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

[2025] SGHCR 14

Suit No 592 of 2020 (Summons Nos 1671, 1955 & 1956 of 2024)

Between

Spackman Entertainment Group Limited

… *Plaintiff*

And

Woo Sang Cheol

… *Defendant*

GROUNDS OF DECISION

[Abuse of Process — *Riddick* principle — Cogency of the evidence]
[Civil Procedure — Discovery of documents — Redaction]
[Civil Procedure — Unless orders]

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v
Woo Sang Cheol

[2025] SGHCR 14

General Division of the High Court — Suit No 592 of 2020 (Summons Nos 1671, 1955 & 1956 of 2024)
AR Reuben Ong
23 December 2024, 1 January, 3 February 2025

23 May 2025

AR Reuben Ong:

1 In Suit No 592 of 2020 ("Suit 592"), the plaintiff, a film production company, claims against the defendant businessman for defamation, malicious falsehood and unlawful interference with trade. Three interlocutory applications were placed before me:

(a) Summons No 1671 of 2024 ("SUM 1671" or "the Specific Discovery Application") is the defendant's application for specific discovery.

(b) Summons No 1955 of 2024 ("SUM 1955" or "the Unless Order Application") is the plaintiff's application for an unless order to be made against the defendant for his alleged failure to comply with a prior discovery order ("the Prior Discovery Order") made

against the defendant in Summons No 493 of 2024 ("SUM 493").

(c) Summons No 1956 of 2024 ("SUM 1956" or "the Release Application") is the plaintiff's application to be released from its implied undertaking under the principle in *Riddick v Thames Board Mills Ltd* [1997] QB 881 not to disclose or use certain documents disclosed by the defendant pursuant to the Prior Discovery Order for purposes outside of Suit 592 ("the *Riddick* undertaking").

2 I heard the parties on 23 December 2024 and 16 January 2025, and delivered oral grounds of decision on 3 February 2025. In brief, I granted the Specific Discovery Application in part, dismissed the Unless Order Application, and granted the Release Application in part. Mr Woo has appealed against my decision in respect of the Release Application.

3 These are the detailed grounds of my decision on all three applications.

4 I begin by setting out the background facts pertinent to all three applications, before setting out my decision and reasons in respect of each application.

Background facts

The parties

5 The plaintiff is Spackman Entertainment Group Limited ("SEG"), a company in the business of developing, producing, presenting and financing theatrical motion pictures. SEG is listed on the Catalist Board of the Singapore Exchange ("SGX").

6 The defendant is Woo Sang Cheol ("Mr Woo"), a Korean businessman who resides in Korea.

The Littauer Transaction and Korean Judgment

7 Suit No 592 of 2020 ("Suit 592") was commenced against the backdrop of a broader, long-running dispute between Mr Woo and the founder of the plaintiff, Charles Choi Spackman ("Mr Spackman"). That dispute began sometime in 2000 and concerned Mr Woo's purchase of shares in a Korean company known as Littauer Technologies Co Ltd ("Littauer"). According to Mr Woo, Mr Spackman had conspired with several others to induce him to purchase the Littauer shares at an artificially inflated price ("the Littauer Transaction"), thus causing him significant losses when Littauer's share price subsequently collapsed.[1]

8 In 2003, Mr Woo commenced proceedings against Mr Spackman and several other defendants in the Seoul Central District Court. Mr Woo's claims were dismissed by that court, and he appealed to the Seoul High Court. In 2011, Mr Woo successfully obtained judgment against Mr Spackman for the sum of KRW 5,207,884,800 ("the Korean Judgment") on the basis that Mr Spackman had not appeared in the proceedings and was therefore "deemed to have confessed to [Mr Woo's] charges [against him]" under the relevant Korean procedural rules. Mr Spackman's subsequent appeal to the Supreme Court of Korea was unsuccessful.[2]

9 Thereafter, Mr Woo commenced efforts to enforce the Korean Judgment against Mr Spackman. Enforcement and related proceedings were filed in

[1] 4NKW at para 7; 9WSC at para 6.

[2] 4NKW at paras 7-13; 9WSC at para 7.

various jurisdictions, including the British Virgin Islands, Hong Kong, Massachusetts, New York and Singapore.[3] In Singapore, enforcement proceedings were commenced in February 2019 *vide* Suit No 211 of 2019 ("**S**uit 211"). Those proceedings remain pending.

Suit 592

10 These enforcement proceedings were the backdrop against which Suit 592 was filed in July 2020. In Suit 592, SEG claims that Mr Woo had, in the course of his efforts to enforce the Korean Judgment, published or caused to be published various statements that are defamatory of SEG, and advances causes of action in the torts of defamation, malicious falsehood and unlawful interference with trade.[4]

The parties' cases in Suit 592

11 I shall set out the issues arising from the parties' pleaded cases in Suit 592 as they are of some pertinence to my analysis of, amongst other things, the relevance of the documents sought by Mr Woo in his Specific Discovery Application.

12 According to SEG, the defamatory statements were published in two groups of documents.

(a) First, Document Preservation Notices ("Notices")[5] Mr Woo had filed in enforcement proceedings in New York, which Mr Woo's solicitors, Kobre & Kim LLP ("KK"), had issued to various

[3] 4NKW at para 14; 9WSC at para 10.

[4] SOC1 at sections IV, V, VII and VIII.

[5] SOC1 at para 32.

business partners and associates of SEG between 2017 and 2018. SEG says that these Notices, which demanded that their recipients preserve certain documents for purposes of enforcement proceedings, also enclosed documents filed in the New York proceedings which contained statements defamatory of SEG.

(b) Second, a series of three online articles published on 22 August 2020, 2 September 2020 and 31 October 2020 ("the 1st, 2nd and 3rd Mak Statements" respectively, and collectively the "Mak Statements")[6] by one Mak Yuen Teen ("Prof Mak"), a professor of accounting at the National University of Singapore Business School. SEG says that the Mak Statements were published by Prof Mak on the instructions of Mr Woo or his solicitors.

13 SEG's case on the defamatory meanings of the statements in the Notices and the Mak Statements is, in essence, that:

(a) The Notices contain allegations that SEG (and its Hong Kong-incorporated subsidiary, Spackman Media Group Limited ("SMG")) were being used by Mr Spackman as vehicles for a conspiracy in the vein of the Littauer Transaction to defraud the shareholders of SEG.[7] In brief:

(i) The Notices describe the Littauer Transaction and suggest that Littauer had been used by Mr Spackman to defraud the shareholders of Littauer. They state that Mr Spackman had

[6] SOC1 at para 46.

[7] SOC1 at para 36.

caused Littauer to acquire a company controlled by Mr Spackman and his associates via a "self-dealing merger" which valued the acquired company at some US$1.3 billion, although it was "in substance only a paper company" worth some US$2.1 million. Mr Spackman thereafter liquidated a portion of his Littauer shares for a "windfall profit" before Littauer's share price eventually collapsed. The "economic effect" of these transactions was allegedly to "transfer value" from Littauer's shareholders to Mr Spackman and his associates.[8]

(ii) The Notices then compare the Littauer Transaction to two share swap transactions involving SEG and SMG and suggest that SEG was likewise being used by Mr Spackman as a vehicle to defraud the shareholders of SEG. They state that SEG acquired a stake in SMG (which was controlled by entities in turn controlled by Mr Spackman or his associates) via two share swaps ("the 2015 and 2017 Share Swaps"). They allege that these were "self-dealing" transactions which artificially boosted the share price of SMG almost tenfold, and that the "economic effect" of the 2015 and 2017 Share Swaps "appears to be another transfer of value" from public shareholders (this time in SEG instead of Littauer) to Mr Spackman and his associates.[9]

(b) The Mak Statements contain allegations that SEG: (i) had breached the letter and spirit of the relevant SGX rules on Interested Person Transactions in respect of five share swap transactions entered

[8] SOC1 at p 49.

[9] SOC1 at p 52.

into between March 2017 and August 2018 ("the Five Share Swaps");[10] (ii) were involved in Interested Person Transactions through the Five Share Swaps; and (iii) had engaged in conduct (in the form of the Five Share Swaps) that warrants regulatory action.[11]

14 As regards relief, SEG seeks general and special damages in respect of the publication of the allegedly defamatory statements, as well as injunctive relief (to restrain Mr Woo from publishing the allegedly defamatory statements).[12]

(a) In respect of the Notices, SEG says that the publication of the Notices resulted in, amongst others: (i) the recipients of the Notices withdrawing planned investments;[13] and (ii) the forced sale of SEG's interests in various entities as a result of those entities' desire to disassociate themselves from SEG;[14] both of which caused SEG to suffer loss.

(b) In respect of the Mak Statements, SEG says that the publication of the Mak Statements led SGX to issue SEG with a Notice of Compliance dated 3 September 2020 ("Notice of Compliance")[15] which caused it to suffer at least two heads of loss.

(i) First, the Notice of Compliance required SEG to conduct a holistic review of the Five Share Swaps, including a review of

[10] SOC1 at para 49(a).

[11] SOC1 at para 49.

[12] SOC1 at p 45.

[13] SOC1 at paras 43(a)-(h).

[14] SOC at paras 43(j)-(x).

[15] SOC1 at para 54(a).

whether the Five Share Swaps constituted Interested Person Transactions under Chapter 9 of the SGX's Catalist Rules ("the SGX Rules"). Accordingly, SEG appointed Deloitte & Touche Financial Advisory Services Pte Ltd ("Deloitte") to conduct an independent review of the Five Share Swaps ("Independent Review") and instructed Drew & Napier LLC ("D&N") to act as SEG's legal representatives in relation to the Independent Review. Deloitte completed the review in June 2022 and issued a report ("Independent Reviewer Report") stating, amongst other things, that none of the Five Share Swaps constituted Interested Person Transactions or breached the relevant SGX Rules on Interested Person Transactions.[16] SEG therefore claims the costs and expenses incurred in instructing Deloitte and D&N in respect of the Independent Review.[17]

(ii) Second, the Notice of Compliance also called into question a proposed divestment of SEG's shareholding in SMG ("Proposed Divestment") (*ie*, whether the Proposed Divestment had been entered into on normal commercial terms and in the interests of SEG and its shareholders), and prohibited SEG from proceeding with the Proposed Divestment until the SGX was satisfied with the findings of the Independent Review. SEG therefore claims for losses associated with the abandonment of the Proposed Divestment.[18]

[16] SOC1 at para 54(e)

[17] SOC1 at para 54(f).

[18] SOC1 at para 54(g).

15 Mr Woo has filed a detailed Defence to SEG's claims, in which he denies certain aspects of SEG's claims, and invokes various defences including the defences of absolute privilege, qualified privilege, justification and fair comment. The parts of Mr Woo's defence which are salient to the applications before me are as follows:

(a) As regards the alleged defamatory statements in the Notices (see [13(a)] above), Mr Woo pleads a defence of justification, *ie*, that SEG was in fact used by Mr Spackman as a vehicle to defraud SEG's shareholders in the vein of the Littauer Transaction.[19] This raises issues relating to, amongst other things: (i) the Littauer Transaction;[20] (ii) the 2015 and 2017 Share Swaps;[21] and (iii) the extent of Mr Spackman's involvement in both sets of transactions.[22]

(b) As regards the alleged defamatory statements in the Mak Statements (see [13(b)] above), Mr Woo pleads that he did not publish the Mak Statements.[23] As such, whether the Mak Statements were published on the instructions of Mr Woo or his solicitors will likewise be a key factual issue.

SUM 493 – SEG's first discovery application

16 In April 2024, SEG obtained discovery of two groups of documents pursuant to the Prior Discovery Order made in SUM 493.

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[19] Defence1 at para 46.

[20] Defence1 at para 46(d).

[21] Defence1 at paras 46(b), 46(d)(iii).

