Ramindo Sukses Perkasa Pte Ltd *v* Sim Kwang Oo
[2015] SGHC 80

Case Number : Originating Summons No 463 of 2012 (Summons No 5762 of 2013)

Decision Date : 25 March 2015

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : K Muralitherapany and Edward Koh (Joseph Tan Jude Benny LLP) for the plaintiff; Thio Ying Ying, Tan Yeow Hiang and Lim Yao Jun (Kelvin Chia Partnership) for the defendant.

Parties : Ramindo Sukses Perkasa Pte Ltd — Sim Kwang Oo

Credit and Security – Mortgages

Civil Procedure – Injunctions

Civil Procedure – Striking Out

25 March 2015

Belinda Ang Saw Ean J:

Introduction

1 Originating Summons No 463 of 2012 ("OS 463") is one of many applications in the long-running battle between two former business partners, Mr Tham Hai Lee ("THL") and the defendant, Ms Sim Kwang Oo ("SKO"). The plaintiff in OS 463 is Ramindo Sukses Perkasa Pte Ltd ("Ramindo"), a Singapore-incorporated company with a registered address at 81 Duchess Road, Singapore 269009, which was and still is THL's residential address. Ramindo was and still is THL's company, THL being the sole shareholder and director of Ramindo at all material times. THL, as the controlling mind and will of Ramindo, deposed to all the affidavits filed on behalf of Ramindo in OS 463. For the purposes of this written decision, references to actions taken by THL are to be treated as actions taken by Ramindo.

2 On 5 November 2013, SKO filed Summons No 5762 of 2013 ("SUM 5762") to strike out OS 463 following Ramindo's non-compliance with two orders of court. On 19 November 2013, I allowed SKO's application in SUM 5762 and struck out OS 463. Ramindo has appealed against my decision via Civil Appeal No 174 of 2013 ("CA 174").

3 The two orders of court in question are:

(a) the order of court dated 21 March 2013 ("the March Injunction Order") made in Summons No 185 of 2013 ("SUM 185"), which was an application for an interim injunction to restrain Ramindo, pending the determination of OS 463, from, *inter alia*, selling, charging or dealing in any other way with three vessels which had been mortgaged to United Overseas Bank ("UOB"), namely, the *Jovan 1*, the *Ocean Dream* and the *Barlian 2501* (collectively, "the OS 463 vessels"); and

(b) the order of court dated 16 August 2013 ("the August Order") made in Summons No 3584

of 2013 ("SUM 3584"), which was an application for, *inter alia*, inspection of the OS 463 vessels and disclosure of Ramindo's dealings with those vessels.

I will hereafter refer to SUM 185 and SUM 3584 collectively as "the 2013 Interlocutory Applications", the affidavits filed in relation thereto as "the 2013 Interlocutory Affidavits" and the two orders of court made pursuant to the 2013 Interlocutory Applications (*ie*, the March Injunction Order and the August Order) as "the 2013 Interlocutory Orders". The terms of the March Injunction Order and the August Order are set out below at [35] and [52] respectively.

4 Notably, the 2013 Interlocutory Orders were not court orders relating merely to matters of procedure. In brief, the March Injunction Order was made to provide interim protection to SKO's rights and interests in the OS 463 vessels, while the August Order was made to (*inter alia*) aid in the observance and enforcement of the March Injunction Order. So long as the 2013 Interlocutory Orders stood, SKO was entitled to have them respected and obeyed. I should point out that Ramindo did not appeal against the 2013 Interlocutory Orders; neither did it seek a stay of execution of those orders.

5 In the interest of clarity, I should explain the reference to a suspension order in the Notice of Appeal in CA 174. The background to this suspension order is as follows. Although I struck out OS 463, SKO's counsel sought a suspension of the striking-out order until the disposal of SKO's counterclaim that was raised in SKO's affidavit dated 6 November 2013. Accordingly, at the hearing on 19 November 2013, I made an order suspending the striking out of OS 463 pending the disposal of SKO's counterclaim ("the 19 November 2013 suspension order"). That counterclaim was subsequently listed for hearing on 4 March 2014. However, the hearing was adjourned and directions were duly made. Briefly, SKO was directed to file a separate action in respect of her counterclaim by 18 March 2014; the March Injunction Order was extended pending the outcome of Ramindo's appeal in CA 174 against the striking out of OS 463, and further orders were made on that injunction order in SKO's counterclaim in the separate action.

6 With the directions and orders outlined above, and as Ramindo had already filed the Notice of Appeal in CA 174, the parties indicated that they were content to leave the 19 November 2013 suspension order undisturbed. In the premises, there should be no confusion that Ramindo's Notice of Appeal in CA 174 pertains solely to the striking out of OS 463 for non-compliance with the 2013 Interlocutory Orders.

7 Finally, I should explain that these written grounds were held back because of the on-going cross-examination of the deponents of affidavits filed in CWU 127 of 2011 and OS 118 of 2012 which were the other sets of proceedings filed in court following the breakdown of the business relationship between SKO and THL ("the related proceedings"). It made sense to release these written grounds after the conclusion of cross-examination and closing submissions for the related proceedings – the evidence elicited from the on-going cross-examination could be relevant in CA 174 given the common factual and legal issues in OS 463 and the related proceedings; and, above all, as stated in [10] below, the evidence pertinent to SUM 5762 had to be put together in a piecemeal fashion, and even now, there are, as can be seen from these written grounds, still some missing links. Unfortunately, the cross-examination in the related proceedings went on for longer than expected and spilled over into several tranches in 2014. Closing submissions for the related proceedings were concluded in February 2015. My decision on CWU 127 of 2011 and OS 118 of 2012 will be handed down on 26 March 2015.

Outline of this decision

8 This written decision is divided into two parts. Part 1 begins with the procedural history of OS 463, and thereafter discusses the 2013 Interlocutory Applications (including the main grounds on

which they were argued) as well as the 2013 Interlocutory Affidavits. Part 2 discusses SUM 5762 and my reasons for striking out OS 463. The 2013 Interlocutory Applications and the 2013 Interlocutory Affidavits were relevant to SUM 5762 as the summons turned on the same matters upon which those interlocutory applications and the 2013 Interlocutory Orders were based.

9 In setting out my reasons for striking out OS 463, I will point out how Ramindo blatantly, unashamedly and persistently breached the 2013 Interlocutory Orders without providing any good explanation or justifiable excuse for its breach. I will also highlight how Ramindo sought to mislead the court through evasive and mendacious statements in the affidavits filed on its behalf by THL. In this regard, it is important to bear in mind that the 2013 Interlocutory Applications were both decided based on the evidence available before the court at the time each of these applications was heard. The available evidence then was, in essence, limited to what SKO had stumbled upon and/or had managed to uncover through her own investigations. Subsequently, further material evidence came to light in the affidavits filed by THL on Ramindo's behalf after the March Injunction Order was made. Specifically, these were the affidavits filed by THL for the purposes of SUM 3584 such as THL's affidavit of 7 August 2013, a pre-August Order affidavit. Also relevant was THL's affidavit of 6 September 2013, a post-August Order affidavit.

10 Comparing the evidence in the affidavits filed by THL prior to 7 August 2013 and the evidence in the affidavits filed on and after that date, it was evident that Ramindo had withheld material information from the court in the earlier affidavits filed on its behalf by THL, as well as lied on oath and relied on false evidence in resisting the 2013 Interlocutory Applications. Plainly, THL wanted to mislead the court as to the true state of affairs. As a result of Ramindo's withholding of material evidence, there were inaccuracies in the affidavits filed by SKO in support of the 2013 Interlocutory Applications. These inaccuracies did not, however, materially impact the outcome of the 2013 Interlocutory Applications as they related mainly to the dates on which changes were made to the names, country of registration ("registration country") and ownership of the OS 463 vessels. What is more important is Ramindo's misconduct in withholding evidence from the court, and in doing so, the evidence pertinent to SUM 5762 had to be put together in a piecemeal fashion, and even now, there are, as can be seen from these grounds of decision, still some missing links.

11 The purpose of Ramindo's actions in changing the names, registration country and ownership of the OS 463 vessels was to conceal and disguise their true identities and whereabouts in a manner amounting to fraud on SKO as mortgagee. Plainly, Ramindo's single-minded objective was to keep the OS 463 vessels out of SKO's reach, and in doing so, it continued to breach the 2013 Interlocutory Orders. Ramindo's disregard of those interlocutory orders because it believed that it was entitled to redeem the mortgages over the OS 463 vessels from SKO, who became the mortgagee by subrogation after paying UOB the full sum secured by those mortgages, was misplaced. There was nothing to Ramindo's argument that SKO had unreasonably declined its offer to repay SKO the sum which she had paid UOB and thereby redeem the mortgages over the OS 463 vessels from SKO.

12 All in all, Ramindo had no good explanation or justifiable excuse for its non-compliance with the 2013 Interlocutory Orders. Whatever Ramindo's subjective views of SKO might be, they could not in themselves justify its conduct in disobeying those interlocutory orders and in lying on oath to mislead the court. Given all that had transpired, coupled with the importance of upholding and enforcing lawful orders of court, the considerations in favour of striking out OS 463 were overwhelming. Had this court decided otherwise, the 2013 Interlocutory Orders would have been utterly toothless.

