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

[2024] SGHC 299

Suit No 211 of 2019
(Registrar's Appeal No 186 of 2024)

Between

Sang Cheol Woo

… *Plaintiff*

And

(1) Charles Choi Spackman
(2) Kim Jae Seung
(3) Kim So Hee
(4) Richard Lee
(5) Funvest Global Pte Ltd
(6) Spackman Media Group Limited
(7) Plutoray Pte Ltd
(8) Vaara Pte Ltd
(9) Starlight Corp Pte Ltd

… *Defendants*

JUDGMENT

[Civil Procedure — Amendments]
[Abuse of Process — *Riddick* principle]

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v
Spackman, Charles Choi and others

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11 November 2024

26 November 2024 Judgment reserved.

Kwek Mean Luck J:

Introduction

1 This is an appeal by the Plaintiff in HC/S 211/2019 ("S211") against the decision of the learned Assistant Registrar ("AR") in HC/SUM 2148/2024 ("SUM 2148"), where the AR granted leave to the 2nd and 3rd Defendants ("2D and "3D" respectively, collectively the "Defendants") to amend their Defence.

2 This appeal raises the following issues:

(a) Whether "proceedings" for the purposes of O 20 r 5(1) Rules of Court (2014 Rev Ed) ("ROC 2014") are still afoot, when the first stage of the trial in S211 on the enforceability of a foreign judgment against the 1st Defendant ("1D") has been determined, but the second stage on 2D and 3D's liability for conspiracy has not been determined.

(b) Whether there is abuse of court process by the Defendants bringing forth the amendment application.

(c) Whether the principle set out in *Riddick v Thames Board Mills Ltd* [1997] QB 881 (the "*Riddick* principle") applies to non-parties.

(d) Whether the *Riddick* principle applies to documents which were disclosed for the purpose of resisting a specific discovery application, but not under compulsion of a court order.

(e) Whether there is a real question to be determined by the proposed amendment application.

Background

3 By way of HC/SUM 4716/2021 ("SUM 4716"), 1D successfully applied for S211 to be bifurcated. The first stage of S211 involved 1D and dealt with, amongst other things, the issue of whether a Seoul High Court Judgment ("SHCJ") was enforceable in Singapore ("1st stage trial"). The other defendants in S211 were given leave to provide submissions at the end of the 1st stage. They also agreed to be bound by the decision made in this stage of S211[1]. On 30 November 2022, by way of *Sang Cheol Woo v Charles Choi Spackman and ors* [2022] SGHC 298 ("Judgment"), the High Court allowed the Plaintiff's claim for the enforcement of the SHCJ in Singapore. The second stage of S211 has yet to proceed. In this tranche, the Plaintiff's claims in lawful and unlawful means conspiracy against all the defendants will be determined ("2nd stage trial").

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1 Notes of Evidence ("NE") for HC/SUM 4716/2021 dated 22 November 2021 at pp 5-6.

4 In HC/S 592/2020 ("S592"), Spackman Entertainment Group Limited ("SEGL") brought a claim against the Plaintiff for defamation. In the Plaintiff's 6th affidavit filed in S592 on 4 April 2024 ("Plaintiff 6th Affidavit"), the Plaintiff stated that he had entered into "a contingency fee arrangement with KK, pursuant to which [he] agreed to pay to KK a certain additional amount out of the net recovery from [his] enforcement of the [SHCJ]" ("KK Fee Arrangement") [2]. "KK" refers to Kobre & Kim LLP, who are the Plaintiff's foreign counsel. 2D is 1D's brother-in-law while 3D is 1D's wife. The Defendants' position is that the Plaintiff's statement in his 6th Affidavit may potentially contradict the statement he made during the 1st stage trial that he was "not in any agreement to share the fruits of this proceeding with any third party"[3].

5 The Defendants applied to amend their Defence, to include that: (a) the Plaintiff entered into the KK Fee Arrangement, which encompasses S211 and is prohibited and/or unenforceable under Singapore law; and (b) in light of the above, the Plaintiff's claim in S211 is tainted by maintenance and/or champerty and is thus an abuse of process.

AR's decision

6 The AR allowed the amendments to the Defence.

7 The AR noted that authorities such as *Choo Cheng Tong Wilfred v Phua Swee Khiang and another* [2022] SGHC(A) 5 ("*Choo Cheng Tong*") show that

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2 Woo Sang Cheol's 6th Affidavit in HC/S 592/2020 dated 4 April 2024 at [26].

