IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 120

Suit No 949 of 2016 (Registrar's Appeal Nos 13 and 31 of 2017)

Between

LAKSHMI ANIL SALGAOCAR

… *Plaintiff*

And

VIVEK SUDARSHAN KHABYA

… *Defendant*

JUDGMENT

[Civil procedure] — [Striking out]

[Probate and administration] — [Unadministered estate] — [Standing to sue without grant of letters of administration]

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v
Vivek Sudarshan Khabya

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George Wei J
9 February 2017; 10 February 2017

26 May 2017 Judgment reserved.

George Wei J:

Registrar's Appeal No 13 of 2017

Introduction

1 Registrar's Appeal No 13 of 2017 ("RA 13") is an appeal by the plaintiff, Lakshmi Anil Salgaocar ("the plaintiff") against the decision of the learned Assistant Registrar Jean Chan Lay Koon ("the AR") striking out the plaintiff's writ and statement of claim in Suit No 949 of 2016 ("Suit 949") under O 18 r 19(1)(*b*) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules"). Having considered the arguments, I dismiss the appeal. I now set out my reasons.

Facts

Dramatis personae

2 The plaintiff is the lawful widow of the late Anil Vassudeva Salgaocar ("AVS"), who died intestate in Singapore on 1 January 2016. AVS was survived by the plaintiff and the couple's two sons and two daughters, all of whom are adults. It is not in dispute that the beneficiaries of the estate of AVS ("the Estate") are the plaintiff and her four children ("the beneficiaries"). It is also undisputed that, under s 7 of the Intestate Succession Act (Cap 146, 2013 Rev Ed), the plaintiff is entitled to a 50% share in the Estate. Despite having made the relevant application on 29 July 2016, the plaintiff has yet to obtain the grant of letters of administration. The plaintiff's eldest daughter, Chandana Anil Salgaocar, has filed a caveat against her application.

3 During his lifetime, AVS was a businessman engaged in a wide range of business interests across several jurisdictions. One of these business interests was Million Dragon Wealth Ltd ("MDWL"), a company incorporated in the British Virgin Islands ("BVI"). AVS was the sole director and sole shareholder of MDWL. MDWL is, in turn, the sole shareholder of 22 BVI-incorporated companies ("the 22 subsidiaries"). AVS was also the sole director of the 22 subsidiaries. Each of the 22 subsidiaries owns a single unit in Newton Imperial, a condominium located in Singapore (collectively, "the 22 units"). These units are leased out to tenants. The rental income is paid to an escrow account held for MDWL as clients.[1] The 22 subsidiaries are:

(a) Ambervale Assets Ltd;

(b) Brilliant Wealth Assets Inc;

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[1] Defence (Tab 2 of the Plaintiff's BOD), para 6(f); see also Defendant's Affidavit dated 24 October 2016, Page 52.

(c) Cobalt City Holding Inc;

(d) Crystal Swan Success Inc;

(e) Emerald Universal Wealth Ltd;

(f) Everflush Worldwide Resources Ltd;

(g) Fast Forward Capital Ltd;

(h) Flourishing Wealth Worldwide ltd;

(i) Gold Fountain Wealth Ltd;

(j) Jade Horse Capital Ltd;

(k) Oriental Prosper Ventures Corp;

(l) Periwinkle Investment Capital Limited;

(m) Precious Jade Investment Corp;

(n) Prosperous Invest Profits Inc;

(o) Rainbow Bright Invest Corp;

(p) Red Star Success Ltd;

(q) Stardust Wealth Corp;

(r) Sunny Gain Worldwide Corp;

(s) Sunnydale Capital Ventures Ltd;

(t) Utopia Wealth Capital Ltd;

(u) Wealthy Choice Ventures Ltd;

(v) Wisteria Meadows Ltd.

4 The defendant is Vivek Sudarshan Khabya ("the defendant"), a Singapore Permanent Resident who has been working in Singapore since around 2007.[2] He was appointed by AVS as the Chief Executive Officer ("CEO") of MDWL on 21 July 2014. It is worth noting that at the time of AVS' passing, the defendant had been working as the CEO of MDWL for about one and a half years. After the death of AVS, the defendant continued to

[2] Defence (Tab 2 of the Plaintiff's BOD), para 2.

act as the CEO of MDWL. MDWL was placed under receivership by a BVI court on 27 July 2016. The court-appointed receivers ("the Receivers") terminated the defendant's services as CEO on 10 August 2016 but subsequently appointed the defendant as a consultant to MDWL on 26 August 2016, with his appointment back-dated to 10 August 2016. Whilst it has been said that the Receivers have since been discharged,[3] it appears that the process has not been completed because of an issue over fees.

5 The defendant claims that he shared a very close professional and personal relationship with AVS, who allegedly regarded him as a "loyal and trusted confidante" and entrusted him with his personal affairs.[4]

6 Another key figure in this dispute is Shanmuga Rethenam s/o Rathakrishnan ("Shanmuga"). Shanmuga was appointed by AVS as the CEO of Winter Meadow Capital Inc ("Winter Meadow"), another BVI-incorporated company wholly owned by AVS which operates vessels and owns shipping equipment in Singapore and Malaysia.

7 I pause to note that the Estate of AVS comprises, *inter alia*, (i) MDWL and the 22 units (broadly speaking, real estate interests); (ii) Winter Meadow (broadly speaking, ship operation business); (iii) S V Enterprises Pte Ltd ("SVE") and (iv) Africean Pte Ltd ("Africean"). The latter two companies were incorporated in Singapore and were wholly owned by AVS.[5] It is not clear what is the nature of their businesses. It appears that the offices of all the aforementioned companies in Singapore were at the same building or

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3 Certified Transcript of RA 13/2017, page 23 line 18.

4 Defendant's 1st Affidavit dated 14 October 2016, para 10.

5 Plaintiff's written submissions for RA 13/2017, para 16.

premises. The relevance of this point will become clearer below. It is noted that the plaintiff's claim is only in respect of MDWL and the 22 subsidiaries.

8 On 30 June 2016, Shanmuga commenced High Court Suit No 689 of 2016 ("Suit 689") against the Estate, SVE and Africean. By Suit 689, Shanmuga claimed that AVS had agreed to indemnify him from and against all liability arising in connection with certain arbitration proceedings. The amount claimed was very substantial. In connection with this claim, Shanmuga applied for an injunction restraining the defendants from dealing in certain assets up to the value of his claim ("the Singapore Injunction Application"). SVE and Africean were made defendants on the back of the claim that they were effectively used as the "personal wallets" of AVS.[6]

9 Shanmuga also brought Claim No BVIHC (Com) 101 of 2016 in the High Court of Justice in the BVI, seeking a freezing order preventing MDWL from dealing in the assets of the 22 subsidiaries until the determination of Suit 689 ("the BVI freezing order application"). The BVI freezing order application was brought in support of Suit 689 in Singapore. I pause to note that under BVI law, it is possible to obtain injunctive relief in support of foreign proceedings. Such relief is known as a "Black Swan" injunction after the name of the case authority, *Black Swan Investments I.S.A v Harvest View Limited and others*, BVIHCV 2009/399.

10 The freezing order was granted by the BVI court on 27 July 2016 ("the BVI freezing order") and it was pursuant to this freezing order that MDWL was placed under receivership in the BVI. The defendant submits that the Receivers were appointed by the BVI Commercial Court and tasked with

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6 Shanmuga's Statement of Claim in Suit 689/2016, Tab 17 of Plaintiff's BOD, pp 15 and 19.

protecting the assets of MDWL *as a going concern* pending the final determination of the application for a Mareva injunction against the Estate, SVE and Africean.[7]

11 Although the freezing order was obtained against MDWL as defendant, in a claim form filed for the purpose of this application, Shanmuga stated that one of his grounds for seeking a freezing order was a substantial risk that MDWL's assets may be dissipated by the *heirs* of AVS.[8] It appears that the freezing order was applied for on the basis that any judgment in Shanmuga's favour could be enforced in the BVI against the shares of MDWL.[9]

12 It is noted that the defendant filed an affidavit in support of the freezing order application in which he stated:

> I apprehend that, unless the assets of Million Dragon are protected, there is a substantial risk that their assets will be dissipated by the Salgaocar family, and creditors of the Million Dragon Group and Mr Salgaocar's estate may be defrauded.[10]

13 The plaintiff complains that the defendant was supporting Shanmuga's indemnity claim and asserts that the fact that the defendant filed this affidavit in the BVI freezing order application supports the assertion that the defendant was acting in concert with Shanmuga.[11]

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7 See Defendant's skeletal submissions, para 9.