Part 1: OS 463 and the 2013 Interlocutory Applications

Circumstances out of which OS 463 arose

13 OS 463, which was filed on 14 May 2012, arose out of the following circumstances.

14 As stated, THL and SKO were formerly business partners. They carried on a business venture of, *inter alia*, owning and operating tugs and barges through a company, Barlian Shipping & Trading Pte Ltd ("BST"). THL and SKO were equal shareholders and co-directors of BST. In the course of its business, BST obtained loans from UOB ("the UOB loans"). These loans were secured by mortgages over vessels, including vessels owned by BST as well as vessels owned by companies controlled by THL and SKO respectively. The mortgaged vessels included the OS 463 vessels. (By way of background on the OS 463 vessels, the *Barlian 2501* was owned by BST, while the *Ocean Dream* and the *Jovan 1* were owned by Ramindo.) In addition, THL and SKO provided personal guarantees to UOB as security for the UOB loans.

15 The UOB loans and the related mortgages were documented in:

(a) a Facility Agreement dated 14 April 2008, which was later revised by a Supplemental Deed dated 21 August 2008 and a Second Supplemental Deed dated 5 November 2008; and

(b) a Facility Agreement dated 21 August 2008.

16 The above facility agreements will hereafter be collectively referred to as "the Facility Agreements". The security documents included the mortgages of the vessels and the Deed of Covenants and Assignment ("the Deed of Covenants"). The Deed of Covenants contained the contractual agreement between the mortgagor (*ie*, BST in the case of the *Barlian 2501*, and Ramindo in the case of the *Jovan 1* and the *Ocean Dream*) and the mortgagee (*ie*, originally, UOB and, subsequently, SKO by subrogation), and dealt with matters relating to the mortgages such as: (a) the employment of the OS 463 vessels (as well as the other mortgaged vessels); (b) the events of default upon which the statutory or other agreed powers of the mortgagee could be exercised; and (c) the powers exercisable by the mortgagee.

17 THL and SKO agreed to go their separate ways after they fell out. They agreed in August 2010 to divide certain assets of BST. As part of that agreement, THL's nominee, Ramindo, was to take over ownership, amongst other vessels, the *Barlian 2501*, subject to THL discharging that portion of the UOB loans which was attributable to the mortgage over the *Barlian 2501*. A bill of sale for the *Barlian 2501* was signed in anticipation of such discharge. THL, however, failed to discharge the relevant portion of the UOB loans. BST as the borrower and mortgagor of the *Barlian 2501* remained indebted to UOB. UOB then (among other things) called upon THL and SKO, as guarantors, to repay BST's debts to the bank. On 13 June 2011, UOB arrested the *QSA 79*, which was one of the vessels mortgaged to it as security for the UOB loans. Eventually, SKO, as a co-guarantor, paid UOB the debts owed by BST in full on or around 15 June 2011. In so doing, SKO stepped into UOB's shoes in relation to the bank's rights as BST's creditor and the mortgagee of the OS 463 vessels, and became entitled to recover from the borrower (*ie*, BST) the amount which she had paid to UOB. In short, SKO, as the mortgagee by subrogation, had the right to enforce the mortgages over the OS 463 vessels for full reimbursement of the amount which she had paid to UOB, and her rights would rank ahead of any subsequent mortgages over those vessels.

18 On 7 October 2011, SKO filed Originating Summons No 881 of 2011 against UOB. By an order of court dated 26 April 2012, SKO obtained confirmation of her status as the mortgagee by subrogation of UOB's rights and interests in the OS 463 vessels. UOB was ordered to deliver up the relevant mortgage documentation to SKO. UOB was further ordered to execute transfers of mortgage in the form prescribed by the Maritime and Port Authority of Singapore ("MPA") to enable the mortgages over the OS 463 vessels to be transferred to SKO. The transfers of mortgage to SKO were registered

on 3 August 2012 at the Singapore Registry of Ships. [note: 1]

19 On 14 May 2012, Ramindo filed OS 463 to redeem the mortgages over the OS 463 vessels. SKO filed affidavits opposing the application for a variety of reasons. In brief, SKO contended that as a creditor of BST, she was entitled to enforce all of UOB's rights against the principal debtor, BST. Her right to look to THL as a co-surety for contribution was a separate and independent relief. In other words, SKO's position was that she could seek either indemnification from the principal debtor (BST) or contribution from the co-surety (THL). If she sought indemnification from BST, it would be for the full amount which she had paid to UOB; whereas if she sought contribution from THL as a co-surety, it would be for only 50% of the amount which she had paid to UOB. Counsel for SKO argued that the accepted legal proposition was that SKO, as BST's creditor, had the liberty to choose which of her remedies to pursue, and was not legally obliged to accept full payment of BST's debt from Ramindo. Counsel for Ramindo, on the other hand, submitted that SKO had no defence to OS 463 as: (a) Ramindo had made offers to redeem the mortgages over the OS 463 vessels, but SKO had unjustifiably refused those offers; and (b) SKO was not entitled to refuse to accept full repayment by the mortgagor/owner who was seeking to redeem the securities which it owned.

SUM 185 and the March Injunction Order

20 On 9 January 2013, SKO filed SUM 185 to protect her status as the mortgagee (initially by subrogation and subsequently, by registration of the relevant transfers of mortgage) of the OS 463 vessels. She sought, among other things, an interim injunction to restrain Ramindo from selling, charging or dealing in any other way with the OS 463 vessels pending the determination of OS 463. SKO argued that her rights and interests as the mortgagee of the OS 463 vessels had been and were being compromised and imperilled by Ramindo's actions. Based on the affidavit evidence available at that time, Ramindo had (*inter alia*): (a) changed the names of two of the OS 463 vessels (*ie*, the *Jovan 1* and the *Ocean Dream*); (b) changed the ownership and registration country of all three of the OS 463 vessels; and (c) mortgaged one of the OS 463 vessels (*ie*, the *Jovan 1*) to an Indonesian bank, PT Bank Negara Indonesia (Persero) Tbk ("BNI"), as security for loans to PT Lautan Lestari ("PTLL"), a company controlled by THL through his wife.

21 Ramindo had secretly effected changes to the OS 463 vessels' names, registration country and ownership in the manner described (at [20] above). These changes were contrary to the Deed of Covenants, and would be an event of default if the mortgagor, without the consent of the mortgagee, changed the name, ownership and/or registration country of the OS 463 vessels, or did anything whereby those vessels' registration in Singapore might be suspended, forfeited or imperilled. It would also be an event of default if the mortgagor sold, transferred, pledged or mortgaged the OS 463 vessels. It is trite law that whilst a mortgagor may continue to use a mortgaged vessel and does not undertake to employ the vessel in any particular way, it must not employ the vessel in a manner which materially prejudices and/or detracts from or impairs the sufficiency of the mortgagee's security in the vessel. Contractually, any of the aforesaid events of default would constitute a material impairment of the mortgagee's security in the OS 463 vessels, and would entitle SKO, as the mortgagee at the material time, to (*inter alia*) sue *in rem* to recover possession of the OS 463 vessels or exercise her contractual rights against the mortgagors (*ie*, BST and Ramindo) in an action *in personam*.

22 SKO's affidavit evidence for SUM 185 disclosed that on 16 February 2012, the *Jovan 1* was registered in the Batam Ship Register as "*Jovan 1 ex Barlian 233*" under the ownership of PTLL. [note: 2] The use of this name "*Jovan 1 ex Barlian 233*" was deliberate. In reality, the *Jovan 1* was not the new name of the *Barlian 233*, and the *Jovan 1* and the *Barlian 233* were two different vessels. [note:

[3] There was every reason to believe that the description "*Jovan 1 ex Barlian 233*" was deliberately used to hide the *Jovan 1*'s identity as a Singapore-registered vessel that was already encumbered with a registered mortgage.

23 Separately, the *Jovan 1* was renamed "*LL 2511*" and was registered in the Indonesian Ship Register at Jakarta ("the Jakarta Ship Register") as "*LL 2511*" under the ownership of PTLL on 5 March 2012. [note: 4]

24 In short, THL registered the *Jovan 1* as "*Jovan 1 ex Barlian 233*" in Batam, and as "*LL 2511*" in Jakarta. Three points should be noted in this regard. First, Ramindo did not explain why it caused the *Jovan 1* to be registered in Batam and Jakarta. Secondly, the aforesaid name changes and double-registration in Indonesia were effected even though the *Jovan 1* was still entered in the Singapore Register of Ships under the ownership of Ramindo. Thirdly, as alluded to at [20] above, despite SKO's interests in the *Jovan 1* as the mortgagee by subrogation, the vessel was mortgaged to BNI (under the name "*Jovan 1 ex Barlian 233*") on or around 13 June 2012 as security for loans to PTLL. This mortgage was confirmed in writing by the Directorate General of Sea Communication of Batam Harbour ("the Batam Harbour Directorate General") on 13 December 2012 in response to a query from SKO; the Batam Harbour Directorate General's letter also stated that the relevant Certificate of Mortgage was dated 13 June 2012. [note: 5]

25 As regards the *Ocean Dream* and the *Barlian 2501*, they were registered in the Kiribati Ship Registry. According to SKO's affidavit evidence, the *Ocean Dream* was registered in Kiribati Ship Registry sometime before January 2012. [note: 6] SKO deposed that she received verbal confirmation (but did not state when she received that confirmation) that the *Barlian 2501* had also been registered in the Kiribati Ship Registry, but was not told of the date of her registration. [note: 7] SKO went on to depose that Ramindo subsequently deregistered the *Ocean Dream* and the *Barlian 2501* from the Kiribati Ship Registry in order to secure certificates of deregistration that would enable the vessels to be registered in Jakarta. Normally, a shipowner who seeks to register a ship in a particular country is required to secure a certificate of deregistration first from the last registration country (if any) before registering the vessel. According to SKO, the Kiribati Ship Registry did not impose such a requirement and would register a vessel without requiring proof of her deregistration from her last registration country (if any). This meant that while the *Ocean Dream* and the *Barlian 2501* were still registered in the Singapore Register of Ships and, thus, Singapore-flagged, Ramindo was able to secure their registration in the Kiribati Ship Registry.