[22] Defence1 at para 46(a).

[23] Defence1 at para 57.

17 First, documents and correspondence exchanged between Prof Mak and Mr Woo, and between Prof Mak and KK (Mr Woo's solicitors), which mention documents or information "referred to in or which form the basis of the Mak Statements".[24]

(a) Discovery of these documents was granted on the basis of their relevance to the question of Mr Woo's and KK's involvement in the publication of the Mak Statements.

(b) Mr Woo filed a second list of documents ("D2LOD") in May 2024, and disclosed redacted versions of various email chains between Prof Mak and KK exchanged between August and October 2020 ("the KK-Mak Correspondence"), which was around the time the Mak Statements were published.[25]

(c) As regards correspondence between Prof Mak and *Mr Woo*, Mr Woo denied having any such correspondence in his possession, custody or power.[26]

Mr Woo's disclosures under the Prior Discovery Order are pertinent to the Unless Order Application, in which SEG argued that Mr Woo had failed to comply with the Prior Discovery Order by his failure to disclose *unredacted* copies of the KK-Mak Correspondence, as well as correspondence between Prof Mak and *Mr Woo* (which, SEG said, must exist).

[24] 11WSC at para 12(a); 5NKW at para 12.

[25] 11WSC at para 15; 5NKW at para 15.

[26] 11WSC at para 15(a).

18 Second, the written retainer setting out the terms of KK's engagement by Mr Woo.[27]

(a) According to SEG, it had long suspected that KK played a role in financially supporting Mr Woo's enforcement efforts through a conditional or contingency fee arrangement of some sort.[28] In its Statement of Claim (Amendment No 1) ("SOC"), SEG pleads that Mr Woo had "sold the claim under the [Korean Judgment] to KK… to further Woo's campaign against Spackman by targeting and damaging SEG".[29]

(b) In his reply affidavit filed in SUM 493, Mr Woo admitted that there was in fact a contingency fee arrangement between him and KK ("the CFA"),[30] and duly disclosed this pursuant to the Prior Discovery Order.

The circumstances leading to Mr Woo's disclosure of the CFA are pertinent to the Release Application, in which SEG argued that there was a serious question as to whether Mr Woo had perjured himself by giving false evidence relating to his retainer with KK.

SUM 1671: Mr Woo's Specific Discovery Application

19 Suit 592 was commenced under the revoked Rules of Court (Cap 332, R 5, 2014 Rev Ed) ("ROC 2014"). The law on discovery is trite; and there was no dispute as to the applicable legal principles. To succeed, the applicant must

[27] 11WSC at para 12(b); 6NKW at para 32(a).

[28] 6NKW at para 27.

[29] SOC1 at para 40(h).

[30] 6WSC at para 26.

show that: (a) the documents sought are relevant to the issues in dispute; (b) the documents sought are necessary for disposing fairly of the matter or for saving costs; and (c) the respondent has, or at some time had, the relevant documents in his possession, custody or power. Most of the points of dispute in this case centred on the question of relevance.

20 Mr Woo applied for discovery of 11 categories of documents, which can be further categorised into four broad groups:

(a) *Group 1 (Category 1)*: Documents and correspondence between Mr Spackman and SEG which evidence Mr Spackman's involvement or participation in SEG's affairs from 20 December 2017, *ie*, *after* Mr Spackman ceased to be an officer of SEG.

(b) *Group 2 (Categories 2–5)*: Documents and correspondence between SEG and SMG relating to the 2015 and 2017 Share Swaps.

(c) *Group 3 (Categories 6–9)*: Documents and correspondence between SEG and SMG or SMG's shareholders relating to the Five Share Swaps.

(d) *Group 4 (Categories 10 and 11)*:

(i) *Category 10*: Documents relating to the Notice of Compliance issued by the SGX to SEG.

(ii) *Category 11*: Documents and correspondence exchanged between SEG's officers and SEG's former business partners and associates, which refer to the Notices or the Mak Statements.

The Group 1 documents (Category 1)

21 Group 1 comprised documents evidencing Mr Spackman's alleged involvement in SEG's affairs *after* he ceased to be an officer of SEG (Mr Spackman resigned his directorship in SEG on 19 December 2017). I declined to grant discovery of the Group 1 documents.

22 The parties joined issue on the relevance of the Group 1 documents to Mr Woo's defence of justification. Mr Woo's justification defence required him to prove, amongst other things, that Mr Spackman had *used SEG* as a vehicle for an alleged fraud in connection with the 2015 and 2017 Share Swaps. Thus, while documents evidencing the extent of Mr Spackman's involvement in and control of SEG *at the material time* (ie*, at the time of the 2015 and 2017 Share Swaps*) would certainly be relevant, it was unclear to me why documents relating to Mr Spackman's involvement *after the 2015 and 2017 Share Swaps* would be relevant.

23 Mr Woo advanced two reasons why Mr Spackman's involvement after the 2015 and 2017 Share Swaps were relevant. Both were, in my view, unpersuasive.

24 First, Mr Woo argued that SEG had itself put the question of Mr Spackman's continued involvement in SEG in issue in its pleadings. SEG had pleaded the following in relation to the allegedly defamatory meanings the statements in the Notices carried:[31]

> 36. In the context of which they were published, and in their natural and ordinary meaning, the [statements in the Notices] meant and/or were understood to mean:
>
> (a) SEG is "controlled" by Spackman.

[31] SOC 1 at paras 36(a), 36(i).

> …
>
> (i) SEG is controlled by Spackman, who Woo and/or KK, whether acting as Woo's agent on his behalf and/or at his instructions, or otherwise, alleges is a criminal and a fraudster.

Mr Woo argued that the use of the present tense ("is controlled") must be read to mean that SEG's own case on the meaning of the statements in the Notice is that Mr Spackman had control over SEG not just at the time of the 2015 and 2017 Share Swaps, but also *at the time of publication of the Notices to the recipients* (which ranged from 2017 to 2018).[32]

25 I rejected this argument for two reasons:

(a) First, SEG's use of the present tense ("is controlled") in referring to Mr Spackman's control of SEG must be read in the context in which those references were made. The thrust of the statements in the Notices was that Mr Spackman had used SEG as a vehicle for a fraud perpetrated *through the 2015 and 2017 Share Swaps*. In that context, the issue of Mr Spackman's control over SEG *at the time the Notices were published* simply has no connection with the thrust of the statements in the Notices. The more contextually appropriate reading of the phrase "is controlled" is that Mr Spackman had control of SEG at time the alleged fraud was perpetrated (*ie*, at the time of the 2015 and 2017 Share Swaps), and that is the reading of SEG's pleadings which I adopt.

(b) Second, it was telling that Mr Woo has not *himself* put Mr Spackman's subsequent control over SEG (*ie*, after Mr Spackman had resigned his directorship) in issue. The only facts relied on by Mr Woo in his defence of justification – as it related to the point of

[32] DWS at para 16(a).

Mr Spackman's control of SEG – were that Mr Spackman held executive offices in SEG between 20 June 2014 and 19 December 2017 (the latter being the date Mr Spackman ceased to be an officer of SEG). Mr Woo has not himself pleaded that Mr Spackman continued to be involved in SEG's affairs *after* 19 December 2017.

26 Second, Mr Woo submitted that the issue of Mr Spackman's control over SEG *after* the 2015 and 2017 Share Swaps would, at the very least, be *indirectly* relevant to the question of Mr Spackman's control *at the time of the 2015 and 2017 Share Swaps*. On this argument, proof that Mr Spackman was in control of SEG even *after* his resignation as director would, *a fortiori*, prove his control of SEG at the time of the 2015 and 2017 Share Swaps when he was a director.[33]

27 I was unable to accept this argument for two reasons:

(a) First, proof of Mr Spackman's control over SEG after his resignation as director does not necessarily speak to the existence or extent of control Mr Spackman might have had over SEG when he was a director.

(b) Second, if indeed Mr Woo's interest was in proving Mr Spackman's control over SEG at the time of the 2015 and 2017 Share Swaps, it was rather curious that Mr Woo had not chosen to seek documents with a *direct* relation to Mr Spackman's control of SEG at the material time, and had instead sought only documents that, at best, bear only an *indirect* relation to that point. This suggested that Mr Woo's

[33] DWS at para 16.

argument on the indirect relevance of the Group 1 documents was an afterthought.

28 For these reasons, I declined to grant discovery of the Group 1 documents.

The Group 2 documents (Categories 2–5)

29 Group 2 comprised documents and correspondence between SEG and SMG relating to the 2015 and 2017 Share Swaps (referred to in the Notices).

30 Mr Woo submitted that these documents would shed light on the circumstances under which the 2015 and 2017 Share Swaps were entered into by SEG and SMG, and would assist the court in determining whether the 2015 and 2017 Share Swaps were arm's length transactions or were the result of coordination and self-dealing between SEG and SMG (as alleged in the Notices). This, he said, was relevant to his defence of justification (see [13(a)(ii)] and [15(a)] above).[34]

31 In response, SEG argued that Mr Woo is entitled only to documents bearing direct relation to the specific facts he had pleaded as part of his defence of justification, *viz*, that: (a) Mr Spackman was involved in SEG as its officer at the time of the 2015 and 2017 Share Swaps; [35] (b) Mr Spackman was involved in the Littauer Transaction;[36] and (c) like in the Littauer Transaction, Mr Spackman and his associates benefitted off the 2015 and 2017 Share Swaps

[34] DWS at para 18.

[35] Defence (Amendment No 1) at para 46(a)(i).

[36] Defence (Amendment No 1) at paras 46(d)(i), 46(d)(ii).

by the increase in the price of SMG's shares.[37] Since Mr Woo did not expressly plead any correspondence between SEG and SMG or their states of mind in relation to the 2015 and 2017 Share Swaps, Mr Woo was not entitled to documents relating to SEG and SMG's motives for entering into those transactions.

32 I was unable to accept SEG's argument, which was tantamount to a submission that relevance invariably requires a showing that the document relates to an *explicitly* pleaded fact. I agreed with counsel for Mr Woo that the inquiry into relevance is not so narrowly drawn.[38] Relevance is established where the document would assist in proving or disproving any fact in issue (*Management Corporation Strata Title Plan No 2297 v Seasons Park Ltd* [2004] SGHC 142 at [14]). Here, the Group 2 documents were potentially relevant to at least two facts in issue: (a) whether the 2015 and 2017 Share Swaps were "self-dealing transactions";[39] and (b) whether the 2015 and 2017 Share Swaps were aimed at artificially inflating the share price of SMG.[40]

33 I therefore granted discovery of the Group 2 documents, with adjustments to the scope of the categories as set out below:

(a) Category 2, which pertained to the 2015 Share Swap, was granted in the following terms:

> All documents and correspondence (including but not limited to emails, WhatsApp messages, text messages and messages sent on other mobile messaging platforms) ~~passing between~~ up to 30 December 2015, evidencing discussions and/or negotiations between:

[37] Defence (Amendment No 1) at para 46(d)(iii).

[38] DWS at para 19.

[39] SOC1 at paras 36(b), 36(h)(a).

[40] SOC1 at para 36(e).

> (a) any (past and/or present officers, servants, agents and/or representatives of [SEG]; and
>
> (b) any (past and/or present) officers, servants, agents and/or representatives of [SMG],
>
> in relation to ~~and/or having any connection with~~ the share swap agreement which [SEG] entered into with [SMG] on 30 December 2015.
>
> [deletions from the original request are in strikethrough; additions from the original request are underlined]

The same adjustments were applied *mutatis mutandis* to Category 4, which (as granted) pertained to documents and correspondence up to 2 March 2017 (being the date of the 2017 Share Swap).