8 Fixed Date Claim Form (Tab 21 of the Plaintiff's BOD), page 2.

9 See Notice of Application in BVIHC (Com) 101 of 2016 (Tab 22 of the Plaintiff's BOD), para 4 of "grounds of application" (page 3).

10 Defendant's 1st Affidavit in BVIHC (Com) 101 of 2016 (Tab 23 of the Plaintiff's BOD), para 47.

11 Statement of Claim (Tab 1 of the Plaintiff's BOD), para 15(l).

Suit 949 of 2016

The plaintiff's claims

14 The suit underlying this Registrar's Appeal, Suit 949, was commenced by the plaintiff on 3 September 2016, about a month after the grant of the freezing order against MDWL by the BVI court. In her statement of claim, the plaintiff states that she commences Suit 949 as a beneficiary of the Estate, for her benefit and for the benefit of her four children. She explicitly says that she is not bringing this claim in any representative capacity.[12]

15 The plaintiff pleads the following causes of action against the defendant: unlawful means conspiracy, lawful means conspiracy, conversion, breach of fiduciary duty and breach of trust.[13] Apart from the claim for breach of trust, the rest of the plaintiff's pleaded causes of action are largely based on the same set of particulars: factual allegations relating to the defendant's conduct around and after the time of AVS' passing. Essentially, the plaintiff's case was that the defendant acted in concert with Shanmuga to deprive the Estate of its assets by, *inter alia*, misappropriating or seeking to misappropriate the rental income of the 22 subsidiaries of MDWL. As such, the assets of MDWL are purportedly "in jeopardy" due to the defendant's conduct.[14] The plaintiff cites the following particulars in support of these claims:[15]

(a) On 21 July 2016, the defendant commenced proceedings in the State Courts in DC 2302/2016 ("DC 2302") against SVE, seeking the

12 Statement of Claim (Tab 1 of the Plaintiff's BOD), paras 2–3.

13 Statement of Claim (Tab 1 of the Plaintiff's BOD), paras 15, 16, 17, 18–20 and 21–24 respectively.

14 Plaintiff's Skeletal Submissions for RA 13/2017, para 80.

15 Statement of Claim (Tab 1 of the Plaintiff's BOD), para 15 (a)–(t).

delivery up of MDWL's documents and records, including the title deeds to the 22 units (collectively, "the MDWL documents"). The MDWL documents had been seized by Sonali Sameer Salgaocar ("Sonali"), the director of SVE and the daughter-in-law of the plaintiff and AVS. Sonali deposed on affidavit that she "promptly retrieved" these documents from MDWL's shared office premises with SVE "to prevent the defendant from getting access to them".[16] The plaintiff alleged that the defendant "had no authority" to commence DC 2302 for the delivery up of the MDWL documents.

(b) The defendant "interfered with" an escrow arrangement in which tenants of the 22 subsidiaries were paying rent to an escrow account ("the Haridass escrow account") held by the law firm Messrs Haridass Ho & Partners ("Haridass"). The alleged interference took the form of instructing the tenants to pay their rent instead to an escrow account held by the law firm Messrs Netto & Magin LLC ("the N&M escrow account").[17]

(c) The defendant "continued to deal" in the assets of MDWL and its subsidiaries after the passing of AVS, such as by entering into a tenancy agreement to lease out one of the 22 units to a tenant in July 2016. The plaintiff alleges that this was done despite the fact that the defendant had "no authority to…deal in the assets of the Estate".

(d) From 27 July 2016 to 29 July 2016, the defendant and his lawyers wrote to Haridass seeking payment from the funds held in the Haridass escrow account to two companies and one person as

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16 Affidavit of Sonali Sameer Salgaocar, 2 September 2016, para 17.

17 Plaintiff's Skeletal Submissions for RA 13/2017, para 6(a)(ii)–(iii).

brokerage fees, refund of rental and repair charges. The plaintiff states that the defendant "had no authority to do so on behalf of MDWL". Further, this was in contravention of the BVI freezing order made on 27 July 2016.

(e) The defendant removed documents from SVE and/or Africean and provided them to Shanmuga to support the Singapore Injunction Application, which he filed in connection with Suit 689 (see [8] above).

(f) The defendant filed an affidavit in support of Shanmuga's BVI freezing order application (see [8] above). The plaintiff alleges that he "falsely asserted" that there was a risk that MDWL's assets may be dissipated by the Salgaocar family.

(g) The defendant allegedly acted in concert with Shanmuga to issue two fabricated charterparties to a company called Neptune Ship Management Pte Ltd ("NSMPL") for the purpose of initiating false claims against Winter Meadow.

(h) After MDWL was placed under receivership, the defendant allegedly "engineered" and "procured" his appointment as consultant of MDWL (see [4] above) under an agreement which entitled him to payment of 15% of the rental income of the 22 units, "thereby depleting the Estate's assets".

16 One might notice the repeated assertions made that the defendant had "no authority" to deal with the assets or handle the affairs of MDWL in [15(a)]–[15(d)] above. This is because the plaintiff takes the position that, since AVS was the sole shareholder and director of MDWL, upon his death

the defendant was not entitled to carry out the functions of MDWL or its 22 subsidiaries, or to manage the affairs of these companies.[18] No reasons were however provided in argument or submissions as to what is the effect of the death of a sole director/shareholder of a BVI company on the management and operations of the company. This is a point which will be dealt with below.

17 As for the plaintiff's claim for breach of trust, this relates solely to a series of allegedly unauthorised withdrawals amounting to $10,000 which the defendant made using AVS' ATM card between 29 December 2015 and 31 December 2015.[19]

18 Apart from damages for conspiracy and conversion, the plaintiff seeks the following reliefs:[20]

> (a) The sum of $10,000 for breach of trust, alternatively damages.
>
> (b) An account of all money due to the beneficiaries of the Estate which was received by the Defendant or any person on his behalf and of the manner in which the Defendant has applied that money.
>
> (c) An inquiry as to what balance of such money as found in 0 remains in the Defendant's hands or under this control.
>
> (d) A declaration that the Defendant is personally liable to make good all sums received by him as trustee or agent, including as Consultant of MDWL, for the beneficiaries of the Estate not accounted for together with interest.
>
> (e) An order that the Defendant do [*sic*] pay to the beneficiaries of the Estate such sums as may be found due upon taking an account together with interest.

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18 Statement of Claim (Tab 1 of the Plaintiff's BOD), paras 9–10; see also Certified Transcript of RA 13/2017, page 4 line 16 to page 5 line 22.

19 Statement of Claim (Tab 1 of the Plaintiff's BOD), para 22.

20 Statement of Claim (Tab 1 of the Plaintiff's BOD), pp 22-23.

The defence and counterclaim

19 The gist of the defendant's defence is that he was duly authorised to continue to manage the affairs of MDWL and its subsidiaries after AVS passed away. The defendant claims that he was expressly appointed by AVS not only to be the CEO of MDWL, but also to be its "reserve director" and "deemed director" upon AVS' demise.[21] For context, reserve directors and deemed directors are creatures of statute under the British Virgin Islands Business Companies Act 2004 (No 16 of 2004) ("the BVI BCA"). Section 113(7) of the BVI BCA provides as follows:

> (7) Where a company has only one member who is an individual and that member is also the sole director of the company, notwithstanding anything contained in the memorandum or articles, that sole member/director may, **by instrument in writing**, nominate a person … as **a reserve director** of the company to act in the place of the sole director in the event of his death.
>
> [emphasis added]

20 Before me, learned counsel for the defendant, Mr Magintharan, did not dispute that there appears to have been no "instrument in writing" nominating the defendant as a reserve director. However, Mr Magintharan maintained that the defendant was also a "deemed director" under Section 109(6) of the BVI BCA, which provides as follows:

> (6) If at any time a company does not have a director, any person who manages, or who directs or supervises the management of, the business and affairs of the company is **deemed to be a director** of the company for the purposes of this Act.
>
> [emphasis added]

21 The defendant contends that as the deemed director, he was entitled to commence DC 2302, to enter into a tenancy agreement in respect of one of the

[21] Defence (Tab 2 of the Plaintiff's BOD), paras 5–6.