26 SKO learnt that after the *Ocean Dream* was deregistered from the Kiribati Ship Registry, she was renamed "*LL Ocean Dream*" and ownership of the vessel was transferred to PTLL, which sought registration of the *LL Ocean Dream* in the Jakarta Ship Register in its own name. [note: 8] Similarly, ownership of the *Barlian 2501* was transferred to PTLL, which sought registration of the *Barlian 2501* in the Jakarta Ship Register in its own name. As far as SKO was aware, the registration process for both vessels had yet to be completed as at 17 December 2012. [note: 9] At that time, THL was certainly aware, but chose not to reveal at the hearing of SUM 185, that the *Barlian 2501* and the *LL Ocean Dream* had already been registered in the Jakarta Ship Register (see [54] below).

27 In response to SUM 185, Ramindo denied the above mentioned changes to the OS 463 vessels as well as the alleged mortgage of the *Jovan 1* to BNI. THL, on behalf of Ramindo, filed an affidavit dated 22 February 2013 opposing SKO's application in SUM 185. In THL's affidavit of 22 February 2013, Ramindo:

(a) refuted SKO's allegations;

(b) contended that SKO's application was an abuse of process; and

(c) asserted, relying on the entries for the OS 463 vessels in the Singapore Register of Ships, that it was still the registered owner of the *Jovan 1* and the *Ocean Dream*, and BST was still the registered owner of the *Barlian 2501*. [note: 10]

Ramindo was plainly being disingenuous when it relied on the entries for the OS 463 vessels in the Singapore Register of Ships to refute the name, registration country and ownership changes to these vessels despite knowing what had been done behind the scenes to keep these vessels out of SKO's reach. More to the point, Ramindo continued to deny these changes and the mortgage of the *Jovan 1* to BNI at the hearing of SUM 185.

28 I mentioned earlier (at [9] above) that it was only long after the March Injunction Order was made – specifically, when THL's affidavit of 7 August 2013 was filed – that THL stopped denying that he had changed the OS 463 vessels' names, registration country and ownership. Even then, THL continued to refute SKO's allegations that the *Jovan 1* had been mortgaged to BNI as security for loans to PTLL, but, he produced no satisfactory documentary proof to the contrary. Details of Ramindo's dealings with the OS 463 vessels from 15 June 2011 onwards were subsequently disclosed in THL's affidavit of 6 September 2013 (see [54]–[58] below).

29 For convenience, I now summarise the affidavit evidence as it then stood (*ie*, at the time SUM 185 was heard). Whilst the OS 463 vessels continued to be registered in the Singapore Register of Ships after 15 June 2011, Ramindo caused the *Jovan 1* to be double-registered in Indonesia (*viz*, in Batam and in Jakarta), and was attempting to register the *Ocean Dream* (by then renamed "*LL Ocean Dream*") and the *Barlian 2501* in Jakarta after their deregistration from the Kiribati Ship Registry.

30 Meilina Siregar, an Indonesian lawyer, opined that concurrent registration in two different ship registers in two different countries (*ie*, Singapore and Indonesia) of the OS 463 vessels was contrary to Art 160(1) of the Law of the Republic of Indonesia No 17/2008 on Shipping. [note: 11] This would consequently expose the OS 463 vessels to the risk of being deregistered as Singapore-flagged vessels, thereby materially impairing SKO's interest in these vessels as the mortgagee.

31 It is significant that the changes in the names of the *Jovan 1* and the *Ocean Dream*, in conjunction with the changes in the registration country and ownership of all three of the OS 463 vessels, were concealed from the mortgagee, SKO, in that, as mentioned above, they were made without her knowledge and consent as well as in deliberate breach of the Deed of Covenants. These changes made identification and detection of the OS 463 vessels difficult. Ramindo deliberately camouflaged those vessels in a way that seriously jeopardised SKO's rights as the mortgagee to enforce her security over those vessels by, *inter alia*, suing *in rem* to recover possession of the vessels.

32 The short point is that, in my view, Ramindo was aware of SKO's rights as the mortgagee of the OS 463 vessels, but chose to act contrary to the terms of the Deed of Covenants. Ramindo's conduct in registering the OS 463 vessels in another country under a different owner (as well as under different names in the case of two of the OS 463 vessels) and taking out (via PTLL) a further mortgage over the *Jovan 1* (under the name "*Jovan 1 ex Barlian 233*") in another country not only materially imperilled SKO's rights in the vessels, but also concealed the vessels' identities in a manner amounting to fraud on SKO as the mortgagee.

33 Quite clearly, Ramindo would continue to expose SKO to serious and on-going prejudice. Unless Ramindo was restrained from registering the OS 463 vessels in other countries and taking out mortgages over those vessels under different names and different ownership in other countries, there would be a serious and obvious risk that SKO's rights as the creditor of BST and the mortgagee with right to possession of the OS 463 vessels would suffer irreparable harm in respect of which monetary damages would be inadequate. In any event, based on the evidence before me at the time SUM 185 was heard, the balance of convenience as well as the overall justice of the case favoured the grant of the interim injunction sought by SKO in SUM 185.

34 SKO had also satisfied me of the serious issues to be tried in OS 463, a necessary consideration to be addressed in SUM 185. Based on the arguments advanced (at [19] above), the serious issues to be tried in OS 463 were as follows:

(a) whether Ramindo "owned" the *Barlian 2501* by virtue of the bill of sale referred to at [17] above, and if it did not, whether it could nonetheless redeem the mortgage over the *Barlian 2501*;

(b) whether THL, as a co-surety, could in law indemnify SKO in full and step into her shoes as the creditor *vis-à-vis* BST;

(c) whether SKO, as a co-surety, had an obligation to accept THL's offer to contribute 50% of the amount which she had paid to UOB to discharge BST's indebtedness; and

(d) whether SKO's refusal to accept Ramindo's offer of full indemnification was a "clog" on Ramindo's equity of redemption in respect of either all three of the OS 463 vessels (assuming Ramindo "owned" the *Barlian 2501*), or the *Jovan 1* and the *Ocean Dream* (if Ramindo did not "own" the *Barlian 2501*).

35 An interim injunction was thus granted in favour of SKO on 21 March 2013 to protect her status as the mortgagee of the OS 463 vessels pending the determination of OS 463. The terms of the March Injunction Order read as follows:

1. An injunction is hereby granted to restrain the Plaintiff [*ie*, Ramindo] whether by itself, by its alter ego Mr Tham Hai Lee, by its agents or servants or howsoever otherwise from parting with, selling, charging or in any other way disposing of or dealing in a manner that diminishes the value of the vessels "Barlian 2501", "Jovan 1" and "Ocean Dream" ("the Vessels") which are the subject order of this action, until the trial of or determination of this action or until further order.

2. In the event that the property/title in the Vessels has been parted with, sold, charged or disposed of, that the Plaintiff does reverse the underlying transaction(s) to restore the Defendant's [*ie*, SKO's] property/interest as mortgagee in the Vessels until further order.

3. There be liberty to apply.

4. The costs of and occasioned by this application in respect of both SUM 185/2013 of OS 463 of 2012/X and SUM 258/2013 of OS 118 of 2012/X be paid by the Plaintiff to the Defendant, fixed at $20,000 (inclusive of disbursements).

[emphasis in bold in original omitted]

36 As stated earlier, Ramindo did not appeal against the March Injunction Order. I turn now to the

second of the 2013 Interlocutory Applications, SUM 3584.

SUM 3584 and the August Order

37 SKO filed SUM 3584 on 12 July 2013 for, *inter alia*, inspection of the OS 463 vessels and full disclosure of Ramindo's dealings with those vessels. SUM 3584 was taken out in response to three specific events, namely: (i) Ramindo's refusal to accede to SKO's lawyer's request on 27 March 2013 to produce copies of the vessels' updated classification certificates; (ii) SKO's discovery of further material information in May 2013 in relation to the OS 463 vessels; and (iii) Ramindo's refusal to accede to SKO's lawyer's request on 4 June 2013 to carry out inspection of the OS 463 vessels. For the reasons set out below, I allowed the application and granted the order on 16 August 2013 (*ie*, the August Order). Notably, the August Order was made to (*inter alia*) aid in the observance and enforcement of the March Injunction Order. I will now elaborate in turn on the specific events that spurred SKO's application.

Request relating to the OS 463 vessels' class certificates

38 On 27 March 2013, SKO's lawyers, M/s Kelvin Chia Partnership ("KCP"), wrote to Ramindo's then lawyers, M/s Tan Rajah & Cheah ("TRC"), requesting Ramindo to provide, *inter alia*, the OS 463 vessels' class certificates including entry with a classification society and full disclosure of Ramindo's dealings with the OS 463 vessels together with supporting documents such as applications for registration, transfers of ownership, loan facility agreements and mortgage documents. [note: 12] Ramindo did not accede to KCP's requests of 27 March 2013.

SKO's discovery of further material information in May 2013 in relation to the OS 463 vessels.

39 I now turn to the evidence that SKO stumbled upon in May 2013. According to SKO, in mid-May 2013, she learnt by chance from Temmy Alberth Tumbelaka ("Temmy"), a superintendent of one of the vessels owned by her company that the *Ocean Dream* and the *Barlian 2501* were sailing under different names since January/February 2013. [note: 13] Temmy was informed by the captain of "*LL Jaguarr 02"* that the *Ocean Dream*, which had been renamed "*LL Ocean Dream*", was further renamed "*LL Jaguarr 02*", and that the *Barlian 2501* had been renamed "*LL 2515*". [note: 14] Although this was surprising news to SKO, it served to reinforce SKO's concerns that Ramindo's dealings with the OS 463 vessels would, *inter alia*, undermine the effectiveness of the March Injunction Order.