In making these adjustments, I accepted SEG's concerns as to the breadth of the phrase "and/or having any connection with the [relevant share swap agreement]" insofar as that might catch purely administrative emails that do not pertain to the circumstances under which the relevant share swap agreement was entered into. Therefore, and at counsel for Mr Woo's suggestion, I included a proviso limiting the scope of Categories 2 and 4 to documents and correspondence which "evidenc[e] discussions and/or negotiations" relating to the 2015 and 2017 Share Swaps.

(b) The requests for Categories 3 and 5 (documents forming the basis of or which gave rise to the 2015 and 2017 Share Swaps) were withdrawn by Mr Woo.

The Group 3 documents (Categories 6–9)

34 Group 3 comprised documents and correspondence between SEG and SMG relating to last four of the Five Share Swaps ("Subsequent Four Share Swaps") (referred to in the Mak Statements).

35 Mr Woo's position was that the Group 3 documents would show whether the Subsequent Four Share Swaps were Interested Person Transactions or arm's length transactions, and would also show whether SEG had breached the relevant SGX Rules on Interested Person Transactions.[41]

36 On its part, SEG argued that the Group 3 documents fell outside the narrow compass of its pleaded case on the Mak Statements. SEG argued that its case on the Mak Statements was confined to the following allegations: (a) SEG had breached the letter and spirit of the SGX rules concerning Interested Person Transactions through the Five Share Swaps; (b) SEG was involved in Interested Person Transactions through the Five Share Swaps; and (c) SEG had engaged in conduct (*ie*, in the form of the Five Share Swaps) that warrants regulatory action.[42] SEG's point was that its case on the falsity of the Mak Statements was confined to the issue of SEG's compliance with the relevant SGX Rules when it entered into the Five Share Swaps. Therefore, only documents which address whether SEG's conduct in relation to the Five Share Swaps contravened the relevant SGX Rules would be relevant – and not documents which relate, more generally, to whether the Five Share Swaps were arm's length transactions.[43] In this connection, SEG further argued that the only document necessary to address the consistency of SEG's conduct with the relevant SGX Rules was the Independent Reviewer Report prepared by Deloitte, which SGX had taken into consideration in determining that there was no need for regulatory action against SEG (and which SEG has already disclosed).[44]

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[41] DWS at para 23.

[42] SOC1 at para 49.

[43] PWS at paras 102–103.

[44] PWS at paras 103-105.

37 I rejected SEG's submission. There was no basis to straitjacket Mr Woo's (and the court's) analysis of the falsity of the Mak Statements by confining the same to a review of the Independent Reviewer Report.

(a) First, it was not suggested that Deloitte's conclusions in the Independent Reviewer Report (*eg*, that SEG had not breached the relevant SGX Rules), or SGX's decision not to take further regulatory action based on the Independent Reviewer Report, would in any way be binding on the court in Suit 592. In fact, the Independent Reviewer Report, being hearsay evidence, was not strictly speaking probative of its contents or the conclusions therein.

(b) Second, and in any case, Mr Woo is surely entitled to obtain and adduce evidence to contradict the Independent Reviewer Report or to dispute its reliability. This was especially so given that Deloitte had itself made express caveats relating to the "limited nature of [the] review".[45] Indeed, the documents reviewed by Deloitte were limited to SEG's official documents (*eg*, board minutes, resolutions, internal policies) and did not include correspondence contemporaneous with the Subsequent Four Share Swaps (which are the subject of the Group 3 requests).[46] Importantly, and in this connection, Deloitte also caveated that its observations "may [*sic*] subject to change if additional information is provided at a later date after the issuance of this report".[47]

[45] 2JBOD 481.

[46] 2JBOD 459–461.

[47] 2JBOD 481.

38 I therefore granted discovery of the Group 3 documents (Categories 6–9), with adjustments to the scope of the categories in the vein of those made in respect of the Group 2 documents:

> All documents and correspondence (including but not limited to emails, WhatsApp messages, text messages and messages sent on other mobile messaging platforms) ~~passing between~~ up to [the date of the relevant share swap agreement], evidencing discussions and/or negotiations between:
>
> (a) any (past and/or present officers, servants, agents and/or representatives of [SEG]; and
>
> (b) any (past and/or present) officers, servants, agents and/or representatives of [SMG] and/or shareholders of [SMG],
>
> in relation to ~~and/or having any connection with~~ the [relevant share swap agreement].
>
> [deletions from the original request are in strikethrough; additions from the original request are underlined]

The Group 4 documents: Category 10

39 Category 10 comprised documents relating to the Notice of Compliance, which Mr Woo said was relevant to establishing the causal link (or lack thereof) between the issue of the Notice of Compliance and the various heads of loss pleaded by SEG:

> All documents in relation to and/or arising from the [Notice of Compliance] (including but not limited to correspondence, directors' resolutions, meeting minutes and all other documents produced in the course of investigations by [SEG's] Audit & Risk Management Committee and SGX, including documents showing the status / outcome of the said investigations).

40 While SEG had also pleaded that SEG's Audit & Risk Management Committee ("ARMC") had incurred "time and costs" in relation to the Notice

of Compliance and the Independent Review,[48] counsel for SEG clarified that SEG was *not* claiming the costs of work done by the ARMC. The relevant heads of loss SEG claimed to have suffered were: (a) the costs of instructing Deloitte and D&N; and (b) losses arising from the abandonment of the Proposed Divestment (see [14(b)] above).

41 It was not seriously disputed that the question of whether there exists a causal link between the issue of the Notice of Compliance and the aforementioned losses was a fact in issue, and that documents which went towards the existence of that causal link would be relevant. SEG's principal objection was that Category 10 was unreasonably and irretrievably broad.

42 I agreed with SEG. The difficulty was not simply one of insufficiently tight drafting; the problem with the scope of Category 10 was that it was defined by reference to the wrong touchstone. Instead of defining its scope by reference to the Notice of Compliance (*ie*, "[a]ll documents in relation to and/or arising from the Notice of Compliance"), the scope of Category 10 would have been more appropriately defined by reference to the events which gave rise to the losses SEG had allegedly suffered, *ie*, losses associated with the appointment of Deloitte and D&N, as well as the Proposed Divestment.

43 To be clear, I did not think that Mr Woo's framing of the original Category 10 belied an intent to fish for evidence – it was not alleged that Mr Woo's position on Category 10 had been vague or shifting. The question was whether the request in Category 10 should be rejected purely on the basis that it would require substantial reframing, notwithstanding that the documents Mr Woo sought were clearly relevant.

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[48] Statement of Claim (Amendment No 1) at para 54(d).

44 In my view, this was not a situation where the request for discovery was so irretrievably defective that it could not be reframed without causing irreparable prejudice to the disclosing party. Therefore, after hearing parties on how Category 10 should be reframed to address my concerns as to the breadth of the original request, I granted discovery of Category 10 in the following terms:

> All documents and correspondence (including but not limited to emails, WhatsApp messages, text messages and messages sent on other mobile messaging platforms), evidencing any causal connection between the Notice of Compliance and: (a) the appointment of Deloitte; (b) the appointment of [D&N]; and (c) [SEG's] inability to proceed with the Proposed Divestment (as defined at para 54(g) of [the SOC]).

The Group 4 documents: Category 11

45 Category 11 comprised documents and correspondence between SEG and its former business partners and associates insofar as these "refer to or mention" the Notices or the Mak Statements.

46 SEG did not seriously dispute relevance; its main objection was that the request was overly broad.[49] I agreed. On Mr Woo's case, the documents sought were those relevant to establishing the causal link between publication of the Notices and the Mak Statements and the SEG's business partners' withdrawal of investments or termination of dealings with SEG (see [14(a)] above). That being the case, a request for all documents and correspondence which merely "refer to or mention" the Notices or the Mak Statements would be too broad. The request should instead have been confined to documents and correspondence between the relevant parties relating to the withdrawal of

[49] PWS at para 119.

investments or termination of dealings with SEG in connection with the publication of the Notices or the Mak Statements.

47 SEG also submitted that the Category 11 documents do not exist because the communications between the various parties were oral communications.[50] If that is so, Mr Woo is entitled to have SEG state so on affidavit. This is particularly the case since, as counsel for SEG candidly acknowledged, the affidavit evidence as to the nature of the Category 11 communications available at the time was incomplete and thus inadequate as it stated only that "most" (and not *all*) of the relevant communications were made orally or over tele-conversation.[51]

48 I therefore granted discovery of the Category 11 documents in the following terms:

> All documents and correspondence (including but not limited to emails, WhatsApp messages, text messages and messages sent on other mobile messaging platforms), evidencing any causal connection between the losses pleaded at paragraph 43 of the [SOC] and (a) the [Notices]; or (b) the Mak Statements. ~~passing between:~~
>
> ~~(a) any (past and/or present officers, servants, agents and/or representatives of [SEG]; and~~
>
> ~~(b) any other persons (including but not limited to Mr Spackman (whether directly or indirectly through his nominee(s), agent(s) and/or any person(s) performing the role of his messenger) and/or the individuals and/or representatives of the entities stated at paragraph 43 of the [SOC[,~~
>
> ~~which refer to or mention (i) the [Notices] and/or its contents or (ii) the Mak Statements.~~
>
> [deletions from the original request are in strikethrough; additions from the original request are underlined]

[50] FNBP of the SOC dated 2 March 2023; PWS at para 120

[51] 4NKW at paras 104–105.

Conclusion on SUM 1671

49 To recap, I made the following orders in relation to the Specific Discovery Application:

(a) I did not allow discovery of the documents in Category 1.

(b) I allowed discovery of the documents in Categories 2, 4, 6, 7, 8, 9, 10 and 11 on amended terms.

(c) Mr Woo's requests in respect of Categories 3 and 5 were withdrawn.

50 On SEG's request, I extended the time for compliance with these orders (*ie*, Prayers 1 and 2 of SUM 1671) to three weeks, as several categories entailed the production of documents dating back to 2015, over nine years ago.

SUM 1955: SEG's Unless Order Application

51 SUM 1955 was SEG's application for an unless order to be made against Mr Woo to compel his compliance with the Prior Discovery Order made in SUM 493. SEG said that Mr Woo had failed to comply with the Prior Discovery Order in two ways:[52]

(a) First, Mr Woo had refused to provide unredacted copies of the correspondence listed at S/Ns 2–21 of the D2LOD (*ie*, the KK-Mak Correspondence).

(b) Second, Mr Woo had omitted to disclose certain correspondence as required under the Prior Discovery Order.

[52] PWS at para 121.

52 I address each of these alleged non-compliances in turn.

The redacted correspondence

The applicable legal principles on the redaction of disclosed documents

53 Unless a court has directed otherwise, a document disclosed may be redacted in part if the redacted portion is irrelevant to the issues of the action (*Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2002] 2 SLR(R) 465 ("*Tan Chin Seng*") at [19], citing *G E Capital Corporate Finance Group Ltd v Bankers Trust Co* [1995] 1 WLR 172 ("*G E Capital*") at 174). In general, a disclosing party may do so without first having to obtain leave of court. As Hoffmann LJ (as he then was) put it in *G E Capital* (at 174), this has "long been the practice" in civil litigation:

> It has long been the practice that a party is entitled to seal up or cover up parts of a document which he claims to be irrelevant. *Bray's Digest of the Law of Discovery*, 2nd ed. (1910), pp. 55–56 puts the matter succinctly:
>
> > "Generally speaking, any part of a document may be sealed up or otherwise concealed under the same conditions as a whole document may be withheld from production; the party's oath for this purpose is as valid in the one case as in the other. The practice is either to schedule to the affidavit of documents those parts only which are relevant, or to schedule the whole document and to seal up those parts which are sworn to be irrelevant…"

54 There are at least two reasons for this. First, since the purpose of disclosure is to ensure that the court has before it the material it needs to decide the dispute, it is arguably unobjectionable for irrelevant material to be redacted because its retention would not assist (and its absence would not impair) the court's determination of the dispute. Second, the discretion to redact irrelevant parts of a document might be seen as an extension of the fact that disclosing parties are not obliged to produce irrelevant documents. Just as a disclosing

party need not disclose documents which are not relevant to the issues of the action, a disclosing party may likewise redact material which is not relevant, provided that the irrelevant part can be redacted without destroying or distorting the overall sense of the rest of the document (*G E Capital* at 175).

