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

**[2023] SGHC 191**

Originating Application No 21 of 2023

Between

The National University of Singapore

… *Claimant*

And

Ten Leu Jiun Jeanne-Marie

… *Defendant*

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# JUDGMENT

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[Courts and Jurisdiction — Vexatious litigants — Whether to grant extended civil restraint order — Section 73C Supreme Court of Judicature Act]

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# The National University of Singapore
# v
# Ten Leu Jiun Jeanne-Marie

**[2023] SGHC 191**

General Division of the High Court — Originating Application No 21 of 2023
Kwek Mean Luck J
4 July 2023

13 July 2023 Judgment reserved.

**Kwek Mean Luck J:**

## Introduction

1 Ms Ten Leu Jiun Jeanne-Marie ("Ms Ten") commenced her candidature for a Master of Arts (Architecture) degree in the National University of Singapore ("NUS") School of Design and Environment in January 2002. As NUS determined that she had failed to comply with certain requirements that were necessary for the award of her degree, NUS terminated her candidature on 4 September 2006, before she obtained her degree.

2 On 8 August 2012, Ms Ten commenced HC/S 667/2012 ("S 667") against NUS, where she sought for NUS to award her the degree and claimed damages for breach of contract, the tort of misfeasance in public office, the tort of intimidation and the tort of negligence. On 9 July 2018, Woo Bih Li J (as he then was) dismissed S 667 (see *Ten Leu Jiun Jeanne-Marie v National*

*University of Singapore* [2018] SGHC 158). A series of legal proceedings followed, which I will examine in greater detail below.

**Application for ECRO**

3 In this application, HC/OA 21/2023 ("OA 21"), NUS seeks an extended civil restraint order ("ECRO") against Ms Ten, pursuant to s 73C(1) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"). This is on the basis that Ms Ten has "persistently commenced actions or made applications that are totally without merit".

4 To support its application, NUS submits that s 73C of the SCJA was derived from and modelled after the United Kingdom's ("UK") Civil Procedure Rules ("CPR") r 3.11 and CPR Practice Direction 3C relating to ECROs, so it is helpful to refer to the UK cases on the applicable principles to determine whether the court should grant an ECRO. One such case that NUS cites is the English Court of Appeal's decision in *Sartipy (aka Hamila Sartipy) v Tigris Industries Inc* [2019] 1 WLR 5892 ("*Sartipy*"). The relevant principles in *Sartipy*, as NUS summarises, are as follows:[1]

> (a) The litigant must have commenced or made at least three actions or applications which are totally without merit in order to be taken to have 'persistently' commenced such actions or applications.
>
> (b) An action or application would be considered 'totally without merit' if it is bound to fail in the sense that there is no rational basis on which it could succeed. It need not be abusive, made in bad faith, or supported by false evidence or documents in order to be totally without merit, but if it is, that will reinforce the case for a civil restraint order.
>
> (c) Subject to the minimum of at least three actions or applications required for the making of an ECRO, the persistence of the litigant in commencing such applications is

1 Claimant's Written Submissions dated 2 May 2023 at paras 41–42.

> to be evaluated by reference to the litigant's overall conduct. It may be easier to conclude that a party is persistently commencing actions or applications which are totally without merit if it seeks repeatedly to relitigate issues which have been decided than if there are three or more unrelated applications many years apart.
>
> (d) When considering whether to make a restraint order, the court is entitled to take into account any previous actions or applications which it concludes were totally without merit, and is not limited to actions or applications so certified at the time, albeit that in such cases the court will need to ensure that it knows sufficient about the previous action or application in question. In other words, the Court hearing the application for the ECRO is entitled retrospectively to adjudge an action or application to be totally without merit: *Perry v Brundle* [2015] EWHC 2737 at [27].

5 NUS submits that it is evident from the procedural history that Ms Ten has persistently commenced at least three actions or applications that have been found by the court to be wholly without merit. The judgment in S 667 was deemed final and unappealable by the Court of Appeal in CA/OS 25/2020 ("OS 25"). Ms Ten nevertheless repeatedly sought to relitigate her allegations that NUS's witnesses, particularly one Professor Lily Kong ("Prof Kong"), were dishonest in S 667, and that the judgment should thus be set aside or not be given effect to as it was obtained by a fraud upon the court. I will refer to this allegation neutrally as the "Allegation".

6 NUS' position is that in assessing whether the previous actions or applications were "totally without merit", the court hearing the ECRO application should examine and refer to the views expressed by the court deciding those previous actions or applications. However, the court hearing the ECRO should *not* be conducting a substantive review of the merits of those decisions to see if they were wrong. It cannot act in an appellate capacity. NUS submits that it is therefore not the function of OA 21 to decide on the Allegation. In any event, Ms Ten had already made the Allegation before Woo J in S 667,

and the Court of Appeal had made its observations on it in OS 25. Unless there is fresh material evidence of the Allegation, the Allegation should not be substantively assessed in this application for an ECRO.

**Procedural history**

7 NUS relies heavily on the related litigation following S 667 to make out its claim that Ms Ten has persistently commenced actions or applications that are totally without merit. I therefore set out the relevant procedural history in detail below. Given the extensive procedural history, for ease of reference, after setting out the relevant actions or applications, I include NUS's submissions on particular actions or applications.

***OS 25***

8 Following the dismissal of S 667 on 9 July 2018, Ms Ten filed OS 25 on 11 August 2020. This was an application for: (a) an extension of time to file a notice of appeal against the judgment; and (b) permission to appeal against the costs order in S 667.