SKO's inspection request

40 On 4 June 2013, KCP wrote to TRC requesting inspection of the *Barlian 2501* and the *Ocean Dream* pursuant to cl 8.1(e) of the Deed of Covenants. That clause obliged Ramindo to "permit the [mortgagee] or its duly appointed surveyors to board the [vessels] at reasonable times and inspect the same and every part thereof including the machinery and equipment installed or to be installed thereon or therein…". [note: 15]

41 Despite various reminders, Ramindo did not accede to SKO's request. SKO then filed SUM 3584 on 12 July 2013.

Discussion

42 I turn first to SKO's discovery in May 2013 of the renaming of "*LL Ocean Dream"* to "*LL Jaguarr 02"* and of the *Barlian 2501* to "*LL 2515"*. It is worth bearing in mind that prior to THL's

affidavit of 7 August 2013, Ramindo had denied renaming the OS 463 vessels, registering them in another country and transferring their ownership to PTLL. In opposing SUM 3584, THL's disclosure in his affidavit of 7 August 2013 was selective, and this became apparent after THL's 6 September 2013 affidavit was filed (see [54]–[58] below).

43 SKO filed SUM 3584 on 12 July 2013. After being served with the application, on 16 July 2012, TRC wrote to KCP seeking SKO's consent to change the names and the registration country of the OS 463 vessels "so that they can be used for business in Indonesian waters", and stated that SKO's security in the vessels would still be protected despite the proposed changes. TRC's letter made no reference to either the transfer of ownership of the OS 463 vessels to PTLL or the changes which had already been effected by then to their names and registration country. SKO rejected the request.

44 Returning to THL's 7 August 2013 affidavit, Ramindo admitted that it had directed the OS 463 vessels to be sailed out of Singapore soon after SKO became the mortgagee because it did not want SKO to interfere with their operations, a possibility which it thought existed in the light of the acrimonious relationship between THL and SKO after they fell out. As for the changes in the names of the OS 463 vessels in conjunction with the changes in their registration country and their ownership, Ramindo's excuses were: (a) it "did not apply [its] mind to the legalities and requirements under the UOB loan[s]"; and (b) "it was not [its] intention to act wrongfully and fraudulently". [note: 16] These two claims by Ramindo were not only self-serving but also fanciful and unconvincing for the reasons stated at [31]–[32] above. I agreed with SKO that THL was not unfamiliar with the notion and the broad terms of a mortgage of vessels to banks in Singapore and Indonesia. [note: 17]

45 Ramindo claimed (via THL's affidavit of 7 August 2013) that the transfer of ownership of the OS 463 vessels to PTLL had merely been a "paper transfer" with no actual change of title and no bill of sale executed. In my view, Ramindo's claim that "[t]his paper transfer was not an attempt to diminish the value of the [OS 463] [v]essels or hide them from [SKO]" [note: 18] was farcical. In addition, the assertion in THL's 7 August 2013 affidavit that the *Ocean Dream* and the *Barlian 2501* "[had] since been deregistered from the Indonesian Ship Registry" [note: 19] was far removed from the truth. That assertion was not based not on a deletion certificate but on a letter of 28 May 2013 from the Directorate General of Sea Transportation ("the DGST"), which stated that the *LL Ocean Dream* and the *Barlian 2501* "are not registered in [the] Indonesian Ship Register" (*ie*, the Jakarta Ship Register). [note: 20] In the absence of a deletion certificate, the DGST's statement was inconclusive. Although it could be construed as meaning that the *LL Ocean Dream* and the *Barlian 2501* had previously been registered in the Jakarta Ship Register but had since been deregistered, it could also be read to mean that the two vessels had never been registered in the Jakarta Ship Register to begin with. More importantly, THL's affidavit evidence in SUM 3584 revealed that the DGST's letter of 28 May 2013 rested on a flawed basis (albeit through no fault on the DGST's part). The DGST's letter of 28 May 2013 was written in response to THL's query of 27 May 2013 as to whether vessels bearing the names "*LL Ocean Dream*" and "*Barlian 2501*" were registered in the Jakarta Ship Register. [note: 21] THL deliberately used these names in his letter to the DGST despite knowing full well at that time (*ie*, 27 May 2013) that the *LL Ocean Dream* had been renamed "*LL Jaguarr 02*" and the *Barlian 2501* had been renamed "*LL 2515*" (see [56] below). The only plausible explanation for THL's inquiry to the DGST on 27 May 2013 using these two vessels' previous names rather than their new names must have been to obtain documentary evidence which Ramindo could use to mislead the court.

46 I now come to the mortgage of the *Jovan 1* (under the name "*Jovan 1 ex Barlian 233*") to BNI, which mortgage was registered in the Batam Ship Register. This was raised by SKO in SUM 185 (see [24] above). It was not until 7 August 2013 that Ramindo claimed (via THL's affidavit of the same

date) that the *Jovan 1* was not "*ex Barlian 233*", and that it had seen a letter from the Batam Harbour Directorate General stating that the *Jovan 1* was not encumbered. Ramindo promised to produce the letter as soon as it had located it. [note: 22] I have two comments on Ramindo's submissions. First, the point is not whether the *Jovan 1* and the *Barlian 233* were two different vessels (both parties agreed to this). Rather, Ramindo's mischief lay in its choice of the name "*Jovan 1 ex Barlian 233*" for the purposes of both registering the *Jovan 1* in Batam and mortgaging it to BNI. There was every reason to believe that the name "*Jovan 1 ex Barlian 233*" had been deliberately used by Ramindo to hide the *Jovan 1*'s identity as a Singapore-registered vessel that was already encumbered with a registered mortgage. Second, no letter was ever produced by Ramindo to challenge the Batam Harbour Directorate General's letter, which alluded to a Certificate of Mortgage *vis-à-vis* the vessel bearing the name "*Jovan 1 ex Barlian 233*", produced by SKO (see [24] above).

47 I now turn to SKO's complaint relating to the OS 463 vessels' classification certificates. Under the terms of the Facility Agreements and the Deed of Covenants, the OS 463 vessels were required to be classed with Germanischer Lloyd ("GL"). SKO pointed to TRC's letter of 16 July 2013 (exhibited in THL's affidavit dated 7 August 2013) which implicitly referred to the expired GL class certificates. TRC wrote: "our client [THL] wishes to inform [SKO] that he does not intend to renew the Class Certificates and Class Maintenance Certificates of 'Barlian 2501', 'Ocean Dream' and 'Jovan 1'". [note: 23] Ramindo briefly disclosed on 7 August 2013 (via THL's affidavit of the same date) that the *Jovan 1* still held a valid class certificate from the Indonesian classification society, Biro Klasifikasi Indonesia ("BKI"), whereas the class certificates of the *Ocean Dream* and the *Barlian 2501* had already expired. [note: 24] It is not clear whether THL was referring to the GL class certificates of the *Ocean Dream* and the *Barlian 2501* or that the latter two vessels were BKI-classed and their certificates had expired.

48 SKO learnt that Ramindo had permitted the *Jovan 1*'s class certificate from GL to expire on 17 October 2012. [note: 25] SKO also found out that Ramindo had allowed the GL class certificates of the *Ocean Dream* to expire. [note: 26] (At that stage, expiration of "*Ocean Dream's*" GL certificate was not known. SKO later found out, post-August Order and after inspection on 23 August 2013, that the "*Ocean Dream's*" GL certificate expired on 12 December 2011. [note: 27]) Returning to the chronology of events, on 4 June 2013, Germanischer Lloyd Singapore Pte Ltd (which is GL's office in Singapore), confirmed that the *Barlian 2501*'s class certificate had been withdrawn since 21 February 2012. [note: 28] SKO maintained that Ramindo's continued operation of the OS 463 vessels without renewing their GL class certificates undermined her security rights, and that her rights continued to be undermined so long as Ramindo operated the OS 463 vessels while they were BKI-classed.

49 It was clear that the OS 463 vessels were required to be classed with Germanischer Lloyd ("GL") under the terms of the Facility Agreements and Deed of Covenants. Ramindo had permitted the *Jovan 1*'s class certificate from GL to expire on 17 October 2012, and had withdrawn the *Barlian 2501*'s class certificate on 21 February 2012. The *Jovan 1* (by then renamed "*LL 2511*") and the *Barlian 2501* were issued class certificates by BKI on 5 March 2012 and 20 October 2012 respectively. The evidence revealed that the *Jovan 1* was classed with BKI before expiry of its GL class certificate whereas the *Barlian 2501*'s GL class certificate was withdrawn before she was classed with BKI or any other classification society. In other words, the *Barlian 2501* was not registered with any classification society for about eight months from 21 February 2012 to 20 October 2012. This is significant, given that subsequent evidence which came to light revealed that the *Barlian 2501* had called at Singapore (under tow by the *Ocean Dream*) on 20 August 2012 (see [72] below). Ramindo did not provide any explanation as to why it jeopardised the mortgagee's (*ie*, SKO's) security in the *Barlian 2501* by deploying her when she did not have a valid class certificate. I note

that on 20 August 2012, the GL certificate of *Ocean Dream* had already expired on 12 December 2011. [note: 29]

50 On a related point, SKO said that BKI-classed vessels were not recognised by MPA. SKO explained that GL was one of nine classification societies recognised by MPA, and that a Singapore-flagged vessel which operated without a valid class certificate from either GL or a classification society recognised by MPA would risk being deregistered from the Singapore Register of Ships. SKO's concern about the risk of deregistration from the Singapore Register of Ships was not misplaced because MPA subsequently inquired about the class certificate of the *Barlian 2501* and asked for a satisfactory answer as to why the *Barlian 2501* should not be deregistered for contravening s 99 of the Merchant Shipping Act (Cap 179, 1996 Rev Ed) by operating without a valid class certificate. [note: 30] In response to MPA's queries, KCP wrote to Ramindo's current solicitors, Joseph Tan Jude Benny LLP, on 4 October 2013 and called on Ramindo to reinstate the OS 463 vessels' GL class certificates.