55 Of course, this does not mean that a disclosing party's discretion to redact material for irrelevance is unfettered or left unpoliced.

(a) Where a disclosing party intends to redact parts of a document disclosed for irrelevance, it would generally be good practice for that party to give a clear and specific explanation as to why the material redacted is irrelevant (*eg*, where the redacted document is a statement of account, the disclosing party might explain that the redacted entries relate to an unrelated transaction).

(b) Where the receiving party has grounds to believe that the redacted parts are in fact relevant, it may request that the disclosing party produce the document in unredacted form.

(c) And if parties are unable to resolve the matter amongst themselves, the receiving party may take steps to apply for the production of an unredacted version of the document, in which case any dispute as to the relevance of the redacted portions would be for the court to decide.

(d) Where the relevance of a redacted part of a document is disputed, the affidavit of the disclosing party (explaining the irrelevance of the redacted portions) will usually be treated by the court as conclusive, unless the court is satisfied – not on a conflict of affidavits, but from the pleadings, affidavits and documents already exhibited or necessarily

from the circumstances of the case – that the disclosing party's affidavit does not disclose the true state of affairs (*G E Capital* at 174 and 176). In determining whether there is cause to look behind the affidavit of the disclosing party, the court asks itself whether, based on the documents or circumstances of the case, it is not unreasonable to suppose that the redacted parts are relevant (*G E Capital* at 177). In other words, the touchstone is relevance. I was not referred to any authority suggesting that the disclosing party must *additionally* justify the redaction of irrelevant parts of a document on the grounds that the redacted material is confidential, privileged or otherwise commercially sensitive.

(e) If the court determines that the redacted material is relevant to the issues in dispute, it may order that the disclosing party produce unredacted copies of the documents or, alternatively, order that the disclosing party undertake a further review of its redactions in light of the court's decision on the relevance of the redacted parts (*Eurasian Natural Resources Corporation Ltd v The Director of the Serious Fraud Office and others* [2023] EWHC 2488 (Comm) at [93]).

56 On the point that a disclosing party may redact documents for irrelevance without first seeking the court's leave, SEG referred me to the case of *The Resolution and Collection Corp v Tsuneji Kawabe and others* [2024] SGHC 259 ("*TRCC*"), and argued that that case should be read as a qualification of that principle.[53]

(a) In *TRCC*, the fourth, sixth and seventh defendants faced claims that they had misappropriated assets from certain companies. A discovery order was made against those defendants, requiring them to

[53] PWS at para 136.

disclose, among others, documents relating to the movement of the allegedly misappropriated assets. The defendants eventually produced the documents, but in "heavily redacted form". The plaintiff applied for production of unredacted copies of the redacted documents.

(b) The court ordered the defendants to produce the relevant documents unredacted, finding that the redactions were premised on an "artificial and contrived interpretation" of the discovery order. The defendants had read the order as requiring only that the documents show where certain monies in the sixth defendant's possession had come from, and had redacted all information they felt was irrelevant to that, including outflows of moneys, transfers of moneys between the defendants and balance figures from bank statements. The extent of the redactions was such as to lead the court to observe that the defendants had "failed to provide any form of meaningful disclosure". In that context, the court stated that the defendants are "not entitled to redact the [documents] without leave of court" and ordered that the defendant produce an unredacted version of the relevant documents (at [5]).

57 In my respectful view, the court's observation (at [5]) that the defendants "are not entitled to redact the [documents] without leave of court" should be read in light of *TRCC*'s (particularly egregious) facts. The redactions in *TRCC* were such as to lead the court to observe that the defendants had, in truth, "disclosed nothing". The defendants were found to have redacted the documents "in cynical disregard of court orders, calculated to frustrate the plaintiff and stall for time" (at [7]). The defendants in *TRCC* had essentially *abused* their discretion to redact disclosed documents and had to be stopped from doing so.

58 Therefore, I did not read *TRCC* as a qualification of the general principle that a disclosing party may redact irrelevant parts of the documents to be disclosed in the first instance. What *TRCC* does amply and unequivocally demonstrate is that courts will not tolerate any abuse of the parties' general right to redact irrelevant parts of disclosed documents, especially where the extent of the redactions are such as to found an inference that they were calculated to frustrate the other party and delay the proceedings.

My decision

59 SEG disputed seven categories of redactions.[54] Mr Woo, on his part, has stated on affidavit that the redacted parts are irrelevant.[55] I address each category in turn.

60 At the hearing on 23 December 2024, counsel for Mr Woo offered to furnish unredacted copies of the relevant documents directly to the court for its consideration *in camera* (*ie*, without disclosing unredacted copies of the same to SEG).[56] Counsel for SEG had no objections to this, and hardcopies of the unredacted documents were tendered to court the day after the hearing. I therefore record, for good order, that in coming to my decision on this application I have had sight of an unredacted version of the relevant documents.

(1) The Name Redactions

61 The first category of redactions were redactions at the top left corner of the correspondence in D2LODs 3 and 5–21, which Mr Woo explained were

[54] DWS at para 39.

[55] DWS at para 38.

[56] DWS at para 40.

redactions of the name of the individual who had converted the relevant emails into PDF format ("the Name Redactions").[57]

62 SEG made three submissions, which I rejected for the reasons that follow.

63 First, SEG argued that there was no need or basis to redact "something as mundane as the names of the individual who converted the emails to PDF", and that it was difficult to see what Mr Woo would have gained from the trouble of redacting every name on some 19 documents.[58]

64 If SEG's point was that Mr Woo's explanation is unbelievable because no party would take steps to hide material unless that material was worth hiding (*ie*, relevant), that argument fails for circularity because it does no more than to presume its conclusion: that the redacted material must be relevant because it was redacted. The fact of redaction alone cannot be reason to suppose that the redacted material is relevant.

65 And if the point is that Mr Woo needs to offer some basis apart from irrelevance for redacting the material, then, with respect, that proposition does not reflect the law. Neither *G E Capital* nor *Tan Chin Seng* suggest that the disclosing party must, in addition to its assertion of irrelevance, also assert some other reason (*eg*, the protection of confidential or commercially sensitive information) for redacting the material.

66 Second, SEG argued that Mr Woo's assertion that the information redacted was merely the name of the individual who had prepared the document

[57] DWS at para 41.

[58] PWS at para 143.

is incredible because Mr Woo did not redact other equally mundane, trivial, meaningless or plainly irrelevant material.[59]

67 I accept that inconsistencies in the disclosing party's approach to redaction which materially contradict its proffered explanation for a particular redaction can, in principle, be reason to suppose that the disclosing party's proffered explanation is untrue. If, for instance, a disclosing party claims that the redactions concern the name of a specific, unrelated individual (perhaps to protect that individual's privacy), but then only redacts some but not all instances of that individual's name, that could, in the absence of an explanation for that inconsistency, cast some doubt on the credibility of the disclosing party's explanation.

68 But that is not the case here. Mr Woo explained that the relevant redactions cover no more than the name of the individual who converted the correspondence to PDF format. The name of that individual was consistently redacted. If the argument is that that is unbelievable because Mr Woo has not redacted *all* other irrelevant material (*eg*, system-generated sign offs, email signatures and confidentiality disclaimers), I am unable to accept it. It cannot be that the redaction of one part of a document for irrelevance thereby compels the redaction of *all* irrelevant material in that document.

69 Third, SEG pointed to certain formatting differences in the top margin and address bars of some of the emails.[60] This point was of no assistance to SEG, since it was unable to say why and how those differences were material to the credibility of Mr Woo's explanation for the relevant redactions.

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[59] PWS at para 143, citing 5JBOD 186–187.

[60] PWS at para 144.

70 For these reasons, the Name Redactions did not constitute a breach of the Discovery Order.

(2) D2LOD 3

71 As regards the other redactions in D2LOD 3 (*ie*, apart from the Name Redactions), Mr Woo explained that the redacted portions were irrelevant expressions of thanks.[61]

72 SEG made three arguments, which I address in turn.

73 First, as regards SEG's argument that there is no need or basis for Mr Woo to redact such trivialities,[62] I rejected this argument for the reasons given at [64]–[65] above.

74 Second, SEG made a general attack on Mr Woo's credibility by reference to his alleged untruthfulness about his involvement in the publication of the Mak Statements (see [159] below).[63] Even if Mr Woo had been untruthful about his involvement in the publication of the Mak Statements, that does not necessarily strike at the credibility of his explanations for the redactions to the discovered documents, particularly since Mr Woo was prepared to, and did in fact, show his hand by furnishing the court with unredacted copies of the documents. This argument was made in relation to a number of the other categories of redactions, and I rejected them for the same reason.

[61] DWS at para 43.

[62] PWS at paras 151–152.

[63] PWS at para 150.

75 Third, SEG argued that there was reason to doubt Mr Woo's explanation since other expressions of thanks were not likewise redacted. I could see how this specific inconsistency (*ie*, redacting only some expressions of thanks but not others) could give rise to a reasonable suspicion as to the truth of Mr Woo's proffered explanation, especially since Mr Woo had not offered any explanation for the inconsistency. That said, having myself had the benefit of reviewing an unredacted version of the document, I was satisfied that there was no reason to hold that retaining these redactions would be a breach of the Discovery Order. I did, however, take my finding that SEG had reasonable grounds to suppose that Mr Woo's proffered explanation may be false into account in my decision on costs.

76 For these reasons, I found that the redactions to D2LOD 3 did not constitute a breach of the Discovery Order.

(3) The Internal Circulation Redactions (D2LOD 5–9)

77 As regards the redactions at D2LOD 5–9, Mr Woo said that the redactions were to internal circulation emails sent to keep the trailing emails as a record, which have no substantive content ("the Internal Circulation Redactions").[64]

78 SEG pointed to discrepancies in the redactions (*ie*, in the size and number of the boxes blanked out) and suggested that these would not ordinarily present if the redactions were indeed to uniform internal circulation emails.[65] I rejected this argument as there was in my view no reason to doubt Mr Woo's

[64] DWS at para 46.

[65] PWS at para 158.

explanation that the discrepancies were due to image display issues in the email signatures.[66]

79 SEG further argued that it was incredible that this "special treatment" (*ie*, the practice of forwarding emails internally to keep an internal record) was applied only to the correspondence at D2LOD 5–9 but not to the other emails.[67] In response, counsel for Mr Woo explained that the copies of D2LOD 5–9 that Mr Woo managed to retrieve were those which began with internal circulation emails. In my view, there was nothing inherently unbelievable about that explanation.

80 For these reasons, I found that the Internal Circulation Redactions did not constitute a breach of the Discovery Order.

(4) D2LOD 10

81 Mr Woo explained that the redacted parts of D2LOD 10 contained information on the likely owners of a company called Zymmetry Investments Ltd ("Zymmetry").[68]

82 The question was whether this constituted "matters… or information… referred to in or which form the basis of the Mak Statements", and therefore fell within the ambit of the Prior Discovery Order (see [17] above). If so, then it would certainly be relevant for purposes of the Prior Discovery Order, and ought not to be redacted.

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[66] DWS at para 47.

[67] PWS at para 157.

[68] DWS at para 49.