22 units (see [15(c)] above) and to direct the tenants of the 22 units to pay their rentals into the N&M escrow account. With regard to the escrow arrangements, specifically, the defendant argues that it was necessary to set up the N&M escrow account because Haridass was refusing to issue payments from the Haridass escrow account which were necessary for the operations of the subsidiaries and MDWL.[22] It is not entirely clear why Haridass was refusing to issue payments, although there is some suggestion that Haridass has taken the position that it considers its client to essentially be the plaintiff, even though MDWL is its client on record.[23] The defendant also maintains that he had continued to manage the affairs of MDWL and its subsidiaries in good faith and in the companies' best interests.[24]

22 It is noted that on or about 8 September 2016 the Receivers took over DC 2302 from the law firm engaged by the defendant. The defendant submits that in order to protect the assets of MDWL, the Receivers pursued the action by demanding the plaintiff to hand over the books and records as well as the assets of MDWL which were in the plaintiff's possession.[25] It appears that the Receivers felt that the plaintiff's misgivings about the defendant were "ill-founded" and were unsympathetic when she expressed dissatisfaction with his appointment as a consultant.[26]

23 Coming back to the defence, the defendant denies any suggestion that he is attempting, whether in concert with Shanmuga or otherwise, to deprive the Estate of its assets. Rather, it was the plaintiff and her children who were

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22 Defence (Tab 2 of the Plaintiff's BOD), para 32.

23 Witness Statement of Hadley Chilton (Tab 26 of the Plaintiff's BOD), para 15.

24 Defence (Tab 2 of the Plaintiff's BOD), paras 28 and 31–32.

25 Defendant's Skeletal Submissions, para 10.

26 Defendant's Skeletal Submissions, paras 11 and 12.

unlawfully interfering with MDWL's affairs with the intention of removing and dissipating the company's assets before the grant of letters of administration. According to the defendant, this is precisely why it was necessary for him to file an affidavit in support of the BVI freezing order application.[27] The defendant also denied the plaintiff's claim that he removed SVE and Africean's documents and supplied them to Shanmuga, and avers that Shanmuga had independent access to these documents because he was the CEO of Winter Meadow, which shared the same office as MDWL, SVE and Africean.

24 In respect of the plaintiff's allegation that the defendant had acted in contravention of the BVI freezing order by writing to Haridass to seek payment of brokerage fees, refund of rental and repair charges from the funds held in the Haridass escrow account, the defendant states that he was not informed of the BVI freezing order until 10 August 2016. In any event, the defendant asserts that the Receivers of MDWL later ratified his actions.[28] Whilst there is no direct material on this, I note that the Receiver's affidavits in the BVI freezing order application and their letters to the defendant do not indicate or suggest any issue with his actions prior to 10 August 2016. The defendant also denies that he "engineered" or "procured" his appointment as a consultant by the court-appointed Receivers of MDWL.

25 The defendant further argues that he neither had a "close relationship" with NSMPL nor any involvement in the charter parties issued from Winter Meadow to NSMPL.

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27 Defence (Tab 2 of the Plaintiff's BOD), paras 10 and 34–35.

28 Defence (Tab 2 of the Plaintiff's BOD), para 37.

26 Finally, in respect of the plaintiff's claim for breach of trust, the defendant's position is that AVS had handed the defendant his ATM card and the passcode, and had authorised the defendant to make deductions and reimbursements from his personal bank account as necessary. The defendant further claims that he had withdrawn the sum of $10,000 for the purpose of paying for AVS' medical and funeral expenses, in the presence of AVS' children and with the plaintiff's acknowledgement.[29]

27 The defendant has also filed a counterclaim, stating that if he is held liable to the plaintiff, he would seek to set-off against any sum awarded to the plaintiff the following sums:

(a) $6,500, being reimbursement owed to him because he had allegedly paid for AVS' medical and personal expenses in December 2015;[30] and

(b) US$1,000,000, which AVS had allegedly undertaken to pay the defendant as incentive and compensation for leaving his job at the time when AVS appointed him CEO of MDWL.[31]

28 During the course of the hearing, the court was informed that Suit 689 brought by Shanmuga against the Estate, SVE and Africean had been withdrawn and ordered to be discontinued. The court was also given to understand that the BVI freezing order had been discontinued, but the Receivers had not yet been discharged because the matter of their fees had not been settled. To be clear, at the date of hearing, the letters of administration have yet to be granted in respect of the Estate.

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29 Defence (Tab 2 of the Plaintiff's BOD), paras 7–9.

30 Defence (Tab 2 of the Plaintiff's BOD), paras 8 and 49.

31 Defence (Tab 2 of the Plaintiff's BOD), paras 5(e) and 49.

Summons No 5158 of 2016 and the AR's decision

29 On 25 October 2016, the defendant filed Summons No 5158 of 2016 ("Summons 5158"), seeking an order that the plaintiff's writ and statement of claim be struck out pursuant to O 18 r 19(1)(*b*) and/or O 18 r 19(1)(*d*) of the Rules, *ie*, that the writ and statement of claim is scandalous, frivolous or vexatious, and/or that it constitutes an abuse of the process of the court. The defendant relied in the alternative on the inherent jurisdiction of the court. In an affidavit deposed in support of the striking out application, the defendant stated that the plaintiff "did not possess the capacity to act for the Estate" because she had not been duly appointed as an administrator of the Estate. The defendant also argued that since the assets (the 22 units and rental income) in question belong to MDWL and its subsidiaries, and not to the Estate, the correct party to bring this action was the Receivers, and not the plaintiff. Finally, the defendant alleged that the plaintiff had commenced the present Suit only to circumvent her inability to obtain the grant of letters of administration, with a view to gaining absolute control of the assets and property of MDWL and the 22 subsidiaries.[32]

30 The matter was heard by the AR on 13 January 2017. Having considered the parties' arguments, the AR found that the plaintiff had no *locus standi* to bring this action. She therefore allowed the defendant's application and struck out the plaintiff's action under O 18 r 19(1)(*b*).[33] In her brief oral grounds, the AR held as follows:

> (a) The plaintiff was not the proper party to bring an action against the defendant for any wrongful dealings with the assets of MDWL or

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32 Defendant's Affidavit dated 25 October 2016.

33 Certified Transcript of Summons 5158/2016, pp 1–2.

its subsidiaries. Even on the basis that the plaintiff had commenced this action as a beneficiary of the Estate, the Estate could be in no better a position than AVS himself would be if he were alive. If AVS were alive, he himself would not be able to sue the defendant for any wrongful dealings with the assets and property of MDWL or its subsidiaries, because AVS, MDWL and its subsidiaries were all separate legal entities. The assets and property had not automatically vested in the Estate upon AVS' passing.

(b) The plaintiff had relied on the case of *Wong Moy (administratrix of the estate of Theng Chee Kim, deceased) v Soo Ah Choy* [1996] 3 SLR(R) 27 ("*Wong Moy*"). That was a case in which the Court of Appeal held that a beneficiary of an unadministered estate who had yet to extract letters of administration was entitled, in certain circumstances, to institute action to recover assets belonging to the estate. However, *Wong Moy* was distinguishable because the plaintiff there had already obtained the grant of letters of administration. Further, the claim in that case was that the respondent was holding the property on trust for the *deceased*, as opposed to the present case where the property is held in the name of the 22 *subsidiaries*, and not in the name of the deceased.