51 To conclude, given Ramindo's wrongdoings outlined above as well as its selective disclosure of its dealings with the OS 463 vessels including their class certificates, I allowed the application and granted the August Order which was to (*inter alia*) aid in the observance and enforcement of the March Injunction Order. I was also mindful that Ramindo via THL's 7 August 2013 affidavit expressed Ramindo's willingness to permit inspection of the OS 463 vessels by SKO so long as SKO gave reasonable advance notice of inspection.

52 The August Order read as follows:

> 1. Prayers 1, 2, 3, 4, 5, 6, 7, 10 and 11 of the Summons be adjourned and fixed to be heard on a date after 6 September 2013;
>
> 2. The Plaintiff [*ie*, Ramindo] do permit the Defendant [*ie*, SKO] or her duly appointed surveyors, within 7 days from the Order, to board the vessels "Jovan 1", "Ocean Dream" and "Barlian 2501" (which references shall include the vessels under their new names and flags) at reasonable times and inspect the same and every part thereof including the machinery and equipment installed therein, and to inspect and make copies of the trading certificates of the said vessels; and
>
> 3. The Plaintiff do file an affidavit within three (3) weeks from the Order stating the Plaintiff's (whether by itself, or its directors, officers, servants or agents) dealing (s) with the vessels "Jovan 1", "Ocean Dream" and "Barlian 2501" (which references shall include the vessels under their new names) from 15 June 2011 to-date, including but not limited to ship registration and class and application(s) for loan(s) secured by any or all of the said vessels.

53 As mentioned earlier, Ramindo did not appeal against the August Order.

THL's affidavit of 6 September 2013 disclosing Ramindo's dealings with the OS 463 vessels since 15 June 2011

54 Pursuant to the August Order, THL filed an affidavit on 6 September 2013 on behalf of Ramindo to disclose its dealings with the OS 463 vessels since 15 June 2011. As mentioned earlier (at, *inter alia*, [9]–[10] above), the matters disclosed in THL's 6 September 2013 affidavit were different from the matters disclosed in THL's previous affidavits. According to THL's 6 September 2013 affidavit, Ramindo's dealings with the OS 463 vessels from 15 June 2011onwards were as follows:

(a) The *Jovan 1* was registered in the Kiribati Ship Registry on 2 November 2011 under the ownership of Ramindo and it was deregistered on 27 December 2011. The *Jovan 1* was renamed "*LL 2511*" and was registered in the Jakarta Ship Register as "*LL 2511*" and under the ownership of PTLL on 15 March 2012. A Provisional Sea Certificate, valid until 14 June 2012, was issued on 15 March 2012. A Sea Certificate was issued on 28 March 2012. Notably, THL did not satisfactorily explain the earlier registration of the *Jovan 1* (under the name "*Jovan 1 ex Barlian 233*") in Batam (see [22] above).

(b) The *Ocean Dream* was registered in the Kiribati Ship Register on 23 September 2011 under the ownership of Ramindo and it was deregistered on 24 September 2012. On 21 September 2012, three days before she was deregistered, the *Ocean Dream* was renamed "*LL Ocean Dream*" and was registered in the Jakarta Ship Register as "*LL Ocean Dream"* under the ownership of PTLL. A Provisional Annual Pass, valid until 20 December 2012, was issued on 21 September 2012. Subsequently, an Annual Pass, valid until 18 November 2013, was issued on 19 November 2012. Notably, THL's 6 September 2013 affidavit did not mention the subsequent change of name from "*LL Ocean Dream*" to "*LL Jaguarr 02*".

(c) The *Barlian 2501* was registered in the Kiribati Ship Registry on 2 August 2011 under the ownership of Ramindo and it was deregistered on 29 August 2012. She was registered in the Jakarta Ship Register as *Barlian 2501* under the ownership of PTLL on 21 September 2012. A Provisional Sea Certificate, valid until 20 December 2012, was issued on 21 September 2012. A Sea Certificate was issued on 19 October 2012. Notably, THL's 6 September 2013 affidavit omitted to mention the change of name from *Barlian 2501* to "*LL 2515*". This name change was alluded to by SKO via her affidavit of 14 August 2013. [note: 31]

55 Based on THL's affidavit of 6 September 2013, all three of the OS 463 vessels were dual-flagged whilst SKO was the mortgagee. THL claimed (via his affidavits of 7 August 2013 and 6 September 2013) that the *Ocean Dream* and the *Barlian 2501* had been deregistered from the Jakarta Ship Register and he placed reliance on a letter from DGST dated 28 May 2013. [note: 32] I now make two points as regards the veracity of that claim. First, Ramindo did not produce any deletion certificates to prove deregistration of the *Ocean Dream* and the *Barlian 2501* from the Jakarta Ship Register at Jakarta. Under Indonesian law, a deletion certificate would be issued for a vessel that is deregistered from the Jakarta Ship Register. [note: 33] The second point relates to THL's written inquiry on 27 May 2013 to the DGST as to the registration status of the vessels bearing the names "*LL Ocean Dream*" and "*Barlian 2501*", and Ramindo's reliance on the DGST's reply of 28 May 2013 stating that the said vessel "are not registered in [the] Indonesian Ship Register". [note: 34] I have already commented that the DGST's reply did not assist Ramindo because it was inconclusive for the reasons explained at [45] above.

56 These two vessels, on Ramindo's own admission, were deployed between January 2013 and 19 August 2013 under the respective names "*LL Jaguarr 02*" and "*LL 2515*", which were the names of vessels that were said to be still under construction at that time. In this regard, THL said in his 6 September 2013 affidavit:

25. "LL JAGUAR [*sic*] 02" and "LL 2515" are separate vessels that are currently still under construction. …

26. From January 2013 to 19 August 2013, the "OCEAN DREAM" and "BARLIAN 2501" were deployed for trading using the names and trading certificates of the "LL JAGUAR [*sic*] 02" and "LL 2515" respectively. The vessels were also physically repainted to reflect these names.

27. This was because these vessels made trips to Singapore and Malaysia and the Plaintiffs [*ie*, Ramindo] were worried that the Defendant [*ie*, SKO] may try to disturb the vessels' operations with an arrest. After May 2013, it was also because the Plaintiff did not have class and trading certificates for these vessels as they had been returned to the Indonesian government authorities.

57 The following points should be noted in respect of Ramindo's disclosure of the purported state of affairs via THL's affidavit of 6 September 2013. As regards the names "*LL Jaguarr 02*" and "*LL 2515*", quite clearly, the paragraphs quoted above from THL's 6 September 2013 affidavit were internally inconsistent and unbelievable. It is not possible for vessels still under construction to have trading certificates. Plainly, THL lied when he stated that the "*LL Jaguarr 02"* and the "*LL 2515"* were names of vessels which were still under construction at the material time; "*LL Jaguarr 02*" and "*LL 2515*" were the new names of, respectively, the "*Ocean Dream"* and the "*Barlian 2501"*; and that the two vessels had been registered in the Jakarta Ship Register under those new names. THL's 6 September 2013 affidavit exhibited the Annual Pass of "*LL Jaguarr 02*" issued on 20 February 2013 and the Sea Certificate of "*LL 2515 eks LL 2414*" issued on 31 January 2013. [note: 35] The Annual Pass for the "*LL Jaguarr 02*"and the Sea Certificate for "*LL 2515*" each state '[the vessel] has fulfilled the requirements as Indonesia [*sic*] Sea Vessel' in accordance with the law currently in force and as such, has the right to sail flying the flag of the Republic of Indonesia. [note: 36] Be that as it may, based on paras 26 and 27 of THL's affidavit of 6 September 2013, it is clear that through illegal practices (namely, continuing to operate the *Ocean Dream* and the *Barlian 2501* while they were out-of-class vessels and causing them to sail using the names and the trading certificates of, respectively, the *LL Jaguarr 02* and the *LL 2515*), Ramindo camouflaged the *Ocean Dream* and the *Barlian 2501*, and deployed them in a manner calculated to avoid detection. Ramindo's motivation and reasons for such subterfuge were inexcusable, dishonest and fraudulent. Its misdeeds imperilled SKO's rights and interests in the *Ocean Dream* and the *Barlian 2501* as the mortgagee of these vessels.