83 Zymmetry and the matter of its ownership were clearly "referred to" in the Mak Statements. One of the statements made in the Mak Statements was that "[i]t is unclear who owns Zymmetry".[69] Zymmetry is relevant to the issues in dispute because Zymmetry was discussed in the Mak Statements as one of the entities involved in the Five Share Swaps (or transactions relating to the Five Share Swaps). The identity of Zymmetry's owners is likewise relevant because the pleaded defamatory sting of Mak Statements is that the Five Share Swaps were entered into in breach of the SGX Rules on Interested Person Transactions, and therefore information as to Zymmetry's ownership might shed light as to how Zymmetry was related to SEG or SMG (if at all).

84 Mr Woo argued that the matter of Zymmetry's ownership cannot be said to have "form[ed] the basis of" the Mak Statements because the Mak Statements only state that Prof Mak did not know who owns Zymmetry.[70] These arguments were unavailing. Professor Mak's conclusion that "[i]t is unclear who owns Zymmetry" was plainly a conclusion as to his knowledge (or lack thereof) of Zymmetry's ownership, and if the KK-Mak Correspondence contained any information on Zymmetry's likely owners, that would almost certainly have formed part of the basis for Prof Mak's conclusion.

85 For these reasons, I found that failure to produce D2LOD 10 with the information pertaining to Zymmetry's ownership unredacted would constitute a breach of the Discovery Order.

[69] Statement of Claim (Amendment No 1) at p 82.

[70] DWS at para 50.

(5) D2LOD 14

86 D2LOD 14 comprised email correspondence between KK and Prof Mak, in which Prof Mak shares a draft of the 2nd Mak Statement with KK, and KK shares certain documents with Prof Mak. These documents included, amongst other things, Mr Spackman's bank accounts and, in KK's words, "other documents you [*ie*, Prof Mak] may find interesting on the NY docket".[71]

87 Mr Woo explained that the redacted parts of D2LOD 14 concern Prof Mak's contemplation of "potential steps" he might take in relation to a document that KK had shared with him in the preceding email.[72] Again, the question was whether this constituted "matters… or information… referred to in or which form the basis of the Mak Statements", and thus fell within the scope of the Prior Discovery Order.

88 I accepted SEG's argument that the Mak Statements do refer to the taking of further action following their publication – in particular, the need to draw regulatory attention to SEG and its conduct of the Five Share Swaps.[73]

(a) In the 2nd Mak Statement (dated 2 September 2020), Prof Mak had discussed the need for regulators to "review the share swap and placement transactions of [SEG] over the last few years" and "look into whether the directors and continuing sponsors have discharged their responsibilities in reviewing and overseeing the transactions and disclosures".

[71] 4JBOD 326-327.

[72] DWS at para 53; 4JBOD 20.

[73] PWS at para 167.

(b) In the 3rd Mak Statement (dated 31 October 2020), Prof Mak referred to "a treasure trove of public documents available online that provides extensive details about these transactions" and expressed his hope that "further regulatory action will follow".

89 Counsel for Mr Woo sought to draw a distinction between the steps Prof Mak *thought ought to be taken* (which are the subject of the Mak Statements) and the steps Prof Mak *himself intended to take* (which are the subject of the redacted parts of D2LOD 14). This was, in my view, unpersuasive. The Mak Statements were obviously a statement of Prof Mak's personal views. Further, it was not suggested that the steps Prof Mak intended to take (as described in D2LOD 14) were materially different from the steps he discussed in the Mak Statements.

90 Mr Woo also argued that the emails in D2LOD 14 (sent in the morning of 2 September 2020) postdated the 2nd Mak Statement (published on 1 September 2020 at 11.56pm) and therefore could not logically have been "referred to" or "form the basis of" that article. I do not think that necessarily follows. The fact that the emails in D2LOD 14 postdate the 2nd Mak Statement did not preclude the possibility that the matters in those emails relate to the follow up action Prof Mak had referred to in the 2nd Mak Statement.

91 Therefore, I found that failure to produce D2LOD 14 with the information pertaining to the follow up steps Prof Mak was contemplating unredacted would constitute a breach of the Prior Discovery Order.

(6) D2LOD 15 and D2LOD 16

92 There were three groups of redactions in D2LOD 15.

93 As regards the first group (email of 2 September 2020, 12.01pm) ("Group A"),[74] Mr Woo explained that this was an irrelevant expression of thanks. I adopt the conclusions and reasoning in relation to the redactions in D2LOD 3 set out at [75] above. In short, having reviewed the unredacted version of D2LOD 15, there was in my view no reason to hold that retaining the Group A redactions would be a breach of the Prior Discovery Order, though I found that SEG did have reasonable grounds to suppose that Mr Woo's proffered explanation might be false, and took this into account in determining the issue of costs.

94 As regards the second group (emails of 7 September 2020, 9.39pm and 9.50pm) ("Group B"),[75] Mr Woo produced a partially unredacted version of this email showing that the parts left redacted were in fact prefaced by a query from Prof Mak as to whether he could enquire as to "something unrelated to [SEG]". Mr Woo argued that since Prof Mak had himself noted that his query was unrelated to SEG, it would not be reasonable for SEG to surmise that the redactions had anything to do with it.[76]

95 I rejected Mr Woo's argument for the following reasons.

(a) The starting point was that the Group B emails followed from a chain of correspondence containing discussions that indisputably fell within the ambit of the Prior Discovery Order (and which were accordingly disclosed in full, without redactions). Therefore, and absent any explanation to the contrary, it was reasonable for SEG to suppose that the Group B emails, being emails following from an email chain

[74] 4JBOD 342.

[75] 4JBOD 339–340.

[76] DWS at para 60.

acknowledged to be relevant, would likewise contain references to matters which fall within the ambit of the Prior Discovery Order.

(b) Mr Woo's reliance on Prof Mak's prefatory remark that his query was "something unrelated to [SEG]" bore little weight. As SEG rightly argued, just because Prof Mak was of the view that the matter did not relate directly to SEG did not foreclose the possibility that it could have been "referred to in or form the basis of the Mak Statements". The Mak Statements contain references to many other entities apart from SEG, and Mr Woo's explanation did not address the possibility that the Group B redactions pertain to other entities referred to in the Mak Statements.

96 For these reasons, I found that it would not be unreasonable for SEG to suppose that the Group B redactions concern matters which fall within the ambit of the Discovery Order, and therefore held that failure to produce unredacted copies of the Group B emails would constitute a breach of the Prior Discovery Order.

97 As regards the third group (emails between 15–16 September 2020) ("Group C"),[77] as well as the emails in D2LOD 16, Mr Woo said that these redactions concerned follow up steps that Prof Mak was considering taking in respect of the documents and information shared with him.

98 I found that failure to produce the Group C and D2LOD 16 emails unredacted would constitute a breach of the Prior Discovery Order, and would adopt my reasons in relation to D2LOD 14 (set out at [88]–[91] above) *mutatis mutandis*.

[77] 4JBOD 338–339.

The allegedly omitted correspondence

99 The second plank of SEG's case on the Unless Order Application was that Mr Woo had omitted to disclose email correspondence that fell within the Prior Discovery Order. There were six categories of observations which, SEG said, led it to suspect that there must be further correspondence that Mr Woo had failed to disclose.[78] Against this, Mr Woo stated on affidavit that no other documents falling within the scope of the Prior Discovery Order exist in his possession, custody or power.

100 The law (under the ROC 2014) is that statements in an affidavit made by the disclosing party as to the non-existence of relevant documents are generally conclusive unless it can be shown, from the documents already disclosed or necessarily from the circumstances, that there is at least a reasonable suspicion that there are further documents to be disclosed (*Soh Lup Chee and others v Seow Boon Cheng and another* [2002] 1 SLR(R) 604 at [7] and [9]).

101 I address the six categories in turn.

D2LOD 4

102 SEG made two arguments in relation to D2LOD 4, which I rejected.

103 First, SEG referred to an email from KK to Prof Mak which began with the phrase "[a]s requested", and sought to suggest that there might be undisclosed correspondence relating to the making of that request.[79] Against this, Mr Woo has explained on affidavit that the request was communicated

[78] PWS at para 176.

[79] PWS at para 176(a).

orally,[80] and there was in my view no reason to doubt the veracity of that explanation.

104 Second, SEG argued that there must be further correspondence relating to follow up questions and clarifications that it surmised Prof Mak would surely have had to make, given the substantial information KK had provided him in a 28 August 2020 email.[81] I found this argument unpersuasive. There was in fact a follow up email disclosed, sent three days after that 28 August 2020 email, in which Prof Mak did raise several queries on the matters in KK's emails.[82] I rejected SEG's argument that it was unbelievable that Prof Mak would not have followed up immediately to ask questions given the importance of the 28 August 2020 email. As counsel for Mr Woo pointed out, there was nothing unusual about the fact that Prof Mak only responded three days after the 28 August 2020 email, given that he might have needed time to digest the materials.

D2LOD 5

105 As regards D2LOD 5, SEG argued that it was highly unlikely that the email from Prof Mak to KK on 31 August 2020 at 3.30pm would have gone without a response.[83] In that email, Prof Mak informed KK that he was using a register of members of one of SEG's subsidiaries to track movements of shares between its shareholders:[84]

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[80] DWS at para 67, citing 4JBOD 26.

[81] PWS at para 176(b).

[82] DWS at para 67, citing 4JBOD 275.

[83] PWS at para 176(c).

[84] 3JBOD 73 at para 34.

> I've used the 62 page record of members to build up the movements of the shares in SMGL and will connect with the info on related parties who control the entities. Thanks.

106 Nothing on the face of that email suggests that a response or further discussion was contemplated or expected. SEG argued that one would have expected KK to step in to provide further "guidance" to Prof Mak.[85] But nothing in Prof Mak's email could be read as a request for "guidance", or as supporting an inference that he needed or expected any such "guidance".

D2LOD 7

107 As for D2LOD 7 (Prof Mak's email of 31 August 2020, 4.55pm), and contrary to SEG's submission, it was not the case that the query in this email went unanswered.[86] KK had in fact responded to Prof Mak's query in an email sent on 31 August 2020 at 7.01pm.[87]

D2LOD 10

108 In the email at D2LOD 10, Prof Mak shared a draft of the 2nd Mak Statement with KK, and said:

> Attached is the first draft of any article which I would like to post. Can you have a look to see I have not used anything that is not public? I have only used the information that is clear from public records.

109 SEG argued that since Prof Mak had asked KK to review a draft of the 2nd Mak Statement, there must exist similar correspondence relating to the review of the 3rd Mak Statement (which was published on 31 October 2020).[88]

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[85] PWS at para 176(c).

[86] PWS at para 176(d).

[87] 4JBOD 268.

[88] PWS at para 176(e).

110 Against this, Mr Woo argued that it could not have been that KK was asked to review any drafts of the 3rd Mak Statement, because KK was only informed of that article *after* it was published (according to Mr Woo, Prof Mak first notified KK of the article on 31 October 2020 at 10.19am, whereas the article was published earlier at 2.41am that same day). Prof Mak had also explained his tone and his intent behind the article, which would not be necessary if an advance draft of the article had already previously been shared.[89]

111 I agreed with Mr Woo that the evidence does not found a reasonable suspicion that Prof Mak must have shared other drafts with KK and that related correspondence must therefore exist. In my view, the fact that Prof Mak had written to KK to inform them of the publication of the 3rd Mak Statement and to explain his intent and tone was telling – there would not have been a need for Prof Mak to do so had he circulated an earlier draft of the 3rd Mak Statements.

112 To avoid doubt, I express no view on the issue of whether the Mak Statements were published on KK's or Mr Woo's instructions – that is a matter for trial. The question before me was whether, based on the evidence before me, there was reasonable basis to suspect that Prof Mak had sent drafts of other articles (apart from the 2nd Mak Statement) to KK for review, which he had not disclosed. On the evidence before me, and for the reasons given above, I answered that question in the negative.