3 Joint Bundle of Documents (Volume 1) ("JBOD-1") at p 65, NE 13 Sept at p 91 ln 6-10.

the prohibition against maintenance and champerty in the common law, does not extend only to the relationship between the instructed lawyer and client[4].

8 In considering the effect of a potentially champertous fee agreement on S211 (as opposed to on the KK Fee Arrangement itself), the AR took the view that it is open for the Singapore courts to adopt the English position in *Lyubov Andreevna Kireeva v Zolotova & Anor* [2024] EWHC 552 (Ch) ("*Kireeva*") (at [117]), or to adopt an even stricter approach. This should be ventilated with the benefit of all evidence surrounding the KK Fee Arrangement as well as full submissions after trial. A defence premised on the KK Fee Arrangement was not unsustainable such that the proposed amendments to introduce this defence should not even have been allowed. It also could not be said that the application was brought in bad faith as there was a valid ground for the application to only have been brought *after* the Judgment for the 1st stage trial. The fact that the Judgment may be reopened did not mean that there would be prejudice that could not be compensated by costs such that it would be unjust to allow the amendments[5].

9 Based on *ED&F Man Capital Markets Ltd v Straits (Singapore) Pte Ltd* [2020] 2 SLR 695 ("*ED&F*"), the *Riddick* undertaking binds third parties who were not party to the suit in which the document or information was disclosed by compulsion. However, the Plaintiff's 6th Affidavit was not accompanied by a court order compelling the disclosure. The *Riddick* principle is thus not engaged. Even if it was so engaged, the open court exception in *Foo Jong Long*

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4 Joint Bundle of Documents (Volume 2) ("JBOD-2") at p 148, [10].

5 JBOD-2 at pp 148-149, [11]-[14].

Dennis v Ang Yee Lim and another [2015] 2 SLR 578 ("*Dennis Foo*") would apply[6].

Plaintiff's case

10 The Plaintiff raises the following grounds of appeal.

11 The proposed amendments are an abuse of process. They will only allow 2D and 3D to attack the final and conclusive Judgment that the High Court has granted against 1D, which is binding on the other defendants in S211.

12 O 20 r 5(1) ROC 2014 does not permit a defendant to amend his claim where the claim (here, the enforcement claim) has been finally and conclusively resolved by the Court (in the 1st stage trial). From the language of the proposed amendment and given where it is sought to be situated in the Defence, it is clearly targeted at the enforcement claim that is the subject of the Judgment.

13 There is abuse as 1D had already attempted to raise the matters in the proposed amendments before the Judgment was granted. The Defendants decided *not* to take procedural steps available to them, to challenge the Judgment in respect of the proposed amendments (both before and after its grant). The Defendants cannot now be permitted to have a second bite at the cherry.

14 Contrary to the Defendants' allegation, the Plaintiff did not say in his 6th Affidavit that S211 was funded by third parties. They conflate a contingency fee arrangement with a third-party funding arrangement (which the Plaintiff consistently maintained he has not entered into).

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6 JBOD-2 at pp 149-150, [15]-[16].

15 The doctrine of champerty and maintenance is a rule of public policy concerned with the protection of "the purity of justice and the interests of vulnerable litigants" in relation to the administration of justice in Singapore; *Re Vanguard Energy Pte Ltd* [2015] 4 SLR 597 ("*Re Vanguard Energy*") at [46]. The doctrine does not apply to fee arrangements entered into with foreign counsel that do not have a "direct or necessary relationship" to Singapore litigation; *Mansell v Robinson* [2007] All ER (D) 279 (Jan) ("*Mansell*") at [9]. Singapore public policy is not infringed upon in such scenarios. In *In re Trepca Mines Ltd (No. 2)* [1963] Ch 199 ("*In re Trepca*") at p 220, Denning LJ pointed out that the practice of a contingency fee arrangement is prevalent in the United States of America. At the point where *In re Trepca* was decided, maintenance was still criminal and tortious in England. Denning LJ nevertheless ruled that it was permissible for an English lawyer to act in English litigation at such an American's lawyer's request or instructions unless he has himself in some way or other participated in the champertous agreement; *In re Trepca* at p 220–221.