58 In THL's affidavit of 6 September 2013, Ramindo denied that the *Jovan 1* was mortgaged to BNI as security for loans to PTLL and that no mortgages had been taken out in respect of the *Ocean Dream* and the *Barlian 2501*. [note: 37] In THL's affidavit of 18 November 2013, Ramindo continued to deny that all the OS 463 vessels had been mortgaged to BNI, claiming that the documentary evidence adduced by SKO or on her behalf was not genuine [note: 38] (see also below at [73]). SKO had adduced BNI's records (which I accepted) to show that the *Ocean Dream* and the *Barlian 2501* were mortgaged by PTLL on or around 27 September 2011 (this was about three months after SKO's became mortgagee by subrogation). [note: 39] According to SKO's Indonesian lawyers, the BNI mortgages over the *Ocean Dream* and the *Barilan 2501* are still in force. [note: 40] Just as an aside, THL admitted under cross-examination in the related proceedings that PTLL's entire fleet of vessels, including the *Barlian 2501*, had been mortgaged to BNI as security for the credit facilities provided by BNI. [note: 41]

Part 2: SUM 5762

59 SUM 5762 was filed on 5 November 2013 to strike out OS 463 for: (a) non-compliance with paras 1 and 2 of the March Injunction Order and/or aiding in such non-compliance; and (b) non-compliance with paras 2 and 3 of the August Order. SKO's grounds for striking out OS 463 were that Ramindo had contumaciously disregarded the 2013 Interlocutory Orders. SKO maintained that THL's 6 September 2013 affidavit contained lies and withheld material information from the court. For instance, SKO argued that contrary to THL's assertion, the *LL Jaguarr 02* and the *LL 2515* were not vessels which were still under construction at the material time, but were instead the new names of,

respectively, the *Ocean Dream* and the *Barlian 2501*, and that the two vessels had been registered in the Jakarta Ship Register under those new names. [note: 42] SKO found that prior to that, the *Ocean Dream* (as "*LL Jaguarr 02"*) was registered in the Kiribati Ship Registry on 10 October 2012 and was deregistered on the same date. The vessel was provisionally registered as "*LL Jaguarr 02"* in the Jakarta Ship Register on 9 November 2012, but was not able to find similar documentation for the provisional registration of the *Barlian 2501* as "*LL 2515*". [note: 43] Be that as it may, the information available (via THL's 6 September 2013 affidavit) showed that the Annual Pass of "*LL Jaguarr 02*" was issued on 20 February 2013 and that the Sea Certificate of "*LL 2515 eks LL 2414*" was issued on 31 January 2013 (see [57] above).

60 In resisting SUM 5762, THL had to "renege" from statements made in his 6 September 2013 that the *Ocean Dream* and the *Barlian 2501* had been "physically repainted" to reflect their new names "*LL Jaguarr 02*" and "*LL 2515*" (see [56] above). [note: 44] In effect, THL stated in his 6 September 2013 that the *Ocean Dream* and the *Barlian 2501* were the same as respectively the *LL Jaguarr 02* and the *LL 2515*. He took a contrary position in his affidavit dated 18 November 2013.

61 First, THL claimed in his affidavit dated 18 November 2013 that he had mistakenly identified the *LL Jaguarr 02* and the *LL 2515* as vessels which were still under construction in his affidavit of 6 September 2013. To prove his mistake, THL produced documents to show that the construction of the *LL Jaguarr 02* and the *LL 2515* had been completed on 3 May 2013 and 1 June 2013 respectively. But, these documents contradicted other documents which indicated that the construction of the vessels had been completed in 2011/2012. [note: 45]

62 Secondly, THL asserted that the *LL Jaguarr 02* and the *LL 2515* were different from, respectively, the *Ocean Dream* and the *Barlian 2501* because their specifications were different. This was a mendacious claim. The same vessels had purposely undergone repair and maintenance works ("R&M works") at PT Lautan Lestari Shipyard ("PTLL Shipyard"), a shipyard controlled by THL. Notably, the R&M works were to obliterate permanently the identity of the *Ocean Dream* and the *Barlian 2501*. Not only were the names "*Ocean Dream*" and "*Barlian 2501*" removed from the hull plating, they were also replaced by the respective names "*LL Jaguarr 02*" and "*LL 2515*". In addition, vestiges of other identification marks of the *Ocean Dream* and the *Barlian 2501*, such as the initials of their former classification society (*viz*, GL) on its hull, the name of their builder and their gross tonnage ("GT") number, were either effaced or changed at PTLL Shipyard. [note: 46]

63 I did not accept THL's claim that the *LL Jaguarr 02* and the *LL 2515* had different specifications from, respectively, the *Ocean Dream* and the *Barlian 2501*, and as such, were different from the latter two vessels. In my analysis, the specifications of the *Ocean Dream* and the *Barlian 2501* were deliberately altered to hide their identities, and the R&M works to effect the necessary alterations were carried out by PTLL Shipyard. I have detailed the relevant R&M works at [64]–[65] below. Specifically, the R&M works to the *Barlian 2501* included changing the builder's name from PT Kian Guan Sakti to PTLL Shipyard, as well as changing her GT number from "GT 1973" per the entry in the Singapore Register of Ships to "GT 2010" in the Sea Certificate for the *LL 2515*. Furthermore, THL's inspection report on 1 November 2013 indicated her builder's name as "PT Lautan Lestari Shipyard" and her GT number as "GT 2010". [note: 47] As for the *Ocean Dream*, the R&M works on her GT number involved the removal of "GT 150" and fabrication of "MS Plate Name 'GT 133 No 6375/BC' aft side (1 Set)". [note: 48] The GT number "GT 133" was intended to and did replace the *Ocean Dream*'s GT number of "GT 150" per the entry in the Singapore Register of Ships. In short, the *Ocean Dream* was given the new name "*LL Jaguarr 02*" and the new GT number "GT 133", both of which appeared in the "Annual Pass" of the *LL Jaguarr 02*.

64 At para 23 of his affidavit dated 6 September 2013, THL said that the *Ocean Dream* and the *Barlian 2501* underwent repair and maintenance works (*ie*, R&M works). He did not state when the R&M works started but only advised that the vessels were brought to PTLL Shipyard in Batam on 21 December 2012. The R&M works for the *Barlian 2501* and the *Ocean Dream* were completed on 31 December 2012 and 7 March 2013 respectively. There is no start-date in the invoices exhibited in the affidavit of Ramindo's solicitor, Edward Koh, who affirmed an affidavit on 8 October 2013 exhibiting PTLL Shipyard's invoices describing the R&M works that were carried out. The description of R&M works on the invoice dated 11 January 2013 for the *Barlian 2501* included the following items: "Name barge PT. Lautan Lestri Shipyard" (this meant changing the builder's name from PT Kian Guan Sakti, which was the entry in the Singapore Register of Ships, to PTLL Shipyard) and "Name No. of barge LL 2515". [note: 49] One other interesting item of R&M works was for "Cellar No. Of barge GT. 2010 No. 6099/Bc size 100 x 75 x 6 mm". I will elaborate on this later when commenting on THL's assertion that the *Barlian 2501* was not the same as the *LL 2515* because the two vessels' specifications were different (see [66] below).

65 As for the *Ocean Dream*, the description of the R&M works on PTLL Shipyard's invoice dated 25 April 2013 included: (a) "Removed the OLD name and Fabrication Name Plate (3 Sets) 'LL JAGUAR [*sic*] 02', 'JAKARTA' and 'GT number' as per requirement"; (b) "Removed with grinding properly 'OCEAN DREAM' x 3 Sets"; (c) "Removed 'GL' mark and grinding properly"; and (d) "Fabricated and [installed] LL Port & [starboard]". [note: 50] The interesting thing about the R&M works relating to the *Ocean Dream*'s GT number was the removal of GT 150 and fabrication of "MS Place Name 'GT 133 No 6375/BC' aft side (1 Set)". In short, the *Ocean Dream* was given the new name "*LL Jaguarr 02*" and the new GT number "GT 133", both of which appeared in the "Annual Pass" of the *LL Jaguarr 02*. I will elaborate on this later when commenting on THL's assertion that the *Ocean Dream* was not the same as the *LL Jaguarr 02* because the two vessels' specifications were different (see [66] below).

66 To summarise, the *LL Jaguarr 02* and the *LL 2515* were one and the same as, respectively, the *Ocean Dream* and the *Barlian 2501*. In addition, based on the evidence in paras 26 and 27 of THL's 6 September 2013 affidavit (see [56] above), from January 2013 to 19 August 2013, the *Ocean Dream* and the *Barlian 2501* sailed into and out of Singapore and Malaysia adopting the names and the trading certificates of, respectively, the *LL Jaguarr 02* and the *LL 2515*.

67 The aforesaid deployment of the *Ocean Dream* and the *Barlian 2501* from January 2013 to 19 August 2013 demonstrated Ramindo's continued refusal to comply with the March Injunction Order. This breach was especially serious as Ramindo played a central role in the concealment of the true identities of these two vessels (as well as of the *Jovan 1*), and the breach would persist, given Ramindo's unequivocal position on the OS 463 vessels as set out in THL's 18 November 2013 affidavit.

68 There were other aspects of THL's evidence in his 18 November 2013 affidavit which were significant and had a bearing on my decision to strike out OS 463.

69 First, THL stated that the names "*Ocean Dream*" and "*Barlian 2501*" on the metal plates have been tack-welded over the names *LL Jaguarr 02* and *LL 2515*. This is not the same thing as undoing the R&M works described above to restore the previous identification marks of the *Ocean Dream* and the *Barlian 2501*, such as the initials of their former classification society (*viz*, GL) on its hull, the name of their builder and their gross tonnage ("GT") number that were either effaced or changed at PTLL Shipyard. Ramindo clearly had no intention of restoring the original names and other identifications marks permanently.