The parties' arguments on appeal

The plaintiff's arguments

31 On appeal, the plaintiff argued that she had standing to bring this action as a beneficiary of the estate. Learned counsel for the plaintiff, Mr Liew, cited a line of authorities including *Wong Moy*, *Omar Ali bin Mohd and others v Syed Jafaralsadeg bin Abdulkadir Alhadad and others* [1995] 2

SLR(R) 407 ("*Omar Ali*") and *Ching Chew Weng Paul v Ching Pui Sim and others* [2010] 2 SLR 76 ("*Ching Chew Weng*") (collectively, "the *Wong Moy* line of authorities") as support for the proposition that a beneficiary is entitled to bring a claim to protect the assets of an estate pending administration, even before the extract or grant of the letters of administration.[34]

32 The plaintiff further contended that the AR had erred in striking out the action on the basis that the plaintiff had no *locus standi* because only MDWL could sue to protect its assets. The AR had relied on the proper plaintiff rule, but that rule and its variant, the reflective loss principle, were subject to exceptions. On the authority of *Hengwell Development Pte Ltd v Thing Chiang Ching* [2002] 2 SLR(R) 454, a shareholder is not prohibited from suing in respect of a loss suffered by a company if there is no risk of double recovery. The plaintiff maintained that in the present situation, where AVS was the sole shareholder of MDWL which in turn was the sole shareholder of the 22 subsidiaries, there was no risk of double recovery.[35] As such, AVS himself, and by extension, "the estate (represented by the beneficiary)" should be entitled to sue to protect the assets of the Estate. The plaintiff further claimed that there have been many instances in which the defendant himself had treated MDWL and its assets as being part of the Estate. Thus, the defendant could not now take an inconsistent position by relying on MDWL's separate legal personality to dispute the plaintiff's right to bring this action.[36] In any event, the issue of whether the plaintiff's claim would fall afoul of the rule against double recovery was a legally and factually complex issue which could not be summarily determined at a striking out application.

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34 Plaintiff's Skeletal Submissions for RA 13/2017, paras 21–29.

35 Plaintiff's Skeletal Submissions for RA 13/2017, paras 55–74.

36 Plaintiff's Skeletal Submissions for RA 13/2017, paras 31–32 and 48–54.

33 Finally, the plaintiff argued that the AR had erred in failing to address the claim for breach of trust in respect of the $10,000 withdrawn from AVS' personal account (see [17] above). This was "money taken from AVS's personal ANZ bank account and had nothing to do with MDWL".[37]

The defendant's arguments

34 The defendant argued that the AR was correct to hold that the plaintiff had no *locus standi*. Mr Magintharan cited the authorities of *Ingall v Morgan* [1944] 1 KB 160 ("*Ingall*") and *Teo Gim Tiong v Krishnasamy Pushpavathi (legal representative of the estate of Maran s/o Kannakasabai, deceased)* [2014] 4 SLR 15 ("*Krishnasamy*") as authority for the proposition that any action commenced on behalf of an estate in a representative capacity before the grant of letters of administration is a nullity. The defendant maintained that the plaintiff's action was, in truth, a representative action and therefore a nullity under the authority of *Ingall*.[38]

35 The defendant further emphasised that the assets the plaintiff claims to "protect" do not belong to AVS but to MDWL and its 22 subsidiaries which were separate legal entities distinct from AVS himself.[39] Thus, under the well-known rule in *Foss v Harbottle* (1843) 2 Hare 461, the plaintiff was not the proper plaintiff to bring an action to prevent these assets from being dissipated or converted by the defendant.[40] The proper plaintiff to bring such an action would instead be the Receivers, or the company itself.

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37 Plaintiff's Written Submissions for RA 13/2017, para 89.

38 Defendant's Skeletal Submissions for RA 13/2017, paras 1(a) and 29–31.

39 Defendant's Skeletal Submissions for RA 13/2017, para 41(b).

40 Defendant's Skeletal Submissions for RA 13/2017, para 46.

Issues to be determined

36 Broadly speaking, the issue to be determined was whether the AR was right to have struck out the plaintiff's writ and statement of claim on the basis that the plaintiff lacked *locus standi*. In this regard, the parties' arguments were almost entirely focused on the following question: where an intestate deceased was the sole shareholder of a company in his lifetime, does a beneficiary of that deceased who has not yet obtained the grant of letters of administration have *locus standi* to bring an action to recover, preserve or protect property which belongs to that company or its subsidiaries? This line of argument was clearly based on, first, the *Wong Moy* line of authorities, which confers a beneficiary with the right to recover, preserve or protect the assets of an estate where special circumstances exist, and secondly, the exceptions to the proper plaintiff rule in *Foss v Harbottle*. Apart from this issue, the plaintiff also made brief written submissions on the claim for breach of trust (see [33] above). Thus based on the arguments raised before me, the issues to be determined were:

(a) Whether the plaintiff had *locus standi* to sue *qua* beneficiary and for the benefit of the Estate under the *Wong Moy* line of authorities; and

(b) Whether the plaintiff had *locus standi* to sue the defendant in respect of the claim for breach of trust.

37 Having dealt with these two issues, I will conclude my analysis on RA 13 with some observations. As I will explain, my decision was made purely on the basis that the plaintiff has chosen to frame her claim as no more and no less than "an action to recover, preserve or protect" the assets of the Estate. That, presumably, is why the arguments were so heavily focused on the

applicability of the *Wong Moy* line of authorities. In my view, if the plaintiff had framed her claim differently, the issue of *locus standi* could have been decided based on different considerations and it may be that the plaintiff would have been found to have *locus standi* at least in respect of *some* of her pleaded causes of action. Even then, however, I would have reached the same conclusion and upheld the AR's decision to strike out the plaintiff's claim *in toto*, for reasons I will explain below.

The law on striking out

38 It is settled law that the power to strike out a claim is considered a "draconian" one (*Ng Chee Weng v Lim Jit Ming Bryan and another* [2012] 1 SLR 457 at [110]) which should only be invoked in plain and obvious cases (*Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 ("*Gabriel Peter & Partners*") at [18]).

39 With respect to O 18 r 19(1)(*b*) of the Rules, the words "frivolous or vexatious" have been interpreted to refer to cases which are "obviously unsustainable or wrong" (see *Riduan bin Yusof v Khng Thian Huat and another* [2005] 2 SLR(R) 188 at [29], citing *Afro-Asia Shipping Co (Pte) Ltd v Haridass Ho & Partners* [2003] 2 SLR(R) 491 at [22]). With respect to O 18 r 19(1)(*d*), the phrase "abuse of process" signifies that the process of the court must be used *bona fide* and properly (*Gabriel Peter & Partners* at [22]). The court has the power to prevent the judicial process from being used as a means of vexation and oppression through litigation.

40 The Court of Appeal in *Gabriel Peter & Partners* also noted that the categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and depend on the circumstances of each case (at [22]). One class of claims that may be struck out as being frivolous, vexatious or an

abuse of process are those in which the plaintiff is unable to establish the requisite *locus standi* (*Madan Mohan Singh v Attorney-General* [2015] 2 SLR 1085 ("*Madan Mohan Singh*") at [21]).

Decision and analysis

Whether the plaintiff has locus standi *to sue* qua *beneficiary and for the benefit of the beneficiaries under the* Wong Moy *line of authorities*

The *Wong Moy* line of authorities

41 The 1996 Court of Appeal decision of *Wong Moy* is the leading local authority in relation to a beneficiary's standing to sue for the benefit of an unadministered estate. Shortly before, however, Chao Hick Tin J (as he then was) had forerun *Wong Moy* in the case of *Omar Ali* in 1995. The plaintiffs in that case were the children of a man who had died intestate, and the beneficiaries of his estate. The deceased had been entitled in his lifetime to the unexpired term of a 999-year leasehold interest in a Singapore property. The first four defendants were the trustees of the estate of the reversion holder of the property. They purported to terminate the lease of the property, and purported to sell the unexpired term of the leasehold interest to the fifth defendant without the plaintiffs' knowledge or consent. The plaintiffs thus commenced proceedings seeking a declaration that the unexpired residue of the leasehold interest in the property vested in the estate of the intestate deceased, as well as a declaration that the purported sale was null and void. The defendants argued that the plaintiffs had no *locus standi*; no one had the legal authority to act on behalf of the estate because letters of administration had not been granted to anyone.