[89] 4JBOD 13–15.

D2LOD 20

113 As regards D2LOD 20, SEG referred to two emails within the same email chain – one sent on 26 October 2020[90] and the other on 29 October 2020.[91] In the 26 October 2020 email, KK responded to an earlier query from Prof Mak as to whether Mr Spackman had appealed against a certain judgment made against him in Hong Kong. In the 29 October 2020 email, Prof Mak referred to one "Richard Lee" and asked KK questions about Richard Lee. SEG's point was that the two emails appeared to discuss entirely different subjects, and that this suggested that there must have been other emails sent in response to the 26 October 2020 email that have not been disclosed.[92]

114 Against this, Mr Woo explained, and I accepted, that the matters discussed in the two emails were in fact linked.[93] The chain of correspondence (from which both emails arose) arose from a discussion pertaining to a decision of a Hong Kong court dismissing Mr Spackman's application to discharge an injunction against him.[94] The reference to "Richard Lee" in the 29 October 2020 email was not a *non sequitur* but was related to the preceding discussion on the Hong Kong proceedings (in which Richard Lee was the first respondent). There was also an earlier mention of Richard Lee in a 20 October 2020 email[95] in that same email chain, where KK informed Prof Mak that Richard Lee was one of a few individuals found by the Hong Kong court to have been a nominee of Mr Spackman.

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[90] 5JBOD 58.

[91] 5JBOD 58.

[92] PWS at para 176(f).

[93] DWS at para 67 on the "Unredacted D2LOD 20".

[94] 5JBOD 24.

[95] 5JBOD 61.

The 3 September 2020 emails

115 Finally, SEG pointed to certain formatting discrepancies in a 3 September 2020 email chain, in that the body and header of a 3 September 2020, 10.48pm email were misaligned with the signature and confidentiality notice.[96] I rejected this argument as there was nothing to suggest that the discrepancies amounted to anything more than a formatting issue.

Conclusion on SUM 1955

116 To recap, I made the following findings in relation to SUM 1955:

(a) As regards the redactions, I found that compliance with the Prior Discovery Order would require that Mr Woo produce copies of the relevant documents with the redactions in D2LOD 10, D2LOD 14, Group B and Group C of D2LOD 15 and D2LOD 16 removed.

(b) To avoid doubt, the Name Redactions, the redactions in D2LOD 3, the Internal Circulation Redactions and the Group A redactions in D2LOD 15 did not constitute non-compliance with the Prior Discovery Order.

(c) As regards the allegedly omitted correspondence, I found that SEG had not shown that there was a reasonable suspicion that the allegedly omitted correspondence exists.

117 Although I had found that some of the redactions would, if retained, constitute a breach of the Prior Discovery Order, I did not consider this an appropriate case for the making of an unless order. The law on peremptory

[96] PWS at para 177.

orders is trite – such orders are exceptional tools of last resort and should be made sparingly when the defaulter's conduct is inexcusable (*Mitora Pte Ltd v Agritrade International (Pte) Ltd* [2013] 3 SLR 1179 at [45(a)]). Having considered Mr Woo's conduct in relation to the Prior Discovery Order in the round (including his offer to furnish unredacted copies of the relevant documents to the court), I was satisfied that this high threshold was not met in this case. I therefore dismissed the Unless Order Application.

118 That said, in light of my findings that certain redactions would constitute a breach of the Prior Discovery Order if retained, counsel for Mr Woo indicated that Mr Woo would produce unredacted copies of the relevant documents, without the need for the court to make orders to that effect.

SUM 1956: The Release Application

119 SUM 1956 is SEG's application to lift the *Riddick* undertaking in respect of two sets of documents: (a) the CFA; and (b) the KK-Mak Correspondence. SEG sought to use these documents for the following purposes:[97]

(a) *Purpose 1: The Singapore enforcement proceedings in Suit 211*: SEG sought to adduce the CFA as evidence in Suit 211 (*ie*, the Singapore proceedings for the enforcement of the Korean Judgment against, amongst others, Mr Spackman).

(b) *Purpose 2: Investigations in Hong Kong*: SEG sought to extend a copy of the CFA to "the relevant regulatory and/or enforcement bodies in Hong Kong" for inquiries into or potential prosecutions against KK for breaches of professional conduct rules, and for investigations into or

[97] PWS at para 190.

prosecutions against Mr Woo and KK for the offences of maintenance and champerty.

(c) *Purpose 3: Commencing committal proceedings in Singapore*: SEG sought to use the CFA and KK-Mak Correspondence to commence committal proceedings against Mr Woo in Singapore for giving false testimony on oath.

(d) *Purpose 4: Investigations in Singapore under the Securities and Futures Act 2001 (2020 Rev Ed) ("SFA")*: SEG sought to provide the KK-Mak Correspondence to the "relevant regulatory and/or enforcement bodies in Singapore" for investigations into or prosecutions against Mr Woo, KK and Prof Mak under the SFA.

The applicable law on lifting the **Riddick** *undertaking*

120 The principle in *Riddick* is well known: documents ordered to be disclosed may only be used for the purposes of the civil proceedings from which the disclosure was made (*Lim Suk Ling Priscilla and another v Amber Compounding Pharmacy Pte Ltd and another and another appeal and another matter* [2020] 2 SLR 912 ("*Amber Compounding*") at [1]). In practice, this principle manifests in the form of an implied undertaking that parties give to the court not to use such documents for purposes extraneous to the civil proceedings. Before such documents may be used for any extraneous purpose, leave of court must typically be obtained. The rationale for this relatively strict approach is "to encourage litigants to provide full and complete discovery in the interest of justice with the concomitant assurance that the disclosed documents will not be used for any collateral purpose save with express leave of court" (*Amber Compounding* at [1]).

121 The analytical framework for determining applications to lift the *Riddick* undertaking is that set out in *Ong Jane Rebecca v Lim Lie Hoa and other appeals and other matters* [2021] 2 SLR 584 ("*Ong Jane Rebecca*") (at [99]):

> (a) First, the court determines whether the *Riddick* undertaking applies to the document. The question is whether that document was disclosed under compulsion. If so, the *Riddick* undertaking applies to it; and if not, the document is not protected and can be used without leave of court. That latter situation was referred to as the "first category" of situations.
>
> (b) Second, if the *Riddick* undertaking applies to the document, the court determines whether the document can nonetheless be used without leave of court due to the nature of the related enforcement proceedings for which the documents are being used. If so, the document falls within the "second category" of situations.
>
> (c) Third, if the *Riddick* undertaking applies to the document and the proceedings in which it is sought to be used are not related enforcement proceedings, the court determines whether leave should be granted for the *Riddick* undertaking to be lifted, with reference to the factors espoused in *Amber Compounding*. This was the "third category" of situations.

122 It was common ground that this case fell within the "third category" in *Ong Jane Rebecca*, and that the *Riddick* undertaking applied.[98]

[98] PWS at para 192.

123 In determining whether the *Riddick* undertaking ought to be lifted, the court engages in a multifactorial balancing exercise, and leave will only be granted if, in all the circumstances, the interests advanced for the extraneous use of the disclosed documents outweigh the interests that are protected by the *Riddick* undertaking (*Amber Compounding* at [46] and [72]).

124 In this regard, the burden of proving that the balance of interests lies in favour of lifting the *Riddick* undertaking rests on the applicant (*Bergman v Bergman (No 4)* [2008] 40 Fam LR 586 ("*Bergman*") at [76]).

125 The Court of Appeal in *Amber Compounding* set out a non-exhaustive list of factors which the court may consider in determining whether the circumstances warrant a release of the *Riddick* undertaking.

(a) The following factors may be cited to support the lifting of the *Riddick* undertaking (*Amber Compounding* at [71]):

(i) countervailing legislative policy;

(ii) support of related proceedings;

(iii) investigation and prosecution of criminal offence(s);

(iv) public safety concerns; and

(v) international comity.

All of these might be said to raise countervailing interests which the court must then balance against the interests protected by the *Riddick* undertaking.

(b) The following factors militate against lifting the *Riddick* undertaking (*Amber Compounding* at [72]):

(i) the public interest in encouraging full disclosure;

(ii) the disclosing party's privacy interests;

(iii) injustice or prejudice to the disclosing party;

(iv) improper purpose for which leave is sought; and

(v) the privilege against self-incrimination.

126 Here, Purposes 2–4 engage the same countervailing interest – the public interest in facilitating the detection, investigation and prosecution of criminal offences or other quasi-criminal wrongdoing. In determining the weight to be given to this interest, the Court of Appeal considered the following factors apposite (*Amber Compounding* at [71(c)]):

(a) whether civil remedies are available;

(b) the cogency of the evidence to be adduced in support of the offence;

(c) the body or authority to which the documents will be disclosed to;

(d) the seriousness of the crime reported; and

(e) the proportionality of the potential penal sanctions.

127 Drawing on and building upon the five factors enumerated by the Court of Appeal, and bearing in mind that these factors do not belong to a closed list, I respectfully suggest that these factors might usefully be condensed into three categories relating to the following:

(a) the nature of the criminal offence or other wrongdoing;

(b) the cogency of the evidence sought to be adduced to facilitate investigations or prosecution of the offence of wrongdoing; and

(c) the body or authority to which the documents will be disclosed.

I elaborate on each of these categories and their subordinate factors in turn, with a focus on discussing how, in my view, these factors feature in the analysis of the appropriate weight to be given the public interest that animates [71(c)] of *Amber Compounding*.

The nature of the criminal offence or other wrongdoing

128 The cases suggest that courts may consider at least four factors relating to the nature of the offence or wrongdoing in question.

129 *(1) Whether civil remedies are available*: A distinction might be drawn between offences involving the infringement of a private right for which analogous civil remedies are available (*eg*, criminal defamation) and offences for which this is not typically the case (*eg*, possession of child pornography). It is arguable that, in general, offences of the former nature less vigorously engage the public interest in facilitating investigation and prosecution because that public interest can adequately be served by allowing the wronged party to continue with or initiate any civil action open to him. Conversely, where the bringing of criminal proceedings is the "exclusive or perhaps the superior means of defending the public interest", that weighs in favour of lifting the *Riddick* undertaking (*Bailey v Australian Broadcasting Corporation* [1995] 1 Qd R 476 ("*Bailey*") at 489).

130 *(2) The seriousness of the offence or wrongdoing*: The types of offences for which the *Riddick* undertaking has been lifted – and their relative gravity – are varied.

(a) In *Bailey*, the *Riddick* undertaking was lifted to facilitate the investigation of a leak of certain documents prepared in the course of criminal prosecutions to the defendants which, the court observed, had a "certain and serious ability to undermine public confidence in the criminal process" (at 489).

(b) In *Bergman*, it was alleged that the protected documents would shed light on the perpetration of an alleged fraud which involved a "substantial sum". In lifting the *Riddick* undertaking, the court held that "the actions and documents are serious enough to warrant the proper scrutiny of the authorities" (at [91]).

(c) In *O Ltd v Z* [2005] EWHC 238 (Ch) ("*O Ltd*"), the offence in question involved possession of "paedophile pornography of a serious nature" (at [1]). The court considered that the offence was "indeed a grave one" (at [77]).

(d) In *Prime Finance Pty Limited and Ors v Maurice Colin Randall and Ors* [2009] NSWSC 361 ("*Prime Finance*") the relevant documents appeared to evidence various offences of dishonesty arising from the acts of a mortgage broker who had encouraged persons to make false statements for the purpose of obtaining finance. The court considered this a "serious state of affairs where it would be understandable that the criminal law ought to be invoked" (at [40]).

(e) *Marlwood Commercial Inc v Kozeny and others* [2005] 1 WLR 104 (at [51]) and *Gilani v Saddiq* [2018] EWHC 3084 (Ch) (at [22]) both involved serious and complex fraud.