70 Second, the OS 463 vessels remained without a class certificate from a classification society

recognised by MPA. At the time of the hearing, there was no will let alone intention to restore the vessels' GL class status. The absence of GL class status did not stop the *Ocean Dream* and the *Barlian 2501* being deployed in a manner that entailed their sailing into and out of Singapore and Malaysia under different names and without valid MPA-recognised class certificates, as was the case in 2013 (see the extract from THL's 6 September 2013 affidavit quoted at [56] above). This pattern of conduct had similarly been adopted earlier in 2012. For instance, whilst the *Barlian 2501* was registered in Kiribati on 2 August 2011, it called at Singapore (under tow by the *Ocean Dream*) on 20 August 2012 without a valid class certificate recognised by the MPA and trading certificate; and later, whilst registered in Indonesia and whilst she did not have a class certificate from a classification society recognised by MPA, the *Barlian 2501* (again under tow by the *Ocean Dream*) called at Singapore on 23 November 2012 and 19 December 2012. [note: 51]

71 Third, Ramindo did not and had no intention to comply with the March Injunction Order even though it admitted that legal ownership of the OS 463 vessels had been transferred to PTLL. This was because Ramindo claimed that "the transfers were notional in that PTLL was associated to THL through his wife", and that: [note: 52]

> … *The [OS 463 vessels] remain and have always been under the beneficial ownership of [Ramindo].* PTLL will not make any claim to the vessels. There is no Bill of Sale for me to execute because a Bill of Sale was never executed to transfer the vessels to PTLL in the first place as this was an internal process purely to enable the vessels to continue trading in Indonesia. [emphasis added]

72 Fourth, THL claimed that it was not possible for the time being to deregister the *Jovan 1* from the Indonesian Ship Register and to effect an immediate name change of the *Jovan 1*, which had by then been renamed "*LL 2511*", back to the original name "*Jovan 1*" because "the vessel … is currently under charter for a period of 12 months, which began on 5th of December 2012, with an option to extend the charter for a further 12 months". [note: 53] THL declared that Ramindo would restore the name "*Jovan 1*" upon the expiry of the charterparty (that charterparty, it should be noted, was entered into in breach of the Deed of Covenants). Even if such deregistration were carried out, the vessel's class status would be an issue for the purposes of her continued registration in the Singapore Register of Ships, given MPA's requirement that a vessel had to be classed with either GL or one of the other classification societies recognised by MPA before it could be registered in Singapore. I agreed with SKO that Ramindo should not be allowed to take advantage of its own wrongdoings made behind SKO's back.

73 Finally, in relation to the loans from BNI to PTLL, Ramindo subsequently insisted that there was no mortgage of the OS 463 vessels to BNI as security for those loans. It maintained that SKO's evidence of those loans was inadmissible as it was evidence that had been illegally obtained. SKO had found out through her Indonesian lawyers that: (a) the *Jovan 1* was mortgaged to BNI in February 2012; [note: 54] and (b) Ramindo then proceeded to register the *Jovan 1* under a different name (*viz*, "*LL 2511 ex Jovan 1*") in Indonesia in March 2012. In the case of the *Ocean Dream* and the *Barlian 2501*, SKO's Indonesian lawyers produced BNI's records to show that these two vessels were mortgaged by PTLL to BNI on 27 September 2011. [note: 55] That was after SKO became the mortgagee by subrogation.

74 The matters outlined above satisfy some of the circumstances identified by Ferguson J in *Cocoon Data Holdings Pty Ltd v K2M3 LLC* [2011] VSC 355 ("*Cocoon Data*") as circumstances that would warrant stringent sanction by the court in the form of exercising its inherent jurisdiction to

strike out an action or a defence for failure to comply with an injunction. *Cocoon Data* concerned an anti-suit injunction. In that case, the Supreme Court of Victoria was asked to strike out the defence of the defendant ("K2M3") and enter judgment in favour of the plaintiff ("Cocoon Data"). The court had previously granted an anti-suit injunction that enjoined K2M3 from continuing proceedings in Texas. Despite the court's orders, K2M3 continued to prosecute the Texas proceedings by appealing against certain unfavourable orders made against it in those proceedings. Cocoon Data submitted that although contempt proceedings might be brought against K2M3 as a method of enforcing the Supreme Court of Victoria's orders, it was of no utility in that case as K2M3 was a company and could not be imprisoned. Further, K2M3 did not appear to have any assets within Australia. Therefore, Cocoon Data submitted, the only means of enforcing the court's orders was for the court to exercise its inherent jurisdiction to strike out K2M3's defence and give judgment in favour of Cocoon Data.

75 Ferguson J (at [14]) cited *Slaveski v State of Victoria and Others* [2009] 25 VR 160 ("*Slaveski*") for some of the circumstances in which the court might exercise its inherent jurisdiction to dismiss or stay proceedings without adjudicating on the merits of the case (referred to hereafter as "the *Slaveski* Propositions"), namely:

(a) where the proceedings in question were an abuse of process;

(b) where the plaintiff repeatedly and deliberately failed to comply with court orders without an acceptable explanation;

(c) where the plaintiff's conduct was such as to: (i) prevent the court from effectively exercising the jurisdiction which it had to dispose of the proceedings, or (ii) thwart the court's processes;

(d) where a dismissal or stay of proceedings was necessary to maintain the authority of the court and the integrity of its processes;

(e) where a fair trial was not possible; and

(f) where the plaintiff had dishonestly misled the court.

76 Notably, the *Slaveski* Propositions include circumstances that concern a failure to comply with *non*-procedural court orders. In the present case, the March Injunction Order was a draconian order in the form of an interim injunction. Each case must be considered on its own facts and a determination must be made as to whether striking out or staying proceedings would be an appropriate response to the non-compliance concerned (*per* Ferguson J at [18]).

77 Ferguson J further quoted *Derby & Co Ltd v Weldon* [1990] 1 Ch 65 at 81, where Lord Donaldson of Lymington MR referred to the possibility of barring the right to defend of a defendant who breached a Mareva injunction:

> … Courts assume, rightly, that those who are subject to its jurisdiction will obey its orders … It is only if there is doubt about whether the order will be obeyed and if, should that occur, no real sanction would exist, that the court should refrain from making an order which the justice of the case requires.
>
> This consideration led the Vice-Chancellor to examine the extent to which a *Mareva* injunction could be enforced against [the defendant] in Luxembourg … This certainly is deserving of examination but, in the context of the grant of the *Mareva* injunction, I think that a sufficient

sanction exists in the fact that, in the event of disobedience, the court could bar the defendant's right to defend. This is not a consequence which it could contemplate lightly as it would become a fugitive from a final judgment given against it without its explanations having been heard and which might well be enforced against it by other courts. …

78 In *Cocoon Data*, Ferguson J found that K2M3 had deliberately breached the terms of the anti-suit injunction concerned on multiple occasions without explanation, despite having been given opportunities to provide an explanation. Ferguson J said (at [21]–[22]):

> 21 Non-compliance with an anti-suit injunction is a grave matter. There must be compliance with such orders. If there is not, and no proper explanation for their breach is given, then severe sanctions may be warranted. Any such sanctions which are imposed are not aimed at punishing a defaulting party but rather are necessary to safeguard the administration of justice.
>
> 22 Whilst the remedy sought by [Cocoon Data] is drastic, in the circumstances, it is appropriate for orders to be made striking out the defence of K2M3. No practical alternative course is available. Such orders are necessary to maintain the authority of the Court. On the evidence before me, K2M3 has deliberately breached the terms of the orders on multiple occasions without explanation, despite opportunities being given to it to provide an explanation. It had taken steps in this proceeding by filing an unconditional appearance and defence; it did not appeal from any of the orders made in the proceeding; after breaching the orders, it instructed counsel to appeal on a further hearing but failed to instruct counsel as to the reason(s) for non-compliance with the orders; it has had notice of this application and chose not to be represented on either this occasion or when the application first came on for hearing.

79 I now turn to *Slaveski* itself. In that case, the plaintiff failed to take certain steps in the proceedings such as appointing a litigation guardian and obtaining evidence from the psychiatrist. It was submitted by the *amicus curiae* that the court should order a stay of proceedings unless the plaintiff performed the aforementioned steps by a specified date and time. It was in that context that the court set out the principles noted at [75] above. Since the defendants did not support the *amicus curiae*'s submission and since the parties were willing to explore the appropriateness of appointing a litigation guardian, the court declined to stay or dismiss the proceedings in *Slaveski*.

80 Three of the *Slaveski* Propositions (namely, Propositions (b), (c) and (f)) were derived from *Mariotti v Wanneroo North Pty Ltd* [2008] WASCA 243 ("*Mariotti*"), a decision of the Court of Appeal of the Supreme Court of Western Australia. That case concerned an application for leave to appeal against the dismissal of an action by the trial judge. The trial judge had dismissed the action because the plaintiff had wilfully disobeyed the court's orders so as to abort the trial. In essence, the plaintiff had decided that there was a more profitable course of action available to him and had decided to stop instructing his counsel as well as stop complying with any direction given by the court in relation to preparing the matter for trial. The trial judge also made a general finding that the plaintiff had been dishonest and that the plaintiff's evidence generally lacked clarity. The Court of Appeal of the Supreme Court of Western Australia ultimately gave the plaintiff leave to appeal, but concurrently dismissed the appeal. The court noted (at [55]) that "orders of the court must be obeyed and … a litigant who deliberately, and without proper excuse, disobeys an order is not allowed to proceed". The observations of the court at [53]–[59] provide a good overview of the Australian position on the court's inherent jurisdiction to stay or strike out proceedings. The statement of law in *Mariotti* has not been doubted by subsequent cases.

81 Likewise, in *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2005] 3 SLR(R) 60, the same sentiments were repeated by this court in the following

general observations:

> 28 The starting point is this. The correct and only course, short of obedience to the orders in question, was to seek, through appropriate legal process, to have the orders discharged, set aside or stayed. That was what the majority defendants did initially. But once their stay applications failed or applications for expedited appeal were refused, the majority defendants continued to ignore and disregarded their legal duty under the various orders.
>
> 29 As long as the orders stood, the plaintiffs were entitled to have them respected and obeyed. It is not for the majority defendants to disregard the orders on the basis of a belief that the Order of 5 March 2004 was basically wrong in that the action should be set aside or stayed and the Mareva injunction discharged. …

82 Committal proceedings, a stay of proceedings and a striking out of an entire action or pleadings are simply methods of enforcing court orders, and it is up to the applicant to decide on an efficacious method of enforcement. In this case, SKO chose to apply to the court to strike out OS 463.