42 Chao J disagreed and held that the plaintiffs had *locus standi* to bring the action (*Omar Ali* at [28]):

> … Here the plaintiffs are not in the position of residual legatees. Neither are they suing in a representative capacity. They come as beneficiaries of the estate of the intestate seeking a declaration that the property (the unexpired term of the leasehold interest) belongs to the estate. They do not seek to claim any asset for themselves. They clearly have an equity in the estate as demonstrated in the Australian case *Re Atkinson, deceased* [1971] VR 612…

43 Chao J cited the following remarks from *Re Atkinson, deceased* [1971] VR 612 (*"Re Atkinson, deceased*") at p 617:

> … The basis of such proceedings is they are taken on behalf of the estate and if they are successful, they can only result in the lost property being restored to the estate for use in the due course of administration. Thus, while they assert the beneficiary's right of remedy, they assert the estate's right of property…

44 Although no letters of administration in respect of the estate had been granted to any of the plaintiffs in *Omar Ali* (or indeed to anyone at all), Chao J felt that this was immaterial and that it did not make the above remarks in *Re Atkinson, deceased* any less applicable.

45 A year later, the Court of Appeal decided *Wong Moy*. The plaintiff in that case claimed to be the lawful widow of the deceased, Theng, having married him in 1952. The defendant was the second wife whom Theng had married in 1964. After Theng passed away, the plaintiff commenced an action against the defendant seeking a declaration that certain property which was in the name of the defendant was held on trust for the deceased. Since the properties had been sold, the claim was directed at the proceeds of the sale. The defendant applied to the High Court to strike out the plaintiff's writ of summons and statement of claim, arguing that the plaintiff lacked *locus standi* to sue in her capacity as administratrix as she had yet to extract the letters of administration. Even when the plaintiff subsequently sought to bring the action in her capacity as a beneficiary of the estate, the claim was struck out in

the High Court. On appeal, however, the Court of Appeal held that the plaintiff had *locus standi* to bring the claim. The Court set out the following principles:

(a) The beneficiaries of an unadministered estate have no equitable or beneficial interest in any particular asset comprised in an unadministered estate (at [11]);

(b) However, in certain special circumstances, the beneficiary may institute an action to recover the assets of the estate (at [12]).

(c) What may constitute "special circumstances" depends on all the circumstances of each case, including the nature of the assets, the position of the personal representative, the reason for the default of the personal representative, or whether any circumstances made it "impossible or at least seriously inconvenient for the representatives to take proceedings" (at [27]–[28]).

46 On the facts of *Wong Moy*, the court found that "special circumstances" existed because the plaintiff had already done all she could to obtain the letters of administration, but had been prevented by circumstances not within her control from extracting the grant of administration. The beneficiary had in fact obtained grant of letters of administration but was unable to extract the grant because she had not been able to obtain the necessary clearance from the Commissioner of Estate Duty (at [30]). These "special circumstances" entitled her to bring the action *qua* beneficiary and on behalf of the beneficiaries of the estate of Theng (at [35]–[36]).

47 Both *Omar Ali* and *Wong Moy* were subsequently considered in the 2009 decision of *Ching Chew Weng* by Steven Chong JC (as he then was).

Ching Chew Weng was a case in which the plaintiff brought an action against the defendants, claiming that they held certain shares either on trust for him, or, in the alternative, on trust for his deceased's father's estate. With regard to the latter alternative, the fourth defendant claimed that the plaintiff had no *locus standi* to seek a transfer of the shares to the estate because he was not entitled to act in place of the executors of his father's estate. Citing *Omar Ali* and *Wong Moy,* Chong JC concluded that the plaintiff had *locus standi*, and further that he was not confined to declaratory reliefs and may claim *any* reliefs on behalf of the estate (at [58]-[59]):

> 58 What [*Omar Ali* and *Wong Moy*] establish is that the beneficiary is not confined to declaratory reliefs. They are able to claim any reliefs on behalf of the estate. …
>
> 59 I, therefore, determine that the plaintiff has the *locus standi* to seek an order that the Trust Assets be transferred to the estate and the consequential orders to account for dividends, income, interest and other payments, if any, to the estate.

48 The plaintiff thus urged me to find, on the strength of these authorities, that she was entitled to bring this cause of action as a beneficiary and for the benefit of the other beneficiaries of the Estate. Apart from these local decisions, another case cited and heavily relied on by the plaintiff was an English decision, *Caudle v LD Law Ltd* [2008] 1 WLR 1540 ("*Caudle*"). *Caudle* was slightly different from the local cases discussed above insofar as it specifically concerned the issue of *locus standi* for a claim in conversion, which, I note, was also one of the causes of action pleaded by the plaintiff.

49 The plaintiff in *Caudle* was a man whose former wife had died intestate, leaving their 11-year-old son as the sole beneficiary of her estate. The deceased's parents consulted the defendant company, a law firm which had provided legal services to the deceased when she divorced the plaintiff

and which had an outstanding judgment debt against the deceased. The deceased's parents also handed the defendant certain papers which were believed to include the deceased's death certificate, bank statements, credit card statements, wage slips, utility and other bills, and documents relating to her insurance policies, pension plan and other assets ("the papers").

50 The plaintiff's solicitors wrote to the defendant to tell them that he intended to apply for letters of administration as his son's legal representative, and to ask the defendant to deliver up the papers. The defendant refused, asserting that it had a lien over the papers in respect of the judgment debt. The question was whether or not the claimant, as the person entitled to the grant of letters of administration, was entitled to immediate possession of the papers and entitled to bring an action for wrongful interference with them, notwithstanding the fact that he had not obtained any letters of administration.

51 Wyn Williams J held as follows (*Caudle* at [36]):

> … it is clear, in my judgment, that a person who is entitled to the grant of letters of administration *has an immediate right to possession of personal property formerly owned by a deceased* if it is necessary that he takes possession to safeguard the estate. As I have found, such a person also has the right to take legal action to enforce that right.
>
> [emphasis added]

52 I took special notice of these remarks concerning "an immediate right to possession" because, as mentioned, one of the plaintiff's pleaded causes of action is in the tort of conversion. It is well established that, in order to have *locus standi* to sue in conversion, a plaintiff must have actual possession or a right to immediate possession of the property in question (*Antariksa Logistics Pte Ltd and others v McTrans Cargo (S) Pte Ltd* [2012] 4 SLR 250 at [44]). There was no suggestion that the plaintiff had actual possession of either the

rental income or the MDWL documents at the material time. The rental income has at all material times been paid into escrow accounts maintained on behalf of MDWL as client. As for the MDWL documents, it appears they were in the possession of MDWL until such time they were taken into the possession of Sonali and/or SVE, against whom DC 2302 was commenced (see [15(a)] above). Since the plaintiff did not have actual possession of the MDWL documents or rental income, the only way in which the plaintiff could have *locus standi* to sue in conversion was if she had the right to immediate possession. I thus considered whether the plaintiff might be able to establish such a right by bringing herself within the principle in *Caudle*. As I shall explain, however, I found that *Caudle*, like all of the other cases in the *Wong Moy* line of authorities, was inapplicable.

The *Wong Moy* line of authorities is inapplicable to the present case

53 What is clear about the *Wong Moy* line of authorities is that none of these cases involves a beneficiary seeking to assert an interest in income or assets which belongs *to a company*. In *Omar Ali*, the claim was that the leasehold interest in question had belonged to the deceased and had vested in the estate upon his death. In *Wong Moy,* the claim was that the defendant's property was held on a resulting trust for the deceased, and thereby the sale proceeds were held by the respondent on a resulting trust for the estate. In *Ching Chew Weng*, the claim was that the defendants held shares on trust for the estate.