16 Even assuming that the doctrine of champerty and maintenance does apply, the Defendants have critically failed to plead (in the proposed amendments) any conduct amounting to abuse of process on the part of the Plaintiff. *Kireeva* affirms that "the fact that a funding agreement may be against public policy and therefore unenforceable as between the parties to it is by itself no reason to regard the proceedings to which it relates or their conduct as an abuse"; *Kireeva* at [107]. In *Kireeva*, the court refused to strike out the defence as there were "at least some reason" to think that the arrangement was champertous. Here, there is no reason for such a conclusion.

17 The Plaintiff only disclosed information in his 6th Affidavit to resist any formal orders for specific discovery. It was disclosed under compulsion. Hence, the 6th Affidavit and its contents are protected by the *Riddick* undertaking. In

Lim Suk Ling Priscilla and anor v Amber Compounding Pharmacy Pte Ltd and anor and anor matter and anor appeal [2020] 2 SLR 912 *("Priscilla Lim*"), the Court of Appeal referred to *ED&F* and stated at [1] that "the core principle applies equally to documents which were disclosed to resist interlocutory applications" even if not made under compulsion of a court order.

18 This approach is consistent with that taken in Australia. In *Helicopter Aerial Surveys Pty Ltd v Garry Robertson* [2015] NSWSC 2104, the court held at [17]:

> **The implied undertaking should in principle be regarded as attaching** not only to documents produced as a result of the actual invocation of compulsory process, but equally **to documents produced in response to an informal request for disclosure in the context of proceedings in which, but for informal disclosure, a formal order could have been obtained**. (emphasis added)

19 These principles apply equally to an affidavit filed under compulsion as they do a document; *Ong Jane Rebecca v Lim Lie Hoa and or appeals and or matters* [2021] 2 SLR 584 ("*Ong Jane Rebecca*") at [106].

20 The *Riddick* undertaking applies even to non-parties to the proceedings in which the document was disclosed (under compulsion); *Distillers Co (Biochemicals) Ltd v Times Newspapers Ltd* [1975] QB 613 ("*Distillers*") at 621C-621F; *Riddick* at 896D, 901H-902A; *Hearne v Street* (2008) 248 ALR 609 ("*Hearne*") at [110]-[112]; *Dennis Foo* at [61].

21 The *Riddick* principle ceases to apply only when documents are used in open court. However, the S592 specific discovery application was heard in chambers. These hearings are private in nature; *Lee Hsien Loong v Review Publishing Co Ltd and anor and anor suit* [2007] 2 SLR(R) 453 at [8]. They

cannot therefore be considered to have taken place in "open court". The *Riddick* principle would thus continue to apply to the Plaintiff's 6th Affidavit.

22 Further, the proposed amendments should not be allowed as they will cause irreparable prejudice to the Plaintiff, by allowing issues in the final, conclusive and binding Judgment to be reopened. In *Emjay Enterprises Pte Ltd v Skylift Consolidator (Pte) Ltd (Direct Services (HK) Ltd, third party)* [2006] 2 SLR(R) 268 ("*Emjay*"), interlocutory judgment was entered on behalf of the plaintiff. The defendant sought to amend its pleadings to raise a limitation of liability clause at the stage of assessment of damages. The High Court found (at [32]) that this related to liability rather than quantum. As interlocutory judgment had been entered into by this point, allowing the amendment application would cause irreparable prejudice to the plaintiff.

Defendants' case

23 The Defendants make the following submissions.

24 The court in *Kireeva* stated that while the fact that an arrangement is champertous does not of itself provide a substantive defence to the action, it may (depending upon the specific facts of the particular case) result in the proceedings themselves constituting an abuse of process; *Kireeva* at [117.4]. In determining whether champerty amounts to an abuse of process, the Court would consider the terms and circumstances of the fee arrangement in question; *Meadowside Building Developments Ltd v 12-18 Hill St Management Company Ltd* [2019] EWHC 2651 (TCC) ("*Meadowside*") at [122]–[123]. However, it is the Plaintiff's own deliberate refusal to produce the KK Fee Arrangement which results in the Court not being able to properly examine the terms and

circumstances of the KK Fee Arrangement, to determine if there has been an abuse of process.

25 There is at least a *prima facie* case that the KK Fee Arrangement is champertous. The Plaintiff does not deny that S211 falls within the scope of the KK Fee Arrangement and that KK would receive a portion of any damages that the Plaintiff obtains in S211. The Plaintiff has admitted that KK acts as "instructing solicitors" for his Singapore solicitors in S211. He has also not denied that KK's legal fees are not being paid by him. The Plaintiff disputes the true nature of the KK Fee Arrangement, but that should be determined after proper pleadings are filed and with proper discovery given on the issue.