9 On 30 October 2020, the Court of Appeal dismissed OS 25 and awarded costs to NUS. The Court of Appeal found that the delay of close to two years was "very substantial" and that Ms Ten had failed to provide good reasons for her failure to comply with the one-month time limit for filing an appeal against the judgment under O 57 r 4 of the Rules of Court (2014 Rev Ed). The court also found that Ms Ten's intended appeal had "little prospect of success", finding that her "overarching submission" that NUS had obtained judgment by fraud because its witnesses had committed perjury (*ie*, the Allegation) was "unsubstantiated". The court dismissed the application for permission to appeal

against the costs order for similar reasons.[2] Ms Ten subsequently wrote to the court on 10 November 2020 to request for leave to make further arguments in respect of OS 25, alleging that the Court of Appeal had "failed to consider" and "properly apply its mind" to her arguments on perjury.[3] On 16 November 2020, the Court of Appeal informed Ms Ten that it had no jurisdiction to hear further arguments and that its decision to dismiss OS 25 was final.[4]

***OSB 3***

10 On 27 December 2019, prior to the filing of OS 25, NUS served a statutory demand on Ms Ten in respect of debts arising from costs orders made against Ms Ten in S 667. On 9 January 2020, after the Court of Appeal dismissed OS 25, Ms Ten filed an application, HC/OSB 3/2020 ("OSB 3"), to set aside the statutory demand. This was the basis that the judgment in S 667 should be disregarded as it was obtained by means of fraud upon the court in the form of perjury and was thus an abuse of process.[5] OSB 3 was dismissed on 8 December 2020.

11 In finding that there was no basis to set aside the statutory demand, the learned Assistant Registrar gave the following reasons:[6]

(a) Ms Ten did not dispute that the judgment debt had been based upon a valid and existing order of court. The judgment was final because

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2 Claimant's Bundle of Documents (Volume I) at 386–389.

3 Claimant's Bundle of Documents (Volume I) at 392–425.

4 Claimant's Bundle of Documents (Volume I) at 390–391.

5 Claimant's Bundle of Documents (Volume I) at 427–437.

6 Claimant's Bundle of Documents (Volume I) at 452–456.

Ms Ten's application in OS 25 had been rejected by the Court of Appeal and there was no further avenue of appeal available for S 667.

(b) The general principle is that the bankruptcy court would not go behind a judgment debt to question its validity. There was no reason to depart from the general principle.

(i) First, the materials Ms Ten had relied upon in support of the Allegation had been placed before and considered by Woo J in S 667. Ms Ten expressly acknowledged that these materials had been repeatedly highlighted to Woo J, and she had provided "no basis" to suggest that there were any additional or new matters that would enable the court to go behind the judgment in S 667.

(ii) Second, Ms Ten's allegations had been raised before the Court of Appeal in OS 25, because the chance of the defaulting party succeeding was a consideration in whether an extension of time to file a notice of appeal should be granted. Ms Ten had also tendered further evidence in OS 25 by way of affidavit. Ms Ten was thus raising the same arguments she had already raised before the Court of Appeal in OS 25, a fact which Ms Ten expressly accepted. That the Court of Appeal had already concluded that Ms Ten's arguments in her intended appeal had "little prospect of success" and found that her claims of perjury were unsubstantiated, only underscored how unlikely it was that Ms Ten's arguments could succeed, given that the requisite threshold of showing sufficient merits at that stage was low.

12 NUS submits that it is clear from the forgoing that OSB 3 was "an unmeritorious and baseless application which was bound to fail", a fact reinforced by the dismissal of Ms Ten's appeal against the decision of learned Assistant Registrar in OSB 3, HC/RA 316/2020 ("RA 316").[7]

***RA 316***

13 Andre Maniam JC (as he then was) dismissed RA 316 on 25 January 2021 because "the costs judgment that the statutory demand is based on is final and unappealable".[8] Maniam JC gave two main reasons for his decision. First, Maniam JC was not satisfied that there were any grounds on which the statutory demand ought to be set aside. This was because Ms Ten's submissions in OSB 3 were premised on her dissatisfaction with the outcome of decisions she could no longer appeal against (*ie,* S 667 and OS 25) and Ms Ten was not able to provide any other basis for the appeal.[9] Maniam JC therefore explained to Ms Ten that "the costs judgment that the statutory demand is based on is now final and unappealable" and informed her that he could not set aside the judgment in S 667 on the basis that Woo J and the Court of Appeal were wrong.

14 Second, and in any event, Maniam JC was not persuaded that Woo J and the Court of Appeal were wrong, based on Ms Ten's affidavit and submissions. Maniam JC further explained the appeal system to Ms Ten and reiterated that the Court of Appeal had already decided that the judgment in S 667 would stand.[10]

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7 Claimant's Written Submissions dated 2 May 2023 at para 46.

8 Claimant's Bundle of Documents (Volume I) at 490.

9 Claimant's Bundle of Documents (Volume I) at 482–483.

10 Claimant's Bundle of Documents (Volume I) at 480 and 484.

15 For completeness, I note that Maniam JC also dismissed Ms Ten's oral application to adjourn the hearing and Ms Ten's application that he recuse himself from hearing the appeal.

16 NUS submits that it is evident that RA 316 was an appeal that was "totally without merit and bound to fail", as Ms Ten did not have any substantive grounds for the appeal.[11]

17 On 15 February 2021, Ms Ten wrote to the court to request that Maniam JC's decision in RA 316 be set aside and for permission to make further arguments in relation to RA 316. In her letter, Ms Ten said that Maniam JC had not heard or considered her arguments for RA 316, as her application to adjourn the hearing to make submissions on a different date had been denied. Additionally, Ms Ten reiterated the arguments she raised in OSB 3 and made further arguments on why she believed that Maniam JC ought to have recused himself.[12] The court did not grant Ms Ten's request.

***B 335 & SUM 5255***

18 On 8 February 2021, NUS proceeded to file a Creditor's Bankruptcy Application, HC/B 355/2021 ("B 355"), against Ms Ten.

19 On 10 March 2021, Ms Ten filed HC/OS 226/2021 ("OS 226") to set aside the judgment in S 667 on the basis that it was tainted with fraud upon the court in the form of perjury (*ie*, the Allegation), as well as to set aside the related costs orders and the decisions in the bankruptcy proceedings.[13]

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11 Claimant's Written Submissions dated 2 May 2023 at para 49.