54 The present case is different. The plaintiff is seeking "an account of all money due to the beneficiaries of the Estate which was received by the defendant" and "a declaration that the defendant is personally liable to make good all sums received by him as trustee or agent for the beneficiaries of the

Estate", but it is clear that the claims are based on allegations that the defendant has dealt with the funds and assets of *MDWL and its 22 subsidiaries* without authority.

55 Unlike *Wong Moy* and *Ching Chew Weng*, what stands between the beneficiaries of the Estate and the MDWL documents, rental income and the 22 units themselves is not a trust but the corporate forms of MDWL and the 22 subsidiaries. Indeed, in her own statement of claim, the plaintiff's complaint under "Conversion" is that:

> …the Defendant has converted the property *of MDWL and/or the 22 BVI companies and/or procured the transfer the property* [*sic*] *of MDWL and/or the 22 BVI companies* to himself and/or Shanmuga and on either or both of their directions …[41]
>
> [emphasis added]

56 Whatever his reasons for doing so, it is clear that AVS made a choice to have these assets held through corporate vehicles: separate legal entities who do not depend on their shareholder's natural life for their own life and personality. I wholly agree with the AR that the 22 units and the rental income they generate belong to the 22 subsidiaries and to MDWL respectively,[42] which are legal entities separate from AVS. The title in the 22 units and the rental income they generate did not belong to AVS, nor have they vested in the Estate by virtue of AVS' passing. The plaintiff's claim that the defendant has "deprived the Estate of its Assets" and "dissipate[d] or siphon[ed] the assets of AVS including the rental income of the 22 BVI companies" is therefore incorrect. Strictly speaking, the assets of the Estate are only the assets that belonged to AVS prior to his demise – the shares in MDWL. Even upon the grant of letters of administration, the administrator will not

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41 Statement of Claim (Tab 1, Plaintiff's BOD), para 17.

42 Certified Transcript of Summons 5158/2016, p 1.

automatically gain title to the 22 units or to their rental income. He or she will instead gain title to the *shares* which, upon distribution, will entitle the beneficiaries to participate in the company as shareholders. They may then gain control of (and eventually, title to) the assets and income of MDWL, for example, by resolving to liquidate the company and distributing its assets. Their entitlement to deal with the assets and income of MDWL (including the rental income) would of course be subject to any competing claims or applicable rules of company law.

57 Thus, an application of the *Wong Moy* authorities can only bring the plaintiff so far as entitling her to sue to recover, protect or preserve the *shares* in MDWL, but not MDWL's income or assets. I note that the plaintiff has tried to get around this by arguing that MDWL's assets were in substance AVS' assets.[43] The argument hangs very much on the fact that Shanmuga had sought a BVI freezing order in respect of MDWL's assets to support his claim for an oral indemnity which AVS gave him personally. The plaintiff says this shows that Shanmuga treated MDWL as the corporate manifestation or the alter ego of AVS. Further, the plaintiff argues that the defendant cannot now take an inconsistent position from Shanmuga by arguing that MDWL and AVS are separate legal entities, because he filed an affidavit in support of Shanmuga's BVI freezing order application in which he stated:

> It is my understanding that the shares held by Million Dragon in the Million Dragon Subsidiaries were held by Million Dragon as nominee or on trust for Mr Salgaocar as beneficial owner.

58 I pause to note that what the defendant says in the quote above is that the *shares* in the 22 subsidiaries were held on trust for AVS as beneficial owner. He does *not* say that MDWL's rental income or the subsidiaries' assets

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[43] Plaintiff's Written Submissions for RA 13/2017, paras 90–100.

are AVS' assets. I was also unpersuaded by arguments that the defendant must be estopped from approbating and reprobating because he has pursued a counterclaim in this action in which he sues the plaintiff as the executor or representative of AVS' estate.[44] The key portion of the defence and counterclaim states:

> Further and *in the alternative*, *if which is denied*, the Defendants [*sic*] is held liable to the Plaintiff, he will seek to set-off against sum awarded to the Defendant in his counterclaim in diminution or to extinguish the Plaintiffs [*sic*] claim.
>
> [emphasis added]

59 I do not think that the defendant can be faulted for having pursued the counterclaim in the *alternative*. Neither this counterclaim nor the fact that the defendant filed an affidavit in support of Shanmuga's BVI freezing order application provided sufficient reason to simply disregard the separate legal identity of MDWL.

60 Quite apart from any positions Shanmuga or the defendant may have taken in other proceedings, the point remains that the property and the profits of a company, even a single-shareholder-cum-single-director company like MDWL, belong to the company, and not to its shareholder (*Lee v Lee's Air Farming Ltd* [1961] 1 AC 12 at p 30). There being no basis for treating AVS' assets as MDWL's assets, I do not think the *Wong Moy* line of authorities will assist the plaintiff to obtain the reliefs she seeks. Indeed, there is the further question (on which I make no decision) as to how much weight should be attached to the fact that in *Wong Moy* letters of administration had in fact been granted already to the beneficiary. I note however that in *Omar Ali*, Chao J (as he then was) made the following statement at [31]: "Of course in the present

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44 Plaintiff's Written Submissions for RA 13/2017, paras 94–95.

case, no letters of administration to the estate of the intestate have yet been granted to anyone. But I did not think this difference was in any way material ..."

61 For similar reasons, I found that the plaintiff could not rely on *Caudle* to establish *locus standi* to sue in conversion. As is clear from the quote at [51] above, the principle in *Caudle* is limited to "personal property formerly owned *by a deceased*" [emphasis added]. It does not allow the plaintiff to bring an action for conversion in respect of property belonging to MDWL and/or the 22 subsidiaries.

The exceptions to the proper plaintiff rule do not assist the plaintiff

62 In urging this court to find that the plaintiff has the requisite *locus standi* to sue in respect of MDWL's property, the plaintiff has argued at length that there are exceptions to the proper plaintiff rule in *Foss v Harbottle* which are applicable to the present case. In particular, the plaintiff emphasises that there is no risk of double recovery because "the Estate is the only shareholder" in MDWL, and there is no risk of prejudice to creditors because allegedly there are none (no evidence was offered in support of this claim). In any event, the plaintiff argued, whether there would be a breach of the rule against reflective loss is a fact-sensitive matter that can only be determined at trial.

63 What the plaintiff is essentially seeking to do is to combine the *Wong Moy* line of authorities with the exceptions to the proper plaintiff rule into a new principle. The "principle" the plaintiff contends for might be stated as follows: As an extension from *Wong Moy*, a beneficiary may sue to recover not only the assets of an Estate, but also to recover *assets belonging to a company in which the Estate is a sole shareholder*. Another way of expressing the "principle" contended for, is that, as an extension from the exceptions to

the proper plaintiff rule, it is not only a *shareholder* who may sue in respect of a loss suffered by the company, but also the *beneficiaries of a deceased former shareholder's unadministered estate*. To this, the response is that, the *Wong Moy* line of authorities and the line of authorities which have departed from the proper plaintiff rule, both represent principles which are, in and of themselves, exceptional and applicable only in special and limited circumstances. In my view, it is plain and obvious that the plaintiff cannot hope to establish *locus standi* simply by grafting either one of these principles onto the other. Indeed, the plaintiff can point to no precedent in which the two disparate strands of case law have been woven together and applied holistically to an individual in her position.

64 The analysis might be different if, for example, the letters of administration had been granted and extracted, and the plaintiff was able to sue *qua sole shareholder* in a representative capacity. That is not, however, the situation at hand.

65 For the foregoing reasons, I find that the plaintiff has no *locus standi* to sue *qua* beneficiary or for the benefit of the beneficiaries under the *Wong Moy* line of authorities. For this reason, I affirm the AR's decision to strike out the writ and the statement of claim under O 18 r 19(1)(*b*) and/or O 18 r 19(1)(*d*) of the Rules. I note, however, that paras 21–24 of the statement of claim deal with the claim for breach of trust. I agreed with the plaintiff that, unlike the other pleaded causes of action, this "had nothing to do with MDWL" and should be dealt with separately. I turn, therefore, to address whether this claim should be struck out on the basis that the plaintiff has no *locus standi*.