131 While the cases above do offer some guidance as to the types of offences that courts have considered "serious", they do not suggest that the offence in question must meet some minimum threshold of seriousness before its investigation will engage the public interest. Of course, where the offence or wrongdoing is of a "trivial or inconsequential nature", that might in an appropriate case give rise to an inference that the application for leave was brought not for the purpose of promoting the public interest (which would be far less compelling for offences of that nature) but rather for improper purposes (*eg*, malice or spite on the part of the applicant) (*Bailey* at 486). But apart from infringements so trivial that they found an inference that the application was made for improper purposes, I do not think it can properly be said that there exists a class of offences (not meeting some stipulated threshold of "seriousness") for which investigation and prosecution would not advance the public interest at all. The investigation or prosecution of practically *any* offence or wrongdoing will ordinarily advance *some* public interest. The question is not whether, but *how much* weight should be accorded to the public interest in investigating or prosecuting that offence (and, in the final analysis, whether that outweighs the public interests preserved by the *Riddick* undertaking). In this regard, the more serious the crime, the greater the presumptive weight of the resulting public interest in investigating and prosecuting that crime.

132 *(3) The ease of detecting the offence or wrongdoing*: In general, where the offence is of such a nature as to make it difficult to detect, there is a correspondingly greater public interest in lifting the *Riddick* undertaking to enable the detection and prosecution of such crime (*Bailey* at 490). Thus, in

Bergman, the fact that the offence in question might not otherwise be detected and prosecuted without the documents sought to be disclosed was a factor in favour of lifting the *Riddick* undertaking (at [91]).

133 *(4) The proportionality of the potential penal sanctions*: A court may decline to lift the *Riddick* undertaking to facilitate a prosecution where the punishment for the offence is disproportionate to the offence committed (*Amber Compounding* at [71(c)]). This might be the case, for instance, where the punishment for an offence involving an infringement of intellectual property rights is imprisonment for life or some form of cruel or unusual punishment (*Reebok International Ltd v Royal Corp and another action* [1991] 2 SLR(R) 688 at [36]).

The cogency of the evidence

134 The analysis of cogency has at least three aspects: (a) the relevance of the documents (sought to be disclosed) to the purpose for which disclosure was sought; (b) the necessity of the documents for that stated purpose; and (c) the merits of the complaint against the alleged wrongdoer. I address them in turn.

135 *(1) Relevance of the document(s) to their stated purpose*: Where, for instance, documents are sought for the purposes of facilitating the investigation or prosecution of a crime, courts will consider whether the documents in question are likely to be relevant to the authorities' consideration of whether to commence or continue investigations or the prosecution, as the case may be. If the documents in question will have "little or no bearing on the investigation or trial", that militates against the lifting of the *Riddick* undertaking (*O Ltd* at [77], citing *Re: C (a minor) (Care Proceedings: Disclosure)* [1997] Fam 76 (CA) at 85–86).

(a) In *Bergman*, the court allowed the disclosure of certain commercial and financial documents that had been produced pursuant to a subpoena in family proceedings to relevant law enforcement agencies (to facilitate criminal investigations into an alleged fraud). In so doing, the court considered that the documents would serve to provide the authorities with the necessary "understanding of the commercial and legal background to corporate decisions concerning the [commercial entities connected with the alleged fraudster] in order to investigate any alleged wrongdoing" (at [72]).

(b) Conversely, the Federal Court of Australia in *Australian Securities & Investments Commission v Marshall Bell Hawkins Limited* [2003] FCA 833 ("*Bell*") declined to lift the *Riddick* undertaking in circumstances where the applicant had failed to satisfy it that *all* of the documents sought to be disclosed would be relevant to its stated purpose – *ie*, to enable the applicant authority to decide whether to convene a hearing for the purpose of determining whether a certain licence issued to a company ought to be revoked (at [23]).

136 *(2) Necessity of the document(s) for their stated purpose*: Apart from assessing relevance, the court may also consider whether the documents sought are *necessary* (*Bell* at [22]).

(a) For instance, if the applicant can show that no effective report to or investigation by the authorities can be made without the documents sought (see *Prime Finance* at [44]), the court may accord greater weight to the public interest in favour of disclosure. The inquiry as to necessity is, in my view, best approached not in binary terms but on a spectrum –

the higher the degree of necessity, the greater the weight that would be accorded to the public interest in favour of ordering disclosure.

(b) Conversely, documents would generally have a lower degree of necessity in the following circumstances:

(i) Where the authorities to whom the documents in question are to be disclosed have other means of obtaining the documents or the information therein (*eg*, by invoking any statutory powers available to them to obtain the documents) (*Amber Compounding* at [110]; *Bell* at [22]). For instance, in *Amber Compounding*, the court noted that the authorities were "well positioned to invoke their own powers to seize any additional documents or information from the defendants should they deem fit to do so" (*Amber Compounding* at [110]).

(ii) Where the purpose for which the documents are sought can be achieved by reference to existing material already available to the relevant authority (*Bell* at [22] and [24]). Thus, in *Bell*, the *Riddick* undertaking was not lifted in circumstances where the applicant authority had failed to satisfy the court that it had been "hindered or impeded in making any such decision [for which the documents had been sought] by not having access those documents" (*Bell* at [25]).

137 *(3) Cogency of the complaint against the alleged wrongdoer*: Finally, the court may consider the cogency of the complaint or grounds on which an investigation or prosecution is said to be warranted.

138 Both parties accept that the court may engage in some evaluation of the merits of the complaint, but join issue on what the appropriate depth and extent of the court's inquiry. SEG argued that the standard of evaluation is a low one, *ie*, the complaint must not be one which is bound to fail and frivolous.[99] Mr Woo argued that the applicant must establish, at a minimum, a *prima facie* or arguable case on the merits of the alleged offences, and emphasised that the circumstances under which the *Riddick* undertaking has, in practice, been lifted have been such as to "leave little doubt that a serious offence… has in fact been committed".[100]

139 I agreed with SEG that the standard of evaluation must be a low one, and would suggest that an appropriate approach would be for the court to ask itself if, based on the documents sought to be disclosed, there is, *prima facie*, a question to be investigated or an apprehension that an offence has been committed.

(a) In *Bailey*, the court considered that the material placed before it "*prima facie* at least, gives rise to an apprehension that an indictable offence… has… been committed" (at 488).

(b) In *Prime Finance*, the court observed, in relation to the cogency of the evidence, that the documents sought to be disclosed "appear to provide evidence of the commission of [the relevant offences]" (at [40]).

(c) In *Crest Homes plc v Marks and others* [1987] 1 AC 829 ("***Crest Homes***"), which concerned the disclosure of protected documents for the purposes of considering the commencement of contempt

[99] SPWS at para 2(b).

[100] SDWS at para 5.

proceedings, Nourse LJ (in the English Court of Appeal) and Lord Oliver (in the House of Lords), both of whom delivered the leading judgments of their respective courts, preferred to frame the threshold in terms no higher than to ask if, on the evidence to be disclosed, there was "a question… to be investigated".

As regards the cogency of the plaintiff's case on contempt, Nourse LJ observed as follows (at 840):

> … it appears to me that the material on which [plaintiff's counsel] relies establishes that there is a question of contempt to be investigated. It is not appropriate to put it higher than that.

On appeal to the House of Lords, Lord Oliver likewise held that (at 860):

> [t]he evidence in the instant case discloses that there is, to put it no higher, at least a serious question to be investigated as to whether there has not been a deliberate contempt by flouting the court's orders and breaking undertakings feely given to the court…

140 The court's consideration of the merits is undertaken on a *prima facie* basis. In other words, the court, at this stage, undertakes this exercise on the face of the applicant's evidence. The court need not (and indeed may not be in a position to) undertake an in-depth assessment of the potential defences the alleged wrongdoer might raise, and the fact that the alleged wrongdoer may have advanced explanations or defences will not *necessarily* preclude a finding that there is a "question to be investigated".

(a) Thus, in *Bergman*, the court lifted the *Riddick* undertaking for the purposes of facilitating investigations against an alleged fraudster notwithstanding that he had "provided a strong explanation which may wholly explain and support his actions" (at [85]):

> I am particularly conscious of the fact that, on the facts of this case, what is sought is a police investigation. There may or may not be any criminal prosecution. Porter [*ie*, the alleged fraudster] has provided a strong explanation which may wholly explain and support his actions. I do not know and make no finding. … I am not authorising a criminal prosecution, although that may well be a consequence.

(b) Likewise, in *O Ltd*, the court was prepared to lift the *Riddick* undertaking even though it was "far from clear" that the alleged wrongdoer (on whose computer drives were found "paedophile pornography of a serious nature") would have no defence and that "[d]ifficult questions could arise" as to whether such material, if deleted, could still legally be said to have been in his possession (at [27]).

141 The foregoing authorities suggest that it is not necessary for the applicant to establish (and for the court to find) that an arguable case on the offence is likely to be made out (*Bergman* at [91]). In practical terms, this means that the court need not necessarily undertake a detailed, element-by-element analysis of the complaint or charge. Indeed, there is, I think, good reason why courts *should not* do so. The court is, at this stage, deciding only whether protected documents may be disclosed to the relevant authorities to enable them to decide whether to commence *investigations*. At this early stage, there may not be enough evidence available for the applicant to make out an arguable case on any element of the offence, much less the entire offence – hence the need for further investigations to first take their course. To require proof of a complete, arguable case as a prerequisite to the disclosure of documents to facilitate *investigations* would, in my respectful view, be unrealistic.

142 I should emphasise that just because the test for cogency is not an exacting one does not, in my view, mean that the floodgates would therefore be opened to frivolous or malicious applications to lift the *Riddick* undertaking.

Cogency is but one factor in the multifactorial test. The burden remains on the applicant to show that the balance of interests lies in favour of lifting the *Riddick* undertaking, and a court may well find that that balance tips the other way, perhaps because the offence in question is trivial, or because the authority in question has alternative and superior means at its disposal for obtaining the material necessary for its investigations.

The body or authority to which the documents will be disclosed

143 The body or authority to which the documents will be disclosed is relevant to the inquiry because it engages the court's interest in safeguarding disclosed documents against potential misuse. In *Bailey*, the court explained that where the disclosure will be to the relevant criminal authorities and not, for instance, the media, the court "may well be comforted by the fact that one would not readily expect documents so disclosed to venture into the public arena" (*Bailey* at 490). Arguably, where the disclosure is made to accepted and appropriate law enforcement authorities, there would ordinarily be no cause for concern that the documents or information therein would be misused.

My decision on SUM 1956

144 As mentioned, there were four Purposes for which disclosure of the CFA and KK-Mak Correspondence were sought. I address them in turn.

Purpose 1: Suit 211

145 At the time SUM 1956 was filed, SEG sought to obtain the court's leave to lift the *Riddick* undertaking to allow the CFA to be used in Suit 211 (*ie*, the Singapore enforcement proceedings). That purpose is now moot because certain parties' pleadings (in Suit 211) had, in the meantime, been amended to

introduce a new defence to which the CFA is undisputedly relevant. In short, it became common ground that the CFA is a discoverable document in Suit 211.

146 I therefore made no order on Prayer 1(a) of SUM 1956 (*ie*, Purpose 1).

Purpose 2: Investigations in Hong Kong

147 SEG sought leave to furnish the CFA to the relevant regulatory and enforcement bodies in Hong Kong for inquiries or potential prosecutions against KK for breaches of professional conduct rules, and for investigations into or prosecutions against Mr Woo and KK for the offences of maintenance and champerty. The broad question which SEG sought to raise for investigation was whether Mr Woo's Hong Kong enforcement proceedings were being prosecuted pursuant to a contingency fee arrangement.