12 Claimant's Bundle of Documents (Volume I) at 496–514.

13 Claimant's Bundle of Documents (Volume I) at 536–537.

20 Pending the resolution of OS 226, Ms Ten filed HC/SUM 4343/2021 ("SUM 4343") to apply for a stay of B 335. On 17 November 2021, a day before the hearing of SUM 4343, Ms Ten filed HC/SUM 5255/2021 ("SUM 5255") seeking the recusal of the learned Assistant Registrar who had heard OSB 3 from hearing B 335 or SUM 4343, on the ground of apparent bias owing to his dismissal of OSB 3. Ms Ten also sought a stay of all proceedings in B 335 and SUM 4343 pending the resolution of SUM 5255.[14] She contended that he had committed "*ex facie* errors of law" by "failing to properly consider" the Allegation and by misunderstanding what the Court of Appeal had decided in OS 25. She also contended that he had failed to exercise his discretion in OSB 3 by neglecting to make findings on the Allegation and thus consider rejecting the bankruptcy application notwithstanding the judgment debt.[15]

21 At the hearing of SUM 5255, the learned Assistant Registrar drew Ms Ten's attention to the decision in OSB 3 and highlighted that he had in fact considered and made reference to her submissions. Ms Ten rejected this explanation on the basis that without a "reasoned finding", she could not accept that a judge had applied his mind to the submissions.[16] He also highlighted to Ms Ten that the proper course of action if she was dissatisfied with the substance of his determination was to file an appeal, *ie*, RA 316, which had in fact been dismissed.[17] The learned Assistant Registrar declined to recuse himself, finding that the matters raised by Ms Ten did not give rise to any reasonable suspicion or apprehension of bias in a fair-minded and informed observer.[18]

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[14] Claimant's Bundle of Documents (Volume I) at 644–645.

[15] Claimant's Bundle of Documents (Volume I) at 646–677.

[16] Claimant's Bundle of Documents (Volume I) at 681–682.

[17] Claimant's Bundle of Documents (Volume I) at 683–684.

[18] Claimant's Bundle of Documents (Volume I) at 693–703.

***OS 226 & SUM 1613***

22 As I mentioned above at [19], OS 226 was an application to set aside the judgment in S 667. On 8 April 2021, NUS filed HC/SUM 1613/2021 ("SUM 1613") to strike out OS 226.

23 The learned Assistant Registrar first held that Ms Ten's perjury allegations had either already been raised or should have been raised in S 667 and Ms Ten was therefore barred from raising the Allegation by issue estoppel and/or the extended doctrine of *res judicata*. In doing so, the learned Assistant Registrar directly considered the Allegation and found that it had generally been put before Woo J in S 667, which was "undoubtedly final and conclusive on the merits". As the materials relied upon by Ms Ten in support of the Allegation was contained in the affidavits and agreed bundles prepared for the trial of S 667 as well as in the transcript of the trial, there was "no new material on which the allegations of perjury were based which had not been placed before [Woo J]". References to the judgment in S 667 itself could not be regarded as new material. Ms Ten had candidly agreed that all of the material relied upon in OS 226 had been placed before Woo J, with her main contention being that she had not been able to put her points in quite as much detail. Accordingly, the judgment in S 667 raised an issue estoppel and the allegations were barred by the extended doctrine of *res judicata*.

24 However, the learned Assistant Registrar did not accept that OS 25 was a final and conclusive judgment on the merits of the Allegation, as it was a determination on the grant of an extension of time. Nevertheless, the learned Assistant Registrar was of the view that Ms Ten's claim that the judgment in S 667 had been tainted by fraud upon the court in the form of perjury and that the decisions could therefore be set aside was "legally and factually

unsustainable". There was no express procedure for setting aside a final and unappealable judgment and the threshold for invoking the court's inherent jurisdiction was not met, as the issues and materials relied upon had already been raised before Woo J in S 667 and the Court of Appeal in OS 25. In the learned Assistant Registrar's view, Ms Ten's allegations of perjury were "really seeming inconsistencies between what Prof Kong had said in either her AEIC or oral testimony and the contemporaneous documents", some of which had been noted by Woo J. Ms Ten's dissatisfaction with Woo J's findings or the absence of a specific finding on Prof Kong's evidence would have been a matter for appeal. Accordingly, there was "simply no factual basis upon which [Ms Ten] could invoke the inherent jurisdiction of the court to set aside the S 667 Judgment, which was final and unappealable".[19]

25 NUS submits that it is trite that striking out applications involve an extremely high threshold and that an action will be struck out only in a plain and obvious case and/or if it was clearly unsustainable. According to NUS, the fact that Ms Ten's action in OS 226 was struck out in its entirety shows that it was "completely devoid of merit and bound to fail".[20] NUS buttresses this submission by referring to the dismissal of Ms Ten's appeal against SUM 1613, HC/RA 351/2021 ("RA 351").

***RA 351***

26 Valerie Thean J dismissed RA 351 (see *Ten Leu Jiun Jeanne-Marie v National University of Singapore* [2022] SGHC 247). In RA 351, Ms Ten had sought to adduce two pieces of fresh evidence. The first was a police report

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19 Claimant's Bundle of Documents (Volume I) at 632–635.

20 Claimant's Written Submissions dated 2 May 2023 at para 52.

made by Ms Ten on 14 February 2022 which contained the Allegation, which was held by Thean J to lack any evidential value (at [25]). The second was a purported expert opinion premised on the materials already put before Woo J in S 667. Thean J held that the opinion was both irrelevant and inadmissible as it did not pertain to any scientific and technical fact. This distinguished it from the fresh material evidence tendered in the authorities cited by Ms Ten, *Takhar v Gracefield Developments Ltd and others* [2019] 2 WLR 984 and *Su Sh-Hsyu v Wee Yue Chew* [2007] 3 SLR(R) 673 (at [26] and [48]). Accordingly, there was no evidence that had not already been put before Woo J in S 667.

27 Although Thean J agreed with the learned Assistant Registrar that there had been no specific finding in S 667 regarding the Allegation (at [32] and [34]), Thean J nevertheless held that OS 226 was barred by the extended doctrine of *res judicata* as Ms Ten had previously raised issues pertaining to the honesty of NUS's witnesses in S 667 and was again raising these same issues in OS 226 (at [40]). Thean J found that Ms Ten had not put forward any new evidence in OS 226, but was seeking to "establish fraud by pointing to the documentary evidence that was before the Court in Suit 667, and the findings in the Judgment itself" and that the primary purpose of OS 226 was "to advance a case that Suit 667 was wrongly decided *on the evidence that was before it*" [emphasis in original] (at [43]). Accordingly, Thean J held that OS 226 amounted to "nothing more than an impermissible collateral attack on the Judgment" (at [44]).