Whether the plaintiff has locus standi *to sue for breach of trust*

66 As mentioned, the claim in breach of trust is based on a series of allegedly unauthorised withdrawals amounting to $10,000 which the defendant made using AVS' ATM card between 29 December 2015 and 31 December 2015.[45] I note that this alleged "breach of trust" occurred when AVS was still alive. Indeed, as the plaintiff herself argues, "this was property for which AVS could have sued in his lifetime".[46] The right to sue in respect of this alleged wrong, therefore, falls within s 10 of the Civil Law Act (Cap 43, 1999 Rev Ed):

> (1) Subject to this section, on the death of any person, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit *of his estate*.
>
> [emphasis added]

67 The question, however, is who is entitled to sue in respect of this cause of action for the benefit of the estate? In my view, it is clear that, apart from the Public Trustee, only a person who has obtained the grant of letters of administration is so entitled.

68 The same question was considered in the case of *Krishnasamy*. There, the plaintiff, one Maran, sued the defendant in the tort of personal injury after having sustained severe injuries in a motor vehicle accident. The defendant admitted partial liability and made an offer to settle the claim ("the Offer to Settle"). The Offer to Settle remained open for acceptance when Maran passed away from his injuries. Two weeks later, before making any application for the grant of letters of administration, Maran's mother obtained an order to be made party to the proceedings as the legal representative of Maran's estate,

45 Statement of Claim (Tab 1 of the Plaintiff's BOD), para 22.

46 Plaintiff's Written Submissions for RA 13/2017, para 89.

and purported to accept the Offer to Settle. The defendant argued that the Offer to Settle was not capable of being accepted upon Maran's death.

69 The Court of Appeal held that Maran's mother could not have accepted the Offer to Settle because she had no capacity to act for the estate. Since Maran had died intestate, under s 37(1) of the Probate and Administration Act (Cap 251, 2000 Rev Ed) read with s 10 of the Civil Law Act, his real and personal estate, including any cause of action which accrued while he was alive and which survived his death, had vested in the Public Trustee (at [21]):

> Thus, upon Maran's death, only the Public Trustee could act for Maran's estate in any matter until there was a grant of administration. Indeed, it is only when the grant is extracted that the person to whom the grant is made is finally clothed with the authority to deal with the estate …

70 These comments are similarly applicable to the claim for breach of trust in the present case. Insofar as it is a cause of action that accrued before AVS' death, it has vested in the Public Trustee. No other person is entitled to pursue the claim until the grant of letters of administration. The plaintiff's claim for breach of trust is thus unsustainable and I strike it out under O 18 r 19(1)(*b*) of the Rules.

An aside

71 Before concluding my analysis of RA 13, I pause here to make some observations. As I have mentioned, the plaintiff has chosen to frame her claim as no more and no less than "an action to recover, preserve or protect" the assets of the Estate. Mr Liew was at pains to emphasise to me that the words used in the Statement of Claim were "taken from cases like *Wong Moy*".[47] Clearly, the plaintiff sought to establish her standing to sue *qua* beneficiary

[47] Certified Transcript of RA 13/2017, p 25 line 3.

and for the benefit of the other beneficiaries of the Estate by relying on the *Wong Moy* line of authorities. In light of this, it made sense that both parties treated the applicability of that line of authorities as being the decisive issue that would determine the plaintiff's *locus standi*. Accordingly, I have made my decision on that basis.

72 Nevertheless, I make the passing observation that if even if the plaintiff did not have *locus standi* to sue under the *Wong Moy* line of authorities, this might not be the end of the inquiry. The plaintiff may have *locus standi* to sue in her *personal, individual* capacity. The issue of the plaintiff's standing would then have been assessed by reference to the specific causes of action pleaded – *ie,* conspiracy, conversion and breach of fiduciary duty – each of which have different rules governing *locus standi*. The issue of *locus standi* may well have been decided differently in that scenario. For example, the plaintiff may have *locus standi* to sue in unlawful means conspiracy because all that is required for a plaintiff to establish *locus standi* for unlawful means conspiracy is an alleged intention by the defendants to harm him/her through unlawful means (see, *eg*, *The Wellness Group Pte Ltd and another v OSIM International Ltd and others and another suit* [2016] 3 SLR 729 at [218]–[219]).

73 However, I concluded that it was unnecessary for me to consider whether I should refrain from striking out the plaintiff's claim on this basis. The plaintiff *did not* frame her claim as one brought in her personal, individual capacity. This is clear from the following:

(a) In the statement of claim, the plaintiff's grievance was not that any wrong had been done to her *personally* but that wrongs had been done to the *Estate*. For example, under the claims for unlawful and

lawful means conspiracy, the plaintiff asserted that the defendant and Shanmuga had taken steps to deprive *the Estate* of its assets, or interfered with the administration of *the Estate.*[48] Under the claim for breach of fiduciary duty, the plaintiff asserted that the defendant had "embarked on a series of acts … which constitute breach or breaches of his fiduciary duties owed to *the beneficiaries of the Estate*" [emphasis added].[49]

(b) As I have mentioned, at the hearing before me, Mr Liew, repeatedly stated that this was "an action to protect the assets of the estate",[50] and that the plaintiff was "protecting the estate as a whole".[51] Indeed, when I queried Mr Liew on whether it would be more appropriate for the plaintiff to frame her case as one to protect her own interest in the Estate, the answer, ultimately, was that the plaintiff "feels she's entitled to bring this action for the benefit of the beneficiaries [as a] whole".[52]

(c) The plaintiff was seeking not only damages for conspiracy and conversion, but an account and declaration concerning monies *due to the beneficiaries of the Estate* (see [0] – [0] above). These remedies are clearly remedies for the benefit of the beneficiaries *as a whole*.

74 For those reasons, it was not necessary for me to consider whether, apart from the *Wong Moy* line of authorities, the plaintiff might have *locus standi* to sue the defendant in her personal and individual capacity.

48 Statement of Claim, Plaintiff's BOD (Tab 1), paras 15-16.

49 Statement of Claim, Plaintiff's BOD (Tab 1), para 18.

50 Certified Transcript of RA 13/2017, page 14 lines 5-6.

51 Certified Transcript of RA 13/2017, page 14 line 18.

52 Certified Transcript of RA 13/2017, page 15 lines 18-19.

75 Nevertheless, and for the sake of completeness, I note that even if I had found that the plaintiff individually had *locus standi* to sue in respect of any of her pleaded causes of action, I would still have upheld the AR's decision to strike out the claim in its entirety. In my view, the plaintiff's claims are unsustainable and frivolous or vexatious simply because they are premised on a misconceived assumption that the defendant had no authority to handle the affairs and assets of MDWL.

76 The claims in conspiracy, conversion and breach of fiduciary duty are based on conduct which seem wholly unremarkable for any CEO of a company running its business as a going concern, *ie*, commencing an action to obtain the company's documents after they had been seized from the company office, directing its rental income into a new escrow account so as to enable the making of payments out of that account, renting out a unit held by one of the 22 subsidiaries, and instructing Haridass to pay brokerage fees, a refund and repair charges from the Haridass escrow account. This otherwise unremarkable conduct takes on a sinister hue in the plaintiff's estimation only because she takes the position that the defendant had no authority to continue running the affairs of MDWL upon AVS' demise (see [16] above). When Mr Liew was queried on the basis for this position, he simply pointed to the fact that AVS was the sole shareholder and registered director of MDWL. Therefore upon his death, "the affairs of the company came to a standstill" and the defendant no longer had authority to deal with the affairs of the company.[53]

77 Yet no authority was cited to show that just because the sole shareholder/director has passed away, the affairs of a company and the contracts of employment entered into by it must *ipso facto* terminate. I would be very surprised if that were the position under *any* applicable law. Where the

[53] Certified Transcript of RA 13/2017, page 4, line 29 to page 5 line 22.

company is operating as a going concern, which regularly incurs costs, enters transactions and receives payments from clients or customers or tenants, the consequences of such a rule would be drastic if not catastrophic. There was, furthermore, no suggestion that the terms and provisions of the contract appointing the defendant as CEO of MDWL provided that such appointment would cease upon the death of AVS.