26 It is highly suspect that Plaintiff would agree for KK to receive a portion of the S211 recovery proceeds, without KK contributing at least a portion of the funding for S211. Despite the Plaintiff's claims, the Plaintiff has refused to produce the KK Fee Arrangement to support the bare assertions on the legitimacy and nature of the KK Fee Arrangement. Where a party faced with allegations of champerty refuses to produce the fee arrangement in question, the Court should not dispose of the matter on a summary basis and the matter should be determined at trial if there is "at least a realistic prospect" or "at least some reason" to think that the fee arrangement is champertous and there is an abuse of process: *Meadowside* at [126]; *Kireeva* at [123]. The true nature of the KK Fee Arrangement should be determined after proper pleadings are filed and with proper discovery given on the issue.

27 Contrary to the Plaintiff's submission, this is not an attempt at a back-door appeal. The 1st stage trial did not deal with the issues of maintenance or champerty as they were not part of the pleaded case. The proposed amendments arise from the contents in the 6th Affidavit, filed on 4 April 2024, after the

Judgment was delivered. It would not have been possible for the Defendants to highlight this then.

28 *Choo Cheng Tong* shows that the principles on maintenance and champerty do not apply only to the lawyers on record for any litigation proceedings. That KK is a foreign law firm and not the solicitors on record for S211, does not preclude the Court from finding that the KK Fee Arrangement is tainted by maintenance / champerty.

29 The *Riddick* principle does not apply to the Plaintiff's 6th Affidavit as it was not produced under compulsion of a Court order. Even if it did, it would be deemed to have been used in open court and the *Dennis Foo* exception to the *Riddick* principle would apply.

30 There is no prejudice caused to the Plaintiff. If his claims are true, there would not be any consequence on the Judgment. He would not suffer prejudice that cannot be compensated by costs. However, if the KK Fee Arrangement is found to be champertous and the Plaintiff's claim is an abuse of process, any consequence on the Judgment is a natural consequence of the prohibition against champerty. That is for 1D to take up.

Legal principles on amendment of pleadings

31 The legal principles on amendment of pleadings are well established. Amendments ought to be allowed if they would enable the real question and/or issue in controversy between the parties to be determined. The court should have regard to whether the amendments would cause any prejudice to the other party which cannot be compensated in costs; and whether the party applying for leave to amend is effectively asking for a second bite at the cherry; *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 at

[113]. It is trite law that amendments should not be allowed if they are factually or legally unsustainable and liable to be struck out.

Decision

Whether the proceedings against the Defendants are still afoot

32 The first main ground of appeal is that the Defendants cannot rely on O 20 r 5(1) ROC 2014 to amend their defence. This rule states:

> **Amendment of writ or pleading with leave (O. 20, r. 5)**
>
> **5.**-(1) Subject to Order 15, Rules 6, 6A, 7 and 8 and this Rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

33 The Plaintiff submits that the "proceedings" here, which he characterises as the enforcement claim, has been conclusively resolved by the Court in the Judgment. Consequently, the Court does not have jurisdiction to hear the amendment application.

34 In *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd and anor and or appeals and anor matter* [2022] 1 SLR 643 ("*Shanghai Shipyard*"), the Court of Appeal considered the meaning of "at any stage of proceedings" under O 15 r 6(2)(b) ROC 2014 (which deals with joinder of parties). The Court held at [11] that the power under this provision:

> …will only exist while the underlying proceedings remain afoot. Obviously, such power will exist before judgment. On the other hand, the court has the power to order joinder post-judgment if and only if something "remains to be done" in the matter, such as the assessment of damages …

35 As a matter of consistency within the ROC 2014, and as a matter of principle, I find that the Court of Appeal's observations above in *Shanghai*

Shipyard are equally applicable to the consideration of whether "proceedings" for the purposes of O 20 r 5(1) ROC 2014 are afoot. Counsel for the Plaintiff agreed that *Shanghai Shipyard* is applicable as the language is the same.