28 Finally, Thean J observed that Ms Ten's own case was that she was seeking to make the same arguments that had already been made in S 667 and was not seeking to rely on any new evidence (at [50]–[51]). In Thean J's view, none of Ms Ten's arguments were of sufficient materiality to be tested at trial (at [53]). Therefore, OS 226 was "legally and factually unsustainable" (at [46] and [54]). Thean J also found the additional prayers sought in OS 226 to be

"legally and factually unsustainable" and therefore "frivolous and vexatious" (at [54]).

29 NUS submits that the dismissal of RA 351 underscores the fact that Ms Ten's appeal in RA 351 (and her underlying application in OS 226) was totally without merit.[21]

***OA 26***

30 On 16 December 2022, Ms Ten filed AD/OA 26/2022 ("OA 26") for, amongst others: (a) permission to appeal against Thean J's decision in RA 351; and if necessary, (b) an extension of time to file a notice of appeal against RA 351.[22] The Appellate Division of the High Court dismissed OA 26 on 7 February 2023. The Appellate Division held that no permission was required to appeal against the striking out, but noted that no explanation had been provided for the failure to file a notice of appeal within the required timeframe.

31 In considering Ms Ten's prospects of success on appeal, the Appellate Division held that Ms Ten could not cross the low threshold of showing that the intended appeal was not hopeless and that the appeal was "bound to fail". There was therefore "no merit in an appeal" against RA 351 and its costs order. The Appellate Division affirmed that a judgment could not be set aside on the basis of fraud unless the fraud was discovered after the judgment was passed and the fraud is proven by material fresh evidence. It held that Thean J was correct in "concluding that the evidence relied upon by [Ms Ten] was not fresh evidence of fraud". In doing so, the Appellate Division found that the authorities relied upon by Ms Ten to submit that this was not a requirement did not support her

21 Claimant's Written Submissions dated 2 May 2023 at para 57.

22 Claimant's Bundle of Documents (Volume II) at 1086.

argument. The need for fresh evidence struck a balance between ensuring finality of litigation and preserving the integrity of the court process. Furthermore, the Appellate Division affirmed that the evidence adduced by Ms Ten in RA 351 (the police report and opinion evidence) was not relevant. Accordingly, Ms Ten was not granted an extension of time to file a Notice of Appeal against the Court's decision in RA 351.[23]

32 On 14 February 2023, Ms Ten wrote to the Appellate Division seeking permission to submit written submissions for OA 26 and to make oral arguments.[24] On 16 February 2023, the Appellate Division directed that Ms Ten was not entitled to present further arguments and that the court did not wish to hear further arguments.[25]

33 NUS submits that OA 26 amounted to yet another unmeritorious application commenced by Ms Ten which demonstrates "her persistence in re-litigating issues which have already been decided by the Courts and reinforces the case for an ECRO to be made against her".[26]

***Recent developments***

34 NUS commenced OA 21 on 11 January 2023. Prior to the hearing of this application, Ms Ten commenced further proceedings.

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23 Claimant's Bundle of Documents (Volume II) at 1250–1253.

24 Claimant's Bundle of Documents (Volume II) at 1254–1259.

25 Claimant's Bundle of Documents (Volume II) at 1260.

26 Claimant's Written Submissions dated 2 May 2023 at para 60.

*Magistrate's Complaint & OA 603*

35 On 6 March 2023, Ms Ten informed the court that following RA 351, she filed a Magistrate's Complaint against Prof Kong (the "Magistrate's Complaint"), accusing her of committing the offence of perjury in S 667 pursuant to ss 191 and 192 of the Penal Code 1871 (2020 Rev Ed). Referring to Thean J's view that Woo J had not made any specific findings on the Allegation in S 667 and the decision that OS 226 had to be struck out as no fresh material evidence had been adduced (above at [26]), Ms Ten argued that this meant that Thean J had impliedly told Ms Ten to "go out and get some fresh evidence" supporting the Allegation. In her letter, Ms Ten explained that if Prof Kong is convicted following the Magistrate's Complaint, this would amount to new evidence that would entitle Ms Ten to commence another action to set aside the judgment in S 667 on the basis of the Allegation.[27]

36 As of 11 March 2023, it appears that the Public Prosecutor has declined to consent to Ms Ten bringing a private prosecution against Prof Kong. This has since become the subject of a judicial review application against the Attorney-General commenced by Ms Ten on 6 June 2023, HC/OA 603/2023 ("OA 603").[28]

*OC 328*

37 On 26 May 2023, Ms Ten filed HC/OC 328/2023 ("OA 328") against NUS, seeking to set aside the judgment in S 667 on the basis of the Allegation and for a retrial of the same.

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27 Claimant's Bundle of Documents (Volume II) at 1268–1312.

28 Defendant's Reply Affidavit dated 13 March 2023 at para 14; Defendant's Letter to Court dated 30 June 2023.

38 NUS submits that OC 328 is materially and substantially similar to the claim in OS 226, which has already been struck out and disposed of in SUM 1613 and RA 351. No fresh material evidence is being raised in OC 328. As OC 328 was filed by Ms Ten only after OA 21 had already been filed, NUS applied at the hearing of this application to have OC 328 included in the ECRO.

**NUS's case**

39 NUS submits that the foregoing procedural history demonstrates that Ms Ten has persistently commenced at least three actions or applications that have been found to be wholly without merit. According to NUS, the Allegation has been "continually raised before and dismissed by the Court" and the court has been forced to repeatedly explain to Ms Ten why her various claims lack merit.[29] NUS highlights that Ms Ten has repeatedly brought actions and applications premised on the same contention: that the judgment in S 667 and subsequent decisions ought to be set aside on the basis of the Allegation. NUS argues that Ms Ten's inability to accept determinations against her is demonstrated by her propensity to allege that the court has failed to consider her arguments whenever her action or application is dismissed, her multiple allegations of apparent bias, and her repeated requests to make further submissions after the dismissal of an action or application. NUS thus submits that Ms Ten's prior and ongoing conduct demonstrates her persistence in attempting to challenge the judgment in S 667 by repeated litigation over the same issues.[30]

40 Furthermore, NUS submits that it has been continuously prejudiced by the time and cost required to defend against Ms Ten's unmeritorious actions and

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[29] Claimant's Written Submissions dated 2 May 2023 at paras 43 and 66.