78 Further, the plaintiff's position that the defendant did not have authority to deal in the affairs and assets of MDWL appears to be contradicted by s 109(6) of the BVI BCA (see [20] above), which I reproduce here for convenience:

> (6) If at any time a company has no director, any person who manages, or who directs or supervises the management of, the business and affairs of the company is deemed to be a director of the company for the purposes of this Act.

79 That section seems directly applicable for the scenario that arose upon the death of AVS. As for what being deemed a director "for the purposes of this Act" entails, I note that s 109(6) appears within s 109 of the BVI BCA, which sets out the general powers of directors *to manage and supervise* the business and affairs of a company (see s 109(1) of the BVI BCA).

80 Of course, the precise impact of s 109(6) of the BVI BCA upon the defendant's authority to deal in MDWL's affairs as a director is a matter of BVI law, and, strictly speaking, not an issue before me. I raise the point only to show that, as a whole, it was clear that the plaintiff's claims were unsustainable and/or disclosed no reasonable cause of action. Thus, even if the plaintiff had *locus standi* to sue for any of her pleaded causes of action in a personal capacity, I would have upheld the AR's decision to strike out the claim.

Conclusion

81 To summarise, I find that:

(a) The plaintiff does not have *locus standi* to sue *qua* beneficiary or for the benefit of the Estate under the *Wong Moy* line of authorities;

(b) The plaintiff does not have *locus standi* to sue in respect of the alleged breach of trust.

82 I, therefore, dismiss the appeal and uphold the AR's decision to strike out the plaintiff's writ and statement of claim in their entirety. Costs in respect of RA 13 are to be paid by the plaintiff to the defendant, to be taxed, if not agreed.

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Sequence of events

83 It is noted that after the AR's decision, the defendant's solicitors drew up a draft order of court ("the Draft Order") which it then sent to the plaintiff's solicitors via fax and post on 13 January 2017, which was a Friday. Not having received a response from the plaintiff's solicitors, in the afternoon of 18 January 2017, a Wednesday, the defendant extracted the order of court ("the Order"). In fact, the plaintiff only received the Draft Order on 18 January 2017 at or about 3.24 pm.

84 The plaintiff complains that this was done without the two days' notice required by O 42 r 8(1) of the Rules. Specifically, the plaintiff argues that under O 62 r 6(3) of the Rules, service by fax was invalid. As regards the fact that the defendant's solicitors had sent the Draft Order to the plaintiff's solicitors by post, under s 2(5) of the Interpretation Act (Cap 1, 2002 Rev Ed),

service of the Draft Order was deemed to have been effected "at the time at which the letter would be delivered in the ordinary course of post". In this case, that would have been 16 January 2017, a Monday. The plaintiff contended that its solicitors should have had until the *end* of 18 January 2017 to respond to the defendant's solicitors.

85 On 18 January 2017, the plaintiff's solicitors wrote in to court requesting that the Order be set aside and the plaintiff be allowed the prescribed period of two days to respond to the defendant's solicitors. The court replied on 19 January 2017, asking the parties to specify what about the extracted order the plaintiff took issue with.

86 The plaintiff wrote back to the court on 20 January 2017 explaining that its objection related to the preamble of the Order, which stated that, "upon the application of VIVEK SUDARSHAN KHABYA (FIN No. XXXXXXXXX) the Plaintiff in Counterclaim and VIVEK SUDARSHAN KHABYA (FIN No. XXXXXXXXX)", the defendant's application was allowed and the action in Suit 949 was struck out. The plaintiff contends that Summons 5158 was taken out "only by the Defendant in the action and not the Plaintiff in the Counterclaim".[54] Its concern was apparently that the preamble "may give rise to the unwarranted and serious implication … that the Defendant is entitled to Judgment on his Counterclaim."

87 Later that same day, the court replied stating that the learned Assistant Registrar James Elisha Lee ("AR Lee") had rejected the request to set the order aside, but the plaintiff was at liberty to file an application for the preamble of the Order to be amended. Registrar's Appeal No 31 of 2017 ("RA

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54 Plaintiff's BOD for RA 31/2017, Tab 5.

31") is the plaintiff's appeal against AR Lee's decision refusing to set the Order aside.

Decision

88 I agree with the plaintiff that there has been a failure to comply with O 42 r 8(1) of the Rules. The earliest "time at which the letter would be delivered in the ordinary course of post" would have been Monday, 16 January 2017. Thus, under s 2(5) of the Interpretation Act, the time at which service of the Draft Order is deemed to have been effected is Monday, 16 January 2017. I agreed that the plaintiff should have had until the end of 18 January 2017 to respond to the defendant's solicitors. The question, however, was whether AR Lee was right to have exercised his discretion by refusing to set aside the Order, notwithstanding this irregularity.

89 In this regard, I note that O 2 r 1(1)–(2) of the Rules provides as follows:

> (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by any reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.
>
> (2) Subject to paragraph (3), the Court may, on the ground that there has been such failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

90 O 2 r 1(2) of the Rules confers the court with "wide discretionary powers" (*Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 at [20]). When faced with a procedural irregularity such as that in the present case, the court is entitled to set aside the order, or exercise its powers to allow any amendments, or to make such order dealing with the proceedings generally as it thinks fit. One key (though not necessarily decisive) consideration in the court's exercise of its discretion is whether or not the opposing party has suffered prejudice by reason of the procedural irregularity (*Metroinvest Ansalt v Commercial Union Assurance* [1985] 1 WLR 513 at p 521, cited by the Singapore Court of Appeal in *The "Melati"* [2004] 4 SLR(R) 7 at [26]).

91 Having considered the substance of the plaintiff's objection to the Order, AR Lee exercised his discretion by refusing to set the Order aside, but also granted the plaintiff leave to make an application for amendment. I see no reason to disturb that decision. Accepting that the Order had been extracted prematurely, the only prejudice suffered by the plaintiff, as I saw it, was that the plaintiff's solicitors might otherwise have had an opportunity to object to the Draft Order and to write to the defendant's solicitors proposing their amendments. However, the defendant has resisted RA 31 and argued that the plaintiff's substantive objections to the preamble of the Order are without merit.[55] From that I gather that the parties would not likely have been able to agree on the plaintiff's solicitors' proposed amendments. In that event, under O 42 r 8(3) and O 42 r 8(4) of the Rules, the terms of the Order would have to be settled by the Registrar. If that has not already taken place in some sense through the plaintiff's correspondence with the court (see [85]–[86] above), AR Lee further suggested that the plaintiff may apply to amend the preamble

[55] Defendant's Skeletal Submissions for RA 31/2017, para 64.

to the Order if she wished. The plaintiff, instead of filing such an application and making the appropriate arguments therein, filed RA 31.

92 In my view, the procedural irregularity in this case did not cause any material prejudice to the plaintiff, and AR Lee was fully entitled to refuse to set aside the judgment. Even if the defendant's failure to abide by O 42 r 8(1) did cause any to the plaintiff prejudice, such prejudice was fully addressed by AR Lee's direction that the plaintiff could file an application for amendment if it so wished. Not having taken this up, the plaintiff cannot now insist that the Order ought to have been set aside because of non-compliance with O 42 r 8(1). Thus, in my view, the appeal should be dismissed. I recognise, however, that the problem began with the defendant's failure to abide by the aforesaid rule. I, therefore, make no order as to costs.

George Wei
Judge

Liew Teck Huat and Dafril Phua (Niru & Co LLC) for the plaintiff;
S Magintharan and Vineetha Gunasekaran (Essex LLC)
for the defendant.