36 In *Shanghai Shipyard*, the Court of Appeal explained at [17]:

> In our view, to determine whether something "remains to be done, the approach taken must be conditioned on the nature of the underlying action, with **especial attention to the nature of the remedy sought by it.** Generally, however, **where there has been a judgment on the merits conclusively determining parties' rights in the action (for example, a judgment determining both liability and quantum** in an ordinary writ action for damages), and the time for appeal against that judgment has expired, then nothing "remains to be done" and the court's power to order joinder ceases on the expiry of the time for appealing. [emphasis added]

37 In this case, and as explained at [3] above, S211 was bifurcated. In the 1st stage trial, the Plaintiff sought in S211 to enforce certain foreign judgments, including the SHCJ against 1D ("Enforcement Claims"). The Plaintiff also brought claims against 1D and other defendants, for lawful and unlawful means conspiracy ("Conspiracy Claims"); these would be heard in the 2nd stage of trial, if necessary, after the disposal of the Enforcement Claims. The remedy sought by the Plaintiff in S211 against 2D and 3D involves not just the enforcement of the SHCJ, but also their liability under the Conspiracy Claims. In *Shanghai Shipyard*, the court referred at [17] to *The Duke of Buccleuch* [1892] P 201, where Fry LJ had concluded that something remained to be done, as the assessment of damages was still outstanding. In this case, not only has the quantum of damages not been determined, liability of 2D and 3D also remains to be determined.

38 It is clear that in this case, something "remains to be done", as described in *Shanghai Shipyard*, namely the Defendants' liability in S211.

39 In summary, I find in respect of this first ground of appeal, that this Court has jurisdiction pursuant to O 20 r 5(1) ROC 2014 to hear the Plaintiff's amendment application, and that 2D and 3D are entitled to rely on the provision as proceedings *against them* have not concluded.

Whether the proposed amendments amount to an abuse of process

40 The second main ground of appeal is that the proposed amendments are a collateral attack on the Judgment, and a form of backdoor appeal. Hence, even if the Court has jurisdiction to hear the amendment application, it should not allow it because of the abuse of court process.

41 In my view, as the Plaintiff's 6th Affidavit was only filed after the Judgment was delivered, the amendment application cannot be said to be brought in bad faith or as an abuse of process.

42 There is a distinction here with the facts in *Emjay*, which the Plaintiff relies on. There, the limitation of liability clause was already present at the time when liability was heard. The defendant could have but did not rely on it to dispute liability, but instead relied on it to dispute the quantum of damages. In contrast, the Defendants in this case are relying on a statement of the Plaintiff made in an affidavit that was only filed after the Judgment was delivered. Furthermore, as mentioned above, the Judgment only goes towards the enforceability of the SHCJ in Singapore and not to the liability of 2D and 3D in S211.

43 The Plaintiff also raises concern that there is potential abuse of court process, by 2D and 3D later seeking to attack the Judgment, when they were given leave to file submissions on it and had agreed to be bound by it. In respect of this, counsel for 2D and 3D confirmed at the hearing on 11 November 2024

that 2D and 3D are not going to challenge and revisit the Judgment, or the enforceability of the SHCJ, at any point[7]. After the hearing, solicitors for 2D and 3D wrote to the Court to "reiterate and state" their position.[8] Solicitors for the Plaintiff responded that 2D and 3D's stated positions in that correspondence were narrower than that confirmed in court.[9] Solicitors for 2D and 3D then wrote to confirm and reiterate the confirmations made at the hearing as well as in their letter.[10] I have proceeded on the basis of the confirmation that was provided to the Court and counsel for the Plaintiff at the hearing.

Whether the Riddick Principle applies to non-parties

44 The third main ground of appeal is that the Plaintiff's 6th Affidavit is protected by the *Riddick* principle.

45 The Defendants maintain that the *Riddick* principle is not applicable to non-parties, and that it only applies where the non-party was aware of the application of the *Riddick* principle and there is some abuse of court process by that non-party, for example, using the disclosed documents for purposes other than what they were originally provided for[11].

46 In my view, the Riddick principle must be applicable to non-parties, even without the caveat of 2D and 3D. This position is fortified by the authorities cited by the Plaintiff, namely *Distillers* at 621C-621F and *Hearne* at [110]–[112]. I also agree with Chan Seng Onn J's (as he then was) observation

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7 NE for RA 186/2024 dated 11 November 2024 at p 8.

8 Rajah and Tann's letter dated 13 November 2024.

9 Wong Partnership's letter dated 14 November 2024.

10 Rajah and Tann's letter dated 15 November 2024.

11 NE for RA 186/2024 dated 11 November 2024 at p 6.

in *Dennis Foo* at [61], that maintaining the distinction between parties and non-parties would allow for the absurd situation where any party to proceedings bound by the *Riddick* principle would be able to easily undermine the principle by simply passing the document in question to a third party.

47 In any event, even on the Defendants' submission, they would potentially be bound by the *Riddick* principle as non-parties, since they were aware of its application and are seeking to use it for purposes other than what they were originally provided for. The Defendants did not have a substantial response to this, but relied on their position that the Affidavit is not covered by the *Riddick* principle since there was no compulsion by court order[12].

Whether the Riddick principle applies to documents that were not disclosed under compulsion of court order

48 That is the nub of the issue here: whether the Plaintiff's 6th Affidavit is protected by the *Riddick* principle, since it was not filed pursuant to a court order. In *ED&F*, the Court of Appeal held in [71]:

> There was no principled basis to extend the *Riddick* principle to apply to documents which were not ordered to be disclosed but were instead disclosed by a party to resist a pre-action disclosure application. The *Riddick* principle was developed to balance competing public interests in the context of discovery made under compulsion, and it has no application where there is no court order compelling the disclosure.

49 The Plaintiff relies on dicta from the Court of Appeal in *Priscilla Lim* at [1], referencing its earlier decision in *ED&F,* stating:

> One of the core principles which regulates the conduct of civil proceedings is that documents ordered to be disclosed are to be used only for the purposes of the civil proceedings from which the disclosure was made. **In fact, this court in its recent**

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12 NE for RA 186/2024 dated 11 November 2024 at p 6.

> **decision in *ED&F Man Capital Markets Limited v Straits (Singapore) Pte Ltd* [2020] SGCA 64 held that this core principle applies equally to documents which were disclosed to resist interlocutory applications even if such disclosure was, strictly speaking, not made under compulsion of a court order**. [emphasis added]

50 The Plaintiff submits that the circumstances in which he filed his 6th Affidavit are those illustrated in *Priscilla Lim* at [1]. It was not made voluntarily, but under compulsion to resist the S592 discovery application.

51 I am unable to agree with the Plaintiff's reading of *Priscilla Lim* at [1]. Counsel for the Plaintiff accepted at the hearing that at the most, it could only be submitted that the cases are not very clear, and that it appears from *Priscilla Lim* that the position is not as clear as *ED&F* made it to be[13].

52 I take a different reading of both cases and find that there is no inconsistency between the two Court of Appeal decisions.

53 First, it is clear from the language at [1] of *Priscilla Lim* that the Court of Appeal did not consider the dicta there to be inconsistent with what it had recently delivered in *ED&F*. If it did, it is likely that the Court would have provided further explanation of why the position had changed, but it did not.

54 Second, the Court of Appeal was explicit in *ED&F* that the *Riddick* principle only applies to documents disclosed under compulsion of a court order.

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[13] NE for RA 186/2024 dated 11 November 2024 at p 10.

(a) It was explicitly stated (at [81]) that "the *Riddick* principle was not engaged because the subject documents were not disclosed under compulsion of a court order."

(b) It was also explicitly stated (at [71]) that there "was no principled basis to extend the *Riddick* principle to apply to documents which were not ordered to be disclosed but were instead disclosed by a party to resist a pre-action disclosure application."

55 Third, the Court of Appeal grounded its decision in *ED&F*, not on the application of the *Riddick* principle but on the abuse of process. The Court found that the application for pre-action disclosure was an attempt to obtain documents and information to assist the appellant in the UK proceedings. That is not the purpose of the pre-action disclosure regime. The use of the disclosed documents in the UK proceedings therefore amounted to an abuse of process and could not be permitted to continue; at [63] and [76]. The abuse of process is a broad concept that permeates all of civil procedure and the *Riddick* principle is essentially an expression of the doctrine of abuse of process; at [72] and [73].

56 Fourth, when the Court of Appeal in *ED&F* discussed the concept of voluntariness, it emphasized that voluntariness is not an exception to the *Riddick* principle. It then went on to explain, why notwithstanding the inapplicability of the *Riddick* principle, the court did not regard the disclosure there to be voluntary. This was because the disclosure was not made in response to an order for disclosure, but the express reservation nonetheless demonstrated that the disclosure could not possibly be regarded as voluntary since it was disclosed in order to defeat the application; at [81] and [93].

57 In view of the above, I do not find that the Court of Appeal in *Priscilla Lim* was advancing a position different from what it had explicitly stated in *ED&F*, namely that the *Riddick* principle is not engaged where the subject documents were not disclosed under compulsion of a court order, but were instead disclosed by a party to resist a pre-action disclosure application.

58 Consequently, I find that the Plaintiff's 6th Affidavit is not protected by the *Riddick* principle. In view of this, it is not necessary to examine the extent to which the open justice exception to the *Riddick* principle applies.

Whether there is a real question to be determined

59 I turn to the fourth main ground of appeal, which is whether there is a real question or issue in controversy to be determined. I find that there is.

60 While the Plaintiff submits that s 107(1) of the Legal Profession Act 1966 (2020 Rev Ed) does not govern foreign lawyers' conduct, it was made clear in *Choo Cheng Tong Wilfred v Phua Swee Khiang and another* [2021] SGHC 154 ("*Choo Cheng Tong (HC)*") that even though s 5A(1) of the Civil Law Act 1909 (2020 Rev Ed) abolished the common law tort of maintenance and champerty, it remains "established" law that contracts which savour of maintenance or champerty are void as being contrary to public policy *at common law;* at [268].

61 What is undisputed is that KK acts as instructing solicitors for the Plaintiff in S211 and that there is a contingency fee arrangement between the Plaintiff and KK. In addition, the Plaintiff had stated at the 1st stage trial in S211, that "I am not in agreement to share the fruits of this proceeding with any third

party".[14] On the other hand, in his 6th affidavit, he stated that "I agree to pay to KK a certain additional amount out of the net recovery from my enforcement of the Korean Default Judgment"[15].

62 I accept counsel for the Plaintiff's submission that the Plaintiff may have given the answer he did in S211 because of the question that was posed to him. On the face of the two statements, I cannot conclude that there was untruth from the Plaintiff.

63 However, there remains some inconsistency between the two statements, on their face. The Defendants have also raised a question which should be explored with the benefit of evidence: whether the Plaintiff would agree for KK to receive a portion of S211 recovery proceeds without KK contributing at least a portion of the funding for S211.

64 In the event that a Singapore court adopts the principles in *Kireeva*, whether it is only the fee arrangement that cannot be enforced or if the underlying claim for the Judgment would be affected, depends on whether there is abuse of process. That in turn depends on the factual circumstances, including the terms and nature of the arrangement.

65 However, as was the situation in *Kireeva* at [123] and *Meadowside* at [126], the actual arrangement is not put in evidence before the court by the Plaintiff. While the Defendants have not put in explicit pleadings of abuse of process, I accept that this is because the KK Fee Arrangement is not in evidence. A claim is "factually unsustainable" if it is "possible to say with confidence

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14 JBOD-1 at p 65.

15 Woo Sang Cheol's 6th Affidavit in HC/S 592/2020 dated 4 April 2024 at [26].

before trial that the factual basis for the claim is fanciful because it is entirely without substance"; *The "Bunga Melati 5"* [2012] 4 SLR 546 at [39(b)]. On the facts I have indicated above, I cannot say that the proposed amendments are factually unsustainable.

66 In the premises, I am unable to conclude now that 2D and 3D's proposed amendments are factually or legally unsustainable and that they should be struck out.

67 I also do not find that allowing the amendments would cause irreparable prejudice to the Plaintiff which cannot be compensated by costs. If the KK Fee Agreement is entirely legitimate, the Plaintiff's claim against the Defendants for liability would remain unaffected. The Plaintiff may be compensated for defending against this claim, by an order of costs. If the KK Fee Agreement is found to be champertous, and the Plaintiff's case against the Defendants for liability is affected, that would be the natural consequence of the prohibition against champerty. I agree with the AR's findings in this regard.

Conclusion

68 For the above reasons, the Plaintiff's appeal is dismissed. Parties are to file their written submissions on costs, of not more than 5 pages, within a week of this Judgment, if they are unable to agree on costs.

Kwek Mean Luck
Judge of the High Court

Lin Weiqi Wendy and Fan Wai Leong, Benson (WongPartnership LLP) for the plaintiff;
Wayne Yeo and Mark Tang Yu Zhong (Rajah & Tann Singapore LLP) for the second and third defendants;
Lee Tat Weng, Daniel (Breakpoint LLC) for the fourth and sixth defendants (watching brief).