[30] Claimant's Written Submissions dated 2 May 2023 at paras 67–69.

applications. NUS submits that this should be considered alongside the apparent lack of financial disincentive or constraint to deter or prevent Ms Ten from commencing further applications or actions against NUS. Although Ms Ten has admitted to being impecunious and although she has yet to repay the judgment debt as required under the bankruptcy proceedings, Ms Ten has continued to pursue various actions or applications resulting in further costs orders against her in RA 316, SUM 1613, RA 351, SUM 1658, and OA 26, none of which have been recovered from Ms Ten. NUS contends that adverse costs orders against Ms Ten have been demonstrably insufficient to deter her from relitigating the Allegation.[31]

41 NUS points out that Ms Ten has, in this application, expressed her pride in continuing to persist in pursuing the Allegation and her intention to "never give up" and "never surrender".[32] NUS submits that this further shows that in the absence of an ECRO, Ms Ten will not cease her attempts to relitigate issues arising out of the judgment in S 667 and will continue to commence unmeritorious applications or actions against NUS.[33]

42 The judgment in S 667 was handed down nearly five years ago on 9 July 2018, in respect of an action that was commenced over a decade ago. NUS submits that finality in this matter is long overdue, and that Ms Ten should no longer be permitted relitigate final and unappealable decisions and abuse the court's processes.[34]

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31 Claimant's Written Submissions dated 2 May 2023 at para 70.

32 Claimant's Written Submissions dated 2 May 2023 at para 72; Defendant's Reply Affidavit dated 13 March 2023 at paras 329–330.

33 Claimant's Written Submissions dated 2 May 2023 at para 73.

34 Claimant's Written Submissions dated 2 May 2023 at para 75.

**Ms Ten's case**

43 Ms Ten submits that if her application for judicial review in OA 603 succeeds, such that she is able to pursue a private prosecution against Prof Kong for the offence of perjury, and the court hearing the private prosecution finds Prof Kong guilty of perjury, that will put Ms Ten's case in a very different light. Ms Ten submits that this will then put her in a position to apply to the High Court to set aside the judgment in S 667 on the ground that it is unsafe, because it is tainted with "fraud upon the Court" in the form of the perjury.[35] The court in OA 21 must take into account that imposing an ECRO against her would be disproportionate and unreasonable in these circumstances.[36] She emphasises that the court must properly examine the documentary evidence that Prof Kong committed perjury and that this can only be done at a proper trial of Prof Kong, on the charges of perjury as set out in her Magistrate's Complaint.[37]

44 At the same time, Ms Ten submits that in OA 21, in assessing whether her previous actions or applications were "totally without merit", the court must decide on her allegations that Prof Kong committed perjury in S 667. If the court finds that there is any merit to the Allegation, then it cannot impose an ECRO on Ms Ten.[38] Aside from the language of s 73C(1) of the SCJA, Ms Ten also bases this submission on a general public policy in favour of enforcing laws against perjury,[39] the principle that "fraud unravels all",[40] and the inherent powers of the court as understood alongside the Ideals set out in O 3 r 1 of the

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35 Defendant's Written Submissions dated 3 July 2023 at paras 69–70.

36 Defendant's Written Submissions dated 3 July 2023 at paras 359–371.

37 Defendant's Written Submissions dated 3 July 2023 at para 282.

38 Defendant's Written Submissions dated 3 July 2023 at paras 11, 21, 127 and 220.

39 Defendant's Written Submissions dated 3 July 2023 at paras 29–30, 74–85.

40 Defendant's Written Submissions dated 3 July 2023 at para 35.

Rules of Court 2021.[41] Ms Ten therefore raises arguments on the Allegation in her submissions, and submits that she will continue to raise the Allegation "over and over again" until it has been determined by the court.[42]

45 Ms Ten submits that an ECRO should be used only against litigants who file only, or at least mostly, unmeritorious applications. Ms Ten submits that in the hypothetical example of a litigant who has commenced a total of three unmeritorious applications, a litigant who has commenced only those three applications should be regarded differently from a litigant who has commenced 30 applications, of which only three of which were unmeritorious.[43] She also submits that in assessing the number of prior actions and applications that are totally without merit, a distinction should be made between applications that are an appeal, which should not be counted, and those which are entirely independent. She further submits on why she considers that the decisions in the prior actions or applications were wrong or unjust.[44]

## My decision

### *The applicable law on Extended Civil Restraint Orders*

46 I begin with s 73C(1) of the SCJA, which sets out the court's power to make an ECRO:

> **73C.**–(1) A court may, if satisfied that a party has persistently commenced actions or made applications that are totally without merit, make an extended civil restraint order against the party.

[41] Defendant's Written Submissions dated 3 July 2023 at para 33.

[42] Defendant's Written Submissions dated 3 July 2023 at para 180.

[43] Defendant's Written Submissions dated 3 July 2023 at paras 330–334.

[44] Defendant's Written Submissions dated 3 July 2023 at paras 441, 468, 480, 523, 539, 549, 558, 587 636, 640 and 642.

Based on a plain reading of s 73C(1) of the SCJA, there are two requirements before the court may make an ECRO: (a) a party must have "persistently commenced actions or made applications"; and (b) such actions or applications were "totally without merit".

47 As can be seen from the above, Ms Ten's submission that an ECRO should be used only against litigants who file a percentage-based majority of unmeritorious applications is not supported by the plain language of s 73C(1) of the SCJA. In any event, as I will explain below, such a submission is not germane on the facts of this case.

48 Before I undertake a more detailed analysis of s 73C(1) of the SCJA, it would be useful to briefly set out the background to the civil restraint order regime. This regime was introduced by way of the Supreme Court of Judicature (Amendment No. 2) Act 2018 (Act 46 of 2018). I reproduce the explanation by the then-Senior Minister of State for Law (*Singapore Parliamentary Debates, Official Report* (2 October 2018), vol 94 (Mr Edwin Tong Chun Fai, Senior Minister of State for Law)):

> The policy intention behind these amendments is … to allow the courts to have, and to be able to take, a more nuanced approach in terms of the orders that they make in managing the different levels of culpability of the vexatious litigants. And this allows the judges to have more regard to the individual circumstances of each case and to make those distinctions.
>
> … in terms of how and when these orders are to be applied, it will be for the courts to carefully consider all the facts and circumstances of each case before exercising their discretion on whether to do so or not … the jurisprudence in this area must ultimately be left to be developed through the exercise of principled discretion by our judges, based on the actual facts and the context before them …
>
> …
>
> It may be helpful to consider that these restraint orders have in fact been applied in jurisdictions like the UK … The factors I

> believe are clear, and they have been considered in previous cases also in the UK. And our Courts will no doubt take reference to, although it will not be strictly bound by these cases, when they have regard to these applications with the specific facts before them in question.
>
> …
>
> … I would like to touch on the scope of the extended civil restraint orders under the new section 73C … and whether it is intended to be identical to the interpretation the UK courts have taken under their Civil Procedure Rules, and the factors that the Court should consider in determining whether a new action or application falls under the extended civil restraint order. When construing the new section 73C, the position adopted by the UK courts may be persuasive but our courts are obviously not bound to follow their interpretation. Different considerations in different jurisdictions will obviously dictate differences in the approach.

49 Section 73C(1) of the SCJA is modelled after rule 3.11 of the UK CPR read with CPR Practice Direction 3C, and the latter provides as follows in paragraph 3.1:

> **Extended civil restraint orders**
>
> 3.1 An extended civil restraint order may be made by –
>
> (1) a judge of the Court of Appeal;
>
> (2) a judge of the High Court; or
>
> (3) a Designated Civil Judge or their appointed deputy in the County Court,
>
> where a party has persistently issued claims or made applications which are totally without merit.

50 Since s 73C of the SCJA is modelled after the UK CPR, I agree that the principles in *Sartipy* as summarised by NUS is useful and relevant. However, these principles are not binding.

51 I begin by addressing the interpretation of "persistently commenced". I note that *Sartipy* mentions that the litigant should have commenced or made

least three prior actions or applications which are totally without merit, in order to be taken to have "persistently" commenced such actions or applications (*Sartipy* at [28]). Conversely, in the only reported decision of the Singapore court on the issuance of an ECRO, *Joseph Clement Louis Arokiasamy v Singapore Airlines Ltd and another matter* [2020] 5 SLR 869 ("*Joseph Clement*"), Maniam JC did not impose such a quantitative requirement, observing that the word "persistently" in s 73C(1) of the SCJA "indicates that more than one unmeritorious action or application would have to be brought before section 73C of the SCJA comes into operation" (at [43]). This *dictum* was made in *obiter*, since Maniam JC found in *Joseph Clement* that four actions or applications had been brought that were totally without merit (at [36]). It does not appear that *Sartipy* had been brought to the attention of the court in *Joseph Clement*. When *Joseph Clement* was brought to the attention of counsel for NUS, his submission was that given how s 73C of the SCJA is worded, there may be situations where two applications within a short period of time, when considered together with the conduct of the litigant, could demonstrate persistence for the purposes of an ECRO application. NUS submits that the assessment ought to be a function of the number of actions and applications, the time period, and the litigant's conduct in those proceedings.

52 In this case, and in view of my assessment of the actions and applications brought by Ms Ten set out below, the specific legal issue of whether there must be a minimum of three prior actions or applications before an ECRO can be issued under s 73C of the SCJA, likewise does not arise on the facts. This is because NUS is basing its application for an ECRO on the basis of at least four prior actions or applications that are "totally without merit". While Ms Ten submits that an appeal of an action or application should effectively be "bundled" and counted only as one action or application for the purposes of

assessing the number of prior actions or applications, I note that s 73C of the SCJA does not contain such a distinction. I also note that in *Sartipy*, the court held that if a claim itself is totally without merit, and individual applications arising therefrom are also totally without merit, the claim and each application can be counted for the purposes of determining whether or not to grant an ECRO (at [29]). Further, in *Panton and another v Vale of White Horse District Council and another* [2020] EWHC 167 (Ch), it was held that appeals can be regarded as one action or application, without requiring the "bundling" of the appeal with the underlying application (at [61]–[62]). I find these decisions persuasive. For the purpose of s 73C of the SCJA, I will consider appeals as one action or application. In light of the above, I make the observations below only in *obiter*.

53 *Sartipy* itself at [28] simply affirms *CFC 26 Ltd and another v Brown Shipley & Co Ltd and others* [2017] 1 WLR 4589 ("*CFC 26*"), which directly deals with the interpretation of "persistently", finding that it means "at least three" (*CFC 26* at [13]). The reasoning in *CFC 26* appears to be twofold. First, citing *Courtman v Ludlam* [2009] EWHC 2067, the civil restraint order regime was intended to provide graduated responses, such that an ECRO ought to have a higher pre-condition threshold compared to a Limited Civil Restraint Order ("LCRO") (*CFC 26* at [10]). Second, the court in *CFC 26* reasoned that had it been intended that an ECRO would be available where there has been no more than two unmeritorious claims or applications, the draftsman would have said so expressly (*CFC 26* at [13]).

54 I note that Singapore also has a regime for issuing a LCRO. This is under s 73B of the SCJA, which provides:

> **Limited civil restraint orders**
>
> 73B.—(1) A court may, if satisfied that a party has made 2 or more applications that are totally without merit, make a limited civil restraint order against the party.

The LCRO and ECRO regime provide a graduated and nuanced response to different circumstances through the scope of the restraint imposed. In the case of an LCRO, the restraint applies to further applications in the legal proceedings in respect of which the LCRO was made (s 73B(2)(*a*) of the SCJA). For an ECRO, the restraint applies to "commencing any action or making any application" that concerns "any matter involving, relating to, touching upon or leading to the legal proceedings in respect of which the order is made" (s 73C(2)(*a*) of the SCJA).

55 The grant of a LCRO under s 73B of the SCJA is conditioned on a specified number of "2 or more applications". This is identical to the position in the UK. This can be contrasted with s 73C of the SCJA, which contains no explicit quantitative requirement, aside from the persistent commencement of actions or applications for the issuance of an ECRO. Such a quantitative requirement could have been inserted, particularly since this was done for the LCRO regime under s 73B of the SCJA, but it was not. The relevant parliamentary debates also do not mention a quantitative requirement in relation to the ECRO, in contrast to the LCRO (*Singapore Parliamentary Debates, Official Report* (2 October 2018), vol 94 (Mr Edwin Tong Chun Fai, Senior Minister of State for Law)):

> Clause 10 of the Bill introduces the new civil restraint orders. They are meant in the first instance, to be used in situations where the litigants have persistently initiated proceedings that are groundless and without merit. So, the litigant has to do it *more than once, multiple times, at least twice in the case of the first rung or the lowest grade of the orders* and also without merit. These are done often with the purpose of annoying or embarrassing the other party.

[emphasis added]

56 In addition, in my view, it is conceptually possible for a litigant to be shown to have been "persistent" on the basis of two prior unmeritorious actions or applications – *ie*, there need not be at least three prior actions or applications – though that would have to be demonstrated on the evidence. At the same time, clearly, the greater the number of prior actions or applications that are totally without merit, the stronger the evidence of persistence.

57 Finally, in relation to the requirement that the prior actions or applications be "totally without merit", I consider that this can be satisfied where the court hearing the prior action or application so considered the matter to be "totally without merit". This could be expressed in its *dicta* or apparent from its reasoning and decision. While Ms Ten made extensive submissions on the errors of the previous decisions (see [45] above), I do not consider them to be germane to this ECRO application. It is not the role nor purview of a court hearing an ECRO application, to review if past decisions were wrong. This would be wrongly engaging in what is effectively an appellate role, long after the time for an appeal has passed, without the jurisdiction to do so. The proper forum for submissions on the merits and the findings of fact of a decision is an appeal of the relevant decision.

### *Actions or applications that are "totally without merit"*

58 On the evidence before me, I am satisfied that Ms Ten has "persistently commenced actions or made applications that are totally without merit" within the meaning of s 73C(1) of the SCJA. This can be seen from her previous actions or applications that were made from 9 January 2020 to 16 December 2022, and which were considered by the court hearing the matter to be totally without merit, or from which it is apparent from the reasoning of the court hearing the

matter that they were totally without merit. These include the following actions or applications:

(a) Her application in OSB 3 on 9 January 2020, to set aside the statutory demand that was served by NUS on the basis that the judgment in S 667 should be disregarded as it was obtained by means of fraud upon the court in the form of perjury (see above at [10]). The learned Assistant Registrar found no basis to set aside the statutory demand. It was undisputed that the judgment debt was based on a valid and existing order of court and undisputed that the materials relied upon by Ms Ten had been placed before Woo J in S 667 and the Court of Appeal in OS 25. The learned Assistant Registrar therefore concluded that OSB 3 did not provide any basis for going behind the judgment in S 667. I am thus satisfied that OSB 3 was an application that was commenced totally without merit.

(b) Her appeal in RA 316 against the dismissal of OSB 3. In dismissing RA 316, Maniam JC had observed that Ms Ten's application in OSB 3 was premised on her dissatisfaction with the judgment in S 667 and the Court of Appeal's decision in OS 25 and that Ms Ten had not provided any other basis in support of RA 316. Maniam JC was not satisfied that there were any grounds to allow RA 316. His decision was principally based on the fact that the costs judgment that the statutory demand was based on was final and unappealable (see above at [13]). I am thus satisfied that RA 316 was an application that was commenced totally without merit.

(c) Her action in OS 226 on 10 March 2021, to set aside the judgment in S 667 on the basis of the Allegation. In SUM 1613, the

learned Assistant Registrar held that the issues raised by Prayers 1 and 2 of OS 226 were barred by the extended doctrine *res judicata*. The substance of the Allegation had been put before Woo J in S 667, which was a final and conclusive judgment, and Ms Ten had adduced no new material in OS 226 which had not already been placed before Woo J. Ms Ten's claim that the judgment in S 667 could be set aside on the basis of the Allegation was "legally and factually unsustainable", and should have properly been brought by way of an appeal against the judgment in S 667. There was "simply no factual basis" for Ms Ten's application (see above at [22]). I agree that striking out applications involve an extremely high threshold and that an action will only be struck out in a plain and obvious case and/or if it was clearly unsustainable. The fact that OS 226 was struck out therefore shows that OS 226 was deemed to be totally without merit.

(d) Her appeal in RA 351 against SUM 1613. In dismissing RA 351, Thean J had agreed that OS 226 was barred by the extended doctrine of *res judicata*. The Judge found that Ms Ten was raising the same issues and relying on the same evidence pertaining to the Allegation in OS 226, that had been raised and adduced in S 667. Ms Ten's claim that Woo J had wrongly decided S 667 on the evidence that was before Woo J amounted to "nothing more than an impermissible collateral attack on the Judgment". The evidence Ms Ten sought to rely upon in RA 351 was based on material already put before Woo J and did not constitute fresh evidence. Given that Ms Ten had not raised any *fresh* material evidence in OS 226, Thean J held that it must be struck out (see above at [26]). I am satisfied that Thean J's dismissal of RA 351 confirms that OS 226 was an action that was totally without merit, and am satisfied that RA 351 itself was an application that was totally without merit.

(e) Her application in OA 26 on 16 December 2022 to seek permission to appeal against the decision in RA 351. In dismissing OA 26, the Appellate Division noted that Ms Ten had not provided any explanation for her delay in filing the notice of appeal. The Appellate Division considered that there was "no merit" in an appeal against RA 351 and affirmed the conclusions of Thean J in RA 351. Accordingly, the Appellate Division found that "the appeal was bound to fail" (see above at [30]). I am thus satisfied that OA 26 was an application that was totally without merit.