148 To succeed, SEG must discharge its burden of showing that the balance of interests lies in favour of lifting the *Riddick* undertaking. I found that SEG had succeeded in doing so. In determining the weight to be given to that interest, I considered the following factors.

149 *Nature of the offence or wrongdoing*: Mr Woo did not suggest that champerty and maintenance are trivial or inconsequential infringements, and rightly so. They are indictable offences at common law in Hong Kong and are punishable by imprisonment and a fine, and engage the public interest in ensuring public confidence in the integrity of the justice system and its ability to ensure the fair administration of justice. This was not unlike the offences in *Bailey* (see [130(a)] above), which also engaged the public interest in upholding public trust and confidence in the administration of justice.

150 *Cogency of the evidence*:

(a) I accepted SEG's submission that the CFA disclosed what appears to be in the nature of a contingency fee arrangement (in that KK would only receive payment for its fees if recovery was made on the Korean Judgment), and a litigation funding arrangement (in that KK would absorb Mr Woo's legal costs and bear his disbursements upfront).[101] This was not seriously disputed.

(b) On his part, Mr Woo argued that the CFA was not relevant to whether offences of champerty and maintenance had been committed *in Hong Kong* because the CFA is an arrangement between Mr Woo (a Korean individual) and KK, a *New York* entity distinct from its Hong Kong office, Kobre & Kim (HK) LLP ("KK HK").[102]

(c) Against this, SEG submitted that Mr Woo's argument did not foreclose the possibility that KK or KK HK may have engaged in conduct that was unlawful *in Hong Kong* because the CFA expressly provides that KK (the New York entity) "expects to" to draw upon the services of other affiliated entities, which would include KK HK.[103] In a footnote to the CFA, it was expressly caveated that while the client enters into an attorney-client relationship only with KK (New York), "the Client [*ie*, Mr Woo] consents to [KK] performing its services by drawing upon other Kobre & Kim LLP-affiliated entities".

[101] PWS at para 227.

[102] SDWS at para 19(c).

[103] PWS at para 234; 12WSC at p 27.

(d) Mr Woo said that his relationship with KK HK was governed by an entirely separate agreement, but did not adduce any such agreement as evidence in these proceedings.[104]

(e) In my judgment, the aforementioned stipulations in the CFA did, *prima facie*, raise a question to be investigated – *ie*, whether work was done by Mr Woo's solicitors in Hong Kong pursuant to a contingency fee arrangement. This weighed in favour of the public interest in investigating potential wrongdoing.

151 *Identity of the relevant authorities*: Mr Woo took issue with the fact that SEG had not specifically identified the relevant regulatory or enforcement bodies.[105] In my view, this objection was not a weighty one; this was not a case where doubts had been cast as to whether a relevant authority exists at all. Nor was it suggested that there might be concerns of potential misuse of the documents by the relevant authorities.

152 *Prejudice*: I accept that if inquiries or investigations are commenced, that would mean that Mr Woo and KK might need to expend time and resources attending to those inquiries or investigations. In lifting the *Riddick* undertaking, the court is not authorising or ordering any inquiry or investigation – whether to do so would be a matter for the relevant Hong Kong authorities. Any order that the court makes will be purely facilitative. If the Hong Kong authorities decide not to take any action, no prejudice would have been occasioned to Mr Woo and KK. If the Hong Kong authorities do decide to commence inquiries or investigations, then that must be because those authorities determined that

[104] 12WSC at para 29.

[105] SDWS at para 19(a).

there was basis to do so, and it would lie ill in the mouth of Mr Woo or KK to say that that constitutes unfair prejudice. In any case, prejudice is but one factor to be considered in the multifactorial balancing exercise, and does not have overriding importance (*Amber Compounding* at [106]).

153 Having considered these factors in the round, especially the fact that the CFA was relevant and cogent evidence which raised a question to be investigated, and my assessment that no unfair prejudice would be occasioned to Mr Woo, I found that the balance of interests lay in favour of lifting the *Riddick* undertaking in relation to Purpose 2.

Purpose 3: Commencing committal proceedings in Singapore

154 SEG sought leave to use both the CFA and the KK-Mak Correspondence for the purposes of considering the commencement of committal proceedings in the Singapore courts.

155 As a preliminary point, counsel for SEG submitted that while this did not strictly fall within the second category of *Ong Jane Rebecca* (for which leave of court is not required) because committal proceedings are a form of enforcement proceedings (referring to Order 45, rule 5(1) of the ROC 2014), this is at least *akin* to the second category of *Ong Jane Rebecca* and therefore the court should more readily grant leave. Against this, counsel for Mr Woo highlighted that committal proceedings referred to in Order 45, rule 5(1) are of a specific type – committal proceedings arising from non-compliance with a judgment or order, and *not* committal proceedings of the type we are presently concerned with, *ie*, committal for giving false testimony on oath. I agreed with counsel for Mr Woo. This case fell squarely within the third category of *Ong Jane Rebecca*.

156 The parties' dispute on Purpose 3 centred on the cogency factor – *ie*, the cogency of the evidence put forward by SEG in support of its case on contempt.

157 SEG's case on contempt was that Mr Woo had given false testimony on oath in his various affidavits in Suit 592, in that he had, in substance: (i) denied the existence of the CFA (and had not merely denied selling his claim under the Korean Judgment to KK); and (ii) denied any involvement with the Mak Statements, whether personally or through KK (and had not merely denied instructing Prof Mak to publish the Mak Statements).[106]

158 In respect of the CFA, SEG submitted that Mr Woo had, in substance, falsely denied the existence of the CFA. SEG referred to, amongst others, the following parts of Mr Woo's evidence:

(a) Paragraph 12 of Mr Woo's 3rd Affidavit which, SEG said, insinuated that there was no contingency fee arrangement between him and KK:

> I have already pleaded, and confirm again herein, that I did not sell my claim under the [Korean Judgment] to KK *and/or enter into any written retainer and/or other written arrangements in respect of the same*. [SEG's emphasis]

On his part, Mr Woo said that the phrase "the same" was a reference to the sale of his claim – *ie*, Mr Woo was doing no more than to state that he did not sell his claim nor enter into any agreement to sell his claim.

(b) Paragraph 17 of Mr Woo's 3rd Affidavit which, SEG argued, insinuated that the CFA did not exist and that Mr Woo was in fact

[106] PWS at para 237.

funding the enforcement proceedings arising from the Korean Judgment:

> It is also highly ironic that [SEG] would allege that I am financially incapable of funding my own litigation

On his part, Mr Woo said that all he was saying was that he was capable of funding his own litigation.[107]

(c) Paragraph 16 of Mr Woo's 4th Affidavit (filed in support of Mr Woo's prior application to strike out SEG's allegation that he had sold his claim in HC/SUM 1407/2023):

> I also wholly reject [SEG's] attempt to cast aspersions on my motivations for filing SUM 1407, i.e. that I am supposedly "concerned that if [I have] to provide full disclosure, [I] will have to disclose documents that will support [SEG's] position…" There is no truth or basis to those allegations at all.

In this passage, Mr Woo denied that he was seeking to strike out SEG's allegations regarding the sale of his claim because he was concerned that he would have to disclose documents that would support the sale of claim allegation (for instance, the CFA). SEG's case was that this insinuated that no such documents (*ie*, including the CFA) existed.

On his part, Mr Woo said that he was doing no more than to deny SEG's claim that he was seeking to strike out SEG's allegations due to concerns over document disclosure – rather, he had done so because he believed those allegations (relating to the sale of his claim) baseless.

159 In respect of the KK-Mak Correspondence, SEG submitted that Mr Woo had in substance falsely denied any involvement with the Mak Statements,

[107] 12WSC at para 31(c).

whether personally or through KK (which would be false in the sense that the KK-Mak Correspondence showed that KK did correspond with Prof Mak in relation to the Mak Statements), and had not merely denied instructing Prof Mak to publish the Mak Statements. SEG referred to, amongst others, the following parts of Mr Woo's evidence:

(a) Paragraph 6 of Mr Woo's 3rd Affidavit in which, SEG claimed, Mr Woo's intention was to falsely deny that neither he nor KK was involved in publishing the Mak Statements:

> I have absolutely no personal connection to [Prof Mak], and I did not instruct [Prof Mak] (whether personally and/or through [KK] to publish the Mak Statements and/or any other statements on my behalf.

On his part, Mr Woo argued that he had never denied his or KK's "involvement" in the publication of the Mak Statements, and had only said that neither he nor KK "instructed" Prof Mak to publish the Mak Statements.

(b) Paragraph 10(a) of Mr Woo's Affidavit Verifying Supplementary List of Documents dated 20 June 2024, in which, SEG said, Mr Woo attempted to downplay his involvement in the publication of the Mak Statements by stating that he had only authorised KK "to find out information about Mr Spackman and his assets, including by communicating with third parties who may have information". SEG countered that the KK-Mak Correspondence clearly showed otherwise; *ie*, that KK appeared to have reached out to Prof Mak to feed him information for the purpose of preparing the Mak Statements (see, for an example, the correspondence referred to at [86] above).[108]

[108] 6NKW at para 72.

160 As regards the severity of the alleged wrongdoing, there is no doubt that contempt proceedings of the sort envisaged here are serious, because they go to the integrity of the court process. On the cogency of the evidence, SEG had, in my view, done enough to show that there was at least a question to be investigated as to whether Mr Woo had given false evidence. While Mr Woo has put forward robust responses to SEG's charges, and may very well succeed in resisting any application for leave to commence committal proceedings, this was not a case where the evidence put forward by SEG was so lacking as to found an inference that Purpose 3 was in truth no more than a tactical ploy to harass Mr Woo. In my view, the potential prejudice to Mr Woo was relatively low – it would be for SEG to decide whether to initiate the committal process (which is a court process), and if so, Mr Woo would have every right to defend himself and thereafter seek costs for his trouble if he is successful. Having considered these factors holistically, my view was that the balance tipped in favour of lifting the *Riddick* undertaking in respect of the CFA and the KK-Mak Correspondence for Purpose 3.

Purpose 4: Investigations in Singapore under the SFA

161 SEG sought leave to furnish the KK-Mak Correspondence to the relevant authorities in Singapore to facilitate investigations into whether, by publishing or causing the defamatory Mak Statements to be published, Mr Woo, KK of Prof Mak had committed an offence under s 199 of the SFA.

162 In my judgment, two factors weighed heavily against lifting the *Riddick* undertaking in respect of Purpose 4.

163 First, as Mr Woo pointed out,[109] the Mak Statements had already been investigated. A Notice of Compliance was issued, and the Monetary Authority of Singapore ("MAS") received a copy of the Independent Reviewer Report. I accepted Mr Woo's submission that if indeed the Mak Statements warranted investigation as to whether an offence under s 199 of the SFA had been committed, the MAS had every opportunity to investigate Prof Mak and prefer charges against him at the material time. MAS did not do so.

164 This spoke volumes of the cogency of the evidence. In *Amber Compounding*, the relevant reports had already been made to the authorities. The court considered it relevant that parties had not been able to point the court to any evidence of ongoing criminal investigations or prosecutions following the reports, and held that "[i]n the result, the merit of allowing further disclosure of the Documents to the authorities is uncertain" (*Amber Compounding* at [110]). Likewise, the fact that MAS was made aware of the Mak Statements and yet does not appear to have seen fit to follow up with further investigations suggested that there was little merit to allowing the disclosure of the Mak Statements for Purpose 4.

165 Second, and on the point of necessity, I agreed with Mr Woo that SEG had not explained why the authorities must be furnished copies of the KK-Mak Correspondence to carry out investigations. As Mr Woo detailed in his written submissions, both the SFA and Criminal Procedure Code 2010 (2020 Rev Ed) confer powers of investigation on MAS and the Commercial Affairs Department. These include powