the Guarantee. In this regard, it will be recalled that the claimant relies on cll 1, 9, 15, and 16 of the Guarantee. The defendant also does not dispute that, if LAPL is liable to the claimant, the defendant would be liable to the claimant as well on the basis of these terms. Having found that the claimant has established a *prima facie* case, the tactical burden therefore shifts to the defendant to show that there is a *bona fide* defence.

*The defendant has not raised a* bona fide *defence in relation to the claimant's alleged breaches of the MOU*

62 I turn to consider the sole defence which the defendant raises, which is premised on the MOU outlined in the 16 Dec Letter. In sum, the defence is that the defendant's liability under the Guarantee has been discharged because LAPL can apply its alleged right to damages under the MOU to fully discharge its debt to the claimant under the Facility Agreement. However, in my judgment, that issue is entirely *contingent* on the defendant proving that the claimant had breached the MOU in the first place. If the defendant is unable to raise a *bona fide* defence that the claimant breached the MOU to begin with, then no issue of set-off can arise.

63 In this regard, I do not think that the defendant has raised any *bona fide* defence in relation to the claimant's alleged breaches of the MOU. This is because this defence is bare and not supported by evidence. Indeed, absent the evidence sought to be adduced in SUM 1161, the only evidence of the breach of the MOU is the 16 Dec Letter that was written by Mr Chow. However, Mr Chow has not filed an affidavit and the source of his information is unclear. Moreover, it is curious that breaches of the MOU were only raised a few days before the Defence in OC 416 was due to be filed. Indeed, up to this point, LAPL had not claimed that it had repaid the sums due under the Facility Agreement.

64 But above all, the 16 Dec Letter does not provide any objective evidence or particulars of the alleged breaches. It is clear that the alleged breaches of the MOU, specifically of para 1.1, cannot be sustained by a mere assertion from Mr Chow. Indeed, a plain reading of para 1.1 shows that the defendant must prove, among others, that the claimant had "unreasonably" withheld financing

from LAPL. However, all that the 16 Dec Letter says in this regard is the following:[9]

> I have been informed that pursuant to paragraph 1.1 of the MOU, the former directors and management of [LAPL] had reached out to [the claimant] on several occasions between September 2020 and July 2022 to request that [the claimant] finances potential deals which the former directors and management of [LAPL] had identified. However, and in breach of paragraph 1.1 of the MOU, [the claimant] failed to use its best endeavours to reasonably negotiate with the former directors and management of [LAPL] on the terms of the financing and unreasonably withheld financing from [LAPL].

65 This paragraph speaks for itself. Apart from Mr Chow's bare assertion that the claimant had "unreasonably withheld financing" from LAPL, the paragraph, and indeed the rest of the 16 Dec Letter, provides no particulars, let alone evidence, of the alleged breaches. It is inconceivable that the defendant is unable to provide some kind of documentary evidence that one would expect for any request for financing, such as emails and the exchange of underlying sale contracts. Yet, the defendant has, until the belated application made in SUM 1161 (which I have dismissed), adduced *no* evidence whatsoever to support the allegations that the claimant had committed *multiple* breaches of the MOU. This is plainly not a *bona fide* defence.

66 Finally, even taking into account the new evidence sought to be admitted in SUM 1161, I would still not have found that there is a *bona fide* defence. The new evidence does not support the defendant's account of the claimant's alleged breaches at all. For instance, as I alluded to (see [24] above), the timespan of the WhatsApp Messages that the defendant sought to admit does not corroborate his allegation that the claimant had rejected LAPL's financing requests on

---

9 JBOD Vol 1 at p 144.

"multiple occasions" between September 2020 and July 2022. In fact, the WhatsApp messages do not even support the *only* example that the defendant provided about the claimant's supposed unreasonable refusal to provide financing in relation to "a trade [of] Ukrainian corn".[10] Taken holistically, even if I had allowed SUM 1161, I am not convinced that it would have made a difference to my conclusion.

67 Accordingly, for this reason alone, I find that the defendant has not raised any *bona fide* defence. Since the other issues that the defendant raises rest on the claimant having breached the MOU, this ground alone would be sufficient for me to dismiss RA 70, and I do so on this basis.

*It is immaterial that there may be a triable issue in relation to Swiss law*

68 For completeness, I conclude with some brief observations on an issue which was heavily contested at the hearing, which was whether it is appropriate to grant summary judgment on the basis that LAPL's right of set-off was excluded by the Facility Agreement when the content of Swiss law, which is stated to govern the Facility Agreement, has not been pleaded or proven. Having considered the submissions of both parties, I am of the view that if I had found that there is a *bona fide* defence in relation to the claimant's alleged breaches of the MOU, and had the issue of Swiss law been pleaded (which was not), there would be a triable issue as to what the content of Swiss law is. This is for the following reasons.

69 First, even though the defendant has not proven the content of Swiss law, I do not think that the claimant can rely on the presumption of similarity to

---

[10] Ollech David's 1st Affidavit dated 30 March 2023 at para 15(a).

contend that the court should simply apply Singapore law in interpreting the Facility Agreement. This is because the cases that have invoked this presumption were largely not decided in the context of an application for summary judgment or striking out. These cases, such as the Court of Appeal decision of *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 and the High Court decision of *IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2018] SGHC 123, were decided on the merits at trial or on appeal.

70 Second, the English Court of Appeal decision of *National Shipping Corp v Arab* [1971] 2 Lloyd's Rep 363 ("*National Shipping*") stands as a helpful authority that cautions against summary judgment being granted on the presumption that foreign law is the same as the *lex fori*. In that case, the claimants and the defendant signed an agreement. The defendant signed under the name of certain agents. At first instance, the claimants obtained summary judgment against the defendant personally under the agreement. On appeal to the English Court of Appeal, the defendant argued that under Saudi Arabian law, the agents were a type of partnership and that he could not be sued personally until the agents had been sued and made default. The claimants contended that Pakistani law should apply, and that, in the absence of evidence to the contrary, the presumption was that foreign law (be it Saudi Arabian or Pakistani law) was the same as English law. The English Court of Appeal rejected the claimants' contention and granted the defendant unconditional permission to defend. Most pertinently, Buckley LJ explained that while the presumption of similarity no doubt existed under English law, "it does not seem … satisfactory that the [claimants] should obtain summary judgment in a case in which foreign law is clearly involved upon the basis of that presumption" and that, therefore, "the case is shown to be not an appropriate one for summary

judgment" (at 366). Likewise, in a learned article and in a similar context, Prof Tan Yock Lin also notes that the "[a]pplication of the presumption would contradict the interlocutory nature of the strike-out application" (see Tan Yock Lin, "Rationalising and Simplifying the Presumption of Similarity of Laws" (2016) 28 SAcLJ 172 at para 31).

71 However, I would not go so far as to say that *National Shipping* stands for the absolute proposition that the presumption of similarity can *never* apply in interlocutory applications which seek to finally dispose of an action, or at least part of it, on its merits. As Chan Sek Keong CJ observed in the High Court decision of *D'Oz International Pte Ltd v PSB Corp Pte Ltd and another appeal* [2010] 3 SLR 267, whether the presumption applies depends on the circumstances of the case. The question that is ordinarily asked when this presumption is invoked is whether, in the circumstances of the case, it would be unjust to apply it against a party so as to make him liable on a claim subject to foreign law when the foreign law that applies has not been proved (at [25]).

72 In my view, the outcome in *National Shipping* should be understood in light of these considerations. In interlocutory matters, where there is a dispute as to the content of foreign law, making a summary determination based on the presumption of similarity might occasion injustice if, for instance, it is improbable that the foreign law in question is similar to the *lex fori*. This can be the case if the *lex fori* belongs to a different legal tradition from the foreign law in question, or if the rule of the *lex fori* is clearly unique. In such circumstances, to shut out a defendant's defence simply because he has not adduced sufficient evidence of the content of foreign law at the interlocutory stage would be premature. Indeed, one should bear in mind that the operation of the presumption of similarity can have a "startling effect" (see the observation of the Court of Appeal in *Pacific Recreation Pte Ltd v S Y Technology Inc and*

*another appeal* [2008] 2 SLR(R) 491 at [33], albeit in a different context). Accordingly, these considerations might have explained the view taken by the court in *National Shipping* that it was inappropriate to grant summary judgment on the artificial assumption that English law was similar to the law of Saudi Arabia or the law of Pakistan.

73 The same considerations are applicable in the present case. As the legal traditions of Switzerland and Singapore are different, it would be artificial and premature, at the interlocutory stage, to finally dispose of this action on the assumption that Swiss law is similar to Singapore law in matters of contractual interpretation. Therefore, had this issue arisen, I would have been inclined to find that the defendant raised a triable issue as to the content of Swiss law and, specifically, whether it provides that LAPL's right of set-off was excluded by the Facility Agreement.

74 In any event, I reiterate that my decision in RA 70 does not turn on my view of whether there is a triable issue in relation to the content of Swiss law. This is because, as the defendant says in its own submissions on appeal, this issue is entirely predicated on whether the claimant breached the MOU.[11] While the defendant need not show that the claimant had actually breached the MOU at this stage, he does need to show a *bona fide* defence to avoid summary judgment. As I have stated (at [67] above), I do not find that he has done so. Also, the defendant has clearly not pleaded that there was a triable issue in relation to the content of Swiss law in its defence.

---

[11] Defendant's Written Submissions dated 11 May 2023 at para 35.

**Conclusion**

75 In conclusion, for all the reasons I have given above, I dismiss the defendant's application in SUM 1161, as well as his appeals in both RA 71 and RA 70.

76 Unless the parties are able to agree on costs, they are to file brief submissions on the appropriate costs order limited to seven pages each, within 14 days of this decision.

77 In closing, I would like to thank Mr Nicholas Poon, who appeared for the claimant, and Mr Tan, as well as their respective teams, including the instructing solicitor for the defendant, Mr Keith Han, for all their helpful submissions, which were clearly and reasonably advanced both in writing and orally before me.

Goh Yihan
Judicial Commissioner

Poon Guokun Nicholas and Lee Tat Weng Daniel (Breakpoint LLC)
for the claimant;
Tan Zhengxian Jordan, Damien Chng Cheng Yee
(Audent Chambers LLC) (instructed), Shankar Ray Shi-Wan,
Han Guangyuan Keith and Ammani Mathivanan (Oon & Bazul LLP)
for the defendant.