59 I note that even with respect to OC 328, Ms Ten has not stated that she will proceed with it only if she has fresh evidence of the Allegation. OC 328 was filed before any criminal proceedings had been commenced. When Ms Ten was asked about this at the hearing, her response was that fresh evidence would help, but she would need to think about it more. It was apparent from her response that she did not want to rule out putting before the court hearing OC 328, the same evidence that she has relied upon thus far. There is hence a distinct likelihood that Ms Ten will continue to commence future proceedings on the same evidential substratum, for which numerous court decisions have already made clear would be bound to fail.

60 Ms Ten submits that this court must decide on the Allegation and if the court finds that there is any merit to the Allegation, then the court cannot impose an ECRO on her. However, as seen from the Procedural History and the above analysis, the merit of the Allegation was not a consideration of the Courts hearing the previous actions or applications. Amongst other reasons, it was the repeated absence of fresh material evidence of the Allegation (not based on materials already put before Woo J in S 667) which rendered these actions and

applications totally without merit. Absent fresh material evidence, there was no basis to go behind the Judgment in S 667, which was final and conclusive.

61 In any event, I note that Ms Ten also recognises that the proper examination of the documentary evidence of whether Prof Kong committed perjury can only be done at a proper criminal trial of Prof Kong, on the charges of perjury as set out in Ms Ten's Magistrate's Complaint.[45]

***My decision to grant the ECRO***

62 I therefore agree with NUS that an ECRO should be made against Ms Ten. I note that NUS has sought a duration of two years for the ECRO (unless extended by the court). This duration is within what is provided for under s 73C(4) of the SCJA, which stipulates a maximum restraint of two years, subject to further extension by the Court. In light of the evidence of Ms Ten's propensity to commence actions or applications that are totally without merit, from 9 January 2020 to 16 December 2022, I consider two years to be an appropriate period, that is proportionate in the circumstances. Accordingly, I grant order in terms of the NUS' prayers as set out under prayers (a) to (c) of OA 21, including its application to include OC 328 in the ECRO. I set out the orders below:

> (a) That the Defendant, Ms Ten Leu Jiun Jeanne-Marie, be restrained from commencing any action or making any application, in any Court or Subordinate Court (as defined in section 2 of the Supreme Court of Judicature Act 1969), concerning any matter involving, relating to, touching upon and/or leading to the following legal proceedings without the permission of the Court that made this order:

[45] Defendant's Written Submissions dated 3 July 2023 at para 282.

(i) High Court Suit No. 667 of 2012;

(ii) Originating Summons (Bankruptcy) No. 3 of 2020 (HC/OSB 3/2020);

(iii) Originating Summons No. 25 of 2020 (CA/OS 25/2020);

(iv) Registrar's Appeal No. 316 of 2020 (HC/RA 316/2020);

(v) Originating Summons (Creditor's Bankruptcy Application) No. 335 of 2021 (HC/B 335/2021);

(vi) Originating Summons No. 226 of 2021 (HC/OS 226/2021);

(vii) Summons No. 1613 of 2021 (HC/SUM 1613/2021);

(viii) Summons No. 5255 of 2021 (HC/SUM 5255/2021);

(ix) Registrar's Appeal No. 351 of 2021 (HC/RA 351/2021);

(x) Summons No. 1658 of 2022 (HC/SUM 1658/2022); and

(xi) Originating Application No. 26 of 2022 (AD/OA 26/2022); and

(xii) Originating Claim No. 328 of 2023 (HC/OC 328/2023).

(b) This order shall remain in effect for two years from today, unless extended pursuant to section 73C(5) of the Supreme Court of Judicature Act 1969 and/or the inherent powers of the Court.

(c) Where the Defendant commences an action or makes an application (other than for the permission of the Court under section 73C(2) of the Supreme Court of Judicature Act 1969), in any Court or

Subordinate Court, contrary to paragraph 2 (a) of this order, that action or application is to be treated as struck out or dismissed –

(i) without the Court having to make any further order; and

(ii) without the need for any other party to be heard on the merits of that action or application.

***Whether fresh evidence should be precluded***

63 Ms Ten submits that, if she prevails in OA 603 and succeeds in obtaining the Attorney-General's fiat to privately prosecute Prof Kong for perjury and obstruction of justice pursuant to ss 191 and 193 of the Penal Code 1871, she might be able to surface new evidence of Prof Kong's perjury that had not previously been brought to the attention of the court in the previous actions and applications. She should hence not be barred from putting forth her case on the basis of any such evidence.

64 A key basis of the decisions in the previous actions and applications is that Ms Ten has been unable to adduce *fresh* material evidence not based on facts and circumstances that were already before Woo J in S 667. I therefore agree with Ms Ten that an ECRO should not bar her from proceeding on the basis of fresh evidence of the Allegation. I also agree with NUS that this can be addressed by the provision for Ms Ten to apply to court for permission to commence any action or make any application concerning any matter relating to the legal proceedings covered by the ECRO, provided that she furnish fresh material evidence of the Allegation to support her application for permission. The provision for seeking permission is set out in s 73C(2) of the SCJA. Paragraph 2(a) of the proposed ECRO also contains similar phrasing to s 73C(2)(*a*) of the SCJA. Ms Ten has nevertheless asked that the court not grant

the ECRO, on the basis that it would impose an additional burden on her continuing with her pursuit of her claims. I consider that imposing this additional step for permission is necessary given my findings above, *viz*, that she has persistently commenced actions or applications that are totally without merit, and there is no assurance that she will not continue to do so on the same basis, despite several court decisions ruling against her.

**Conclusion**

65 For the reasons above, I will grant the ECRO on the terms as stated above. Ms Ten had asked that she be allowed to put in written submissions on costs. Parties are to file their written submissions on costs, of not more than seven pages, within seven days of this Judgment.

Kwek Mean Luck
Judge of the High Court

Chia Voon Jiet, Charlene Wong Su-Yi, Grace Lim Si Rui and Tay Jia Yi Pesdy (Drew & Napier LLC) for the claimant;
Defendant in person.