83 I should add that the *Slaveski Propositions* also resonate with the over- arching approach taken in *Alliance Management SA v Pendleton Lane P and another and another suit* [2008] 4 SLR (R) 1 ("*Pendleton Lane*"). Indeed the court there was essentially dealing with a procedural default, but it is clear (*a fortiori*) that the legal principle there enunciated is of universal application. In that case, the defendants were ordered by the court to return a certain hard disk ("the Hard Disk") to the plaintiff by a certain date; the order was predicated upon the court being satisfied that the Hard Disk was in the possession of the defendants. The defendants refused to produce the Hard Disk on the basis that they did not have it. The plaintiff applied to strike out the defendants' defence as the defendants' failure to produce the Hard Disk resulted in non-compliance with other court orders relating to the inspection of electronic documents stored in the Hard Disk. The court struck out the defendants' defence and entered interlocutory judgment because the defendants deliberately and persistently disregarded the order of court requiring it to produce the Hard Disk.

84 As a matter of legal principle, the court in *Pendleton Lane* held that where there was a total disregard of the court's orders such that it could properly be viewed as contumelious conduct, such conduct warrants a striking out order regardless of whether a fair trial was possible and without having to make an "unless order". As noted by the court in *Pendleton Lane* (at [9]), this legal basis for striking out "is not [premised upon] a perceived need to punish the party concerned [and] is a proper and necessary response not to allow the court's process to be used as a means of achieving injustice." Jeffrey Pinsler SC rightly points out in his book *Singapore Court Practice 2014* (Lexis Nexis, 2014) at para 24/16/2 that the legal basis for striking out in *Pendleton Lane* "is anchored on the public interest". The public interest there relates to upholding the authority of the court and ensuring its processes are not used in an unjust way. Indeed, it is implicit in the observations of the Court of Appeal in *Mitora Pte Ltd v Agritrade International (Pte) Ltd* [2013] 3 SLR 1179 (at [48]) that a court has the discretion to strike out when it was in the public interest to do so.

85 Applying four of the *Slaveski* Propositions (namely, Propositions (b), (c), (d) and (f)) to the facts of this case, Ramindo's explanation for not undoing what it had done contrary to the March Injunction Order was untenable. The reasons which Ramindo proffered were devoid of merit and reflected its contumacious refusal to abide by the March Injunction Order. On many occasions, Ramindo attempted to mislead the court through the incomplete and false affidavits filed on its behalf by THL. Ramindo was determined both to put and keep the OS 463 vessels out of SKO's reach, as well as to conceal their true identities and whereabouts. I should mention Ramindo's counsel's last-ditch attempt at the hearing to offer, on behalf of Ramindo, cash security in substitution of full and proper

compliance of the 2013 Interlocutory Orders. I saw that attempt as further conduct that exemplified Ramindo's continued defiance and total disregard for the authority of the court.

86 For these reasons, in the exercise of the inherent jurisdiction of this court, I struck out OS 463. Ramindo's wilful and contumacious non-compliance with the March Injunction Order was a grave matter. There must be full and proper compliance with injunction orders which are protective orders of the court. If not, and if no valid and proper explanation is given by the defaulting party for its non-compliance, severe sanctions (such as striking out) are warranted. It is in the public interest that such sanctions are imposed not to punish the defaulting party, but rather, to safeguard the effectiveness of and ensuring compliance with the protective orders of the court. In my view, striking out OS 463 was the appropriate response to Ramindo's breach of the March Injunction Order. Given the history of the proceedings, and Ramindo's continued disregard for the authority of the court, it would be pointless to make any order of a less draconian nature. I was also mindful that the court was dealing with a person (*ie*, THL) who had no qualms about submitting false evidence to the court.

87 I now turn to the August Order. SKO, in paras 51 to 59 of her affidavit of 1 November 2013 filed in support of SUM 5762, complained of Ramindo's breaches of the August Order. She detailed Ramindo's various attempts to frustrate the proper inspection of the OS 463 vessels. SKO's complaints should not be viewed in isolation but had to be examined in the light of Ramindo's contumacious disobedience of the March Injunction Order. Based on the evidence before this court, I was satisfied that in relation to the August Order, Ramindo demonstrated the same degree of wanton disregard as it displayed *vis-à-vis* the March Injunction Order. In the circumstances, a striking out of OS 463 for non-compliance with the 2013 Interlocutory Orders was justified.

Conclusion

88 For the reasons stated, orders were made in favour of SKO in relation to her application in SUM 5762.

[note: 1] SKO's Affidavit dated 9.1.13, pp 115–123.

[note: 2] SKO's Affidavit dated 9.1.13, p 266.

[note: 3] SKO's Affidavit dated 9.1.13, para 32.

[note: 4] SKO's Affidavit dated 9.1.13, p 264.

[note: 5] SKO's Affidavit dated 9.1.13, para 31 & p 266.

[note: 6] SKO's Affidavit dated 9.1.13, paras 35-38.

[note: 7] SKO's Affidavit dated 9.1.13, para 41.

[note: 8] SKO's Affidavit dated 9.1.13, para 38.

[note: 9] SKO's Affidavit dated 9.1.13, paras 38 & 42

[note: 10] Affidavit of Tham Hai Lee ("THL's Affidavit") dated 22.2.13, paras 6, 18 & 24.

[note: 11] SKO's Affidavit dated 11.3.13, p 41 exhibiting Meilina Siregar's Affidavit affirmed on 8.3.13, para [9].

[note: 12] SKO's Affidavit dated 12.7.13, para 8.

[note: 13] Temmy Alberth Tumbelaka's Affidavit dated 12.8.13, paras 6-7.

[note: 14] SKO's Affidavit dated 14.8.13, para 12.

[note: 15] SKO's Affidavit dated 12.7.13, para 12.

[note: 16] THL's Affidavit dated 7.8.13, para 11.

[note: 17] SKO's Affidavit dated 14.8.13, para 11.

[note: 18] THL's Affidavit dated 7.8.13, para 14.

[note: 19] THL's Affidavit dated 7.8.13, para 16.

[note: 20] THL's Affidavit dated 7.8.13, exhibit marked "THL-3".

[note: 21] THL's Affidavit dated 7.8.13, exhibit marked "THL-3".

[note: 22] THL's Affidavit dated 7.8.13, para 20.

[note: 23] THL's Affidavit dated 7.8.13, exhibit marked "THL-3".

[note: 24] THL's Affidavit dated 7.8.13, para 21.

[note: 25] SKO's Affidavit dated 12.7.13, para 7.

[note: 26] SKO's Affidavit dated 14.8.13, para 21.

[note: 27] SKO's Affidavit dated 1.11.13, para [47].

[note: 28] SKO's Affidavit dated 12.7.13, exhibit marked "Tab C".

[note: 29] SKO's Affidavit dated 1.11.13, para 47.

[note: 30] THL's Affidavit affirmed on 10.10.13, exhibit marked "THL-1".

[note: 31] SKO's Affidavit dated 14.8.13, paras 11 & 24.

[note: 32] THL's Affidavit dated 7.8.13, para 16 and exhibit marked "THL-3"; THL's Affidavit dated 6.9.13, para 10.

[note: 33] Meilina Siregar's Affidavit dated 1.11.13, para 8.

[note: 34] THL's Affidavit dated 7.8.13, exhibit marked "THL-3".

[note: 35] THL's Affidavit dated 6.9.13, exhibit marked "THL-6".

[note: 36] SKO'Affidavit dated 1.11.13, para 35 and Tab 9.

[note: 37] THL's Affidavit dated 6.9.13, paras 16-17.

[note: 38] THL's Affidavit dated 18.11.13, paras 10-11 and 47-50.

[note: 39] SKO's Affidavit dated 1.11.13, para 31; SKO's Affidavit dated 18.11.13, paras 5-8.

[note: 40] SKO's Affidavit dated 1.11.13, para 32.

[note: 41] CWU 127/2011, Transcript of Evidence dated 12.2.14, pp 44-45, 47-50 & 52.

[note: 42] SKO's Affidavit dated 6.11.13, para 10(e).

[note: 43] SKO's Affidavit dated 18.11.13, para 12.

[note: 44] THL's Affidavit dated 6.9.13, para 26.

[note: 45] SKO's Affidavit dated 18.11.13, paras 11.

[note: 46] Edward Koh's Affidavit dated 18.10.13, exhibit marked "EK-1".

[note: 47] THL's Affidavit dated 18.11.13, para 55 & Edward Koh's Affidavit dated 20.11.13 at pp 6 & 13 (for English translation of inspection report).

[note: 48] Edward Koh"s Affidavit dated 18.10.13, p14.

[note: 49] Edward Koh's Affidavit dated 18.10.13, p 6.

[note: 50] Edward Koh's Affidavit dated 18.10.13, pp 14 & 16.

[note: 51] SKO's Affidavit dated 1.11.13, para 12.

[note: 52] THL's Affidavit dated 18.11.13, para 14.

[note: 53] THL's Affidavit dated 18.11.13, para 13.

[note: 54] SKO's Affidavit dated 1.11.13, para 21.

[note: 55] SKO's Affidavit dated 1.11.13, para 31 & "Tab 2" pp 39 & 41.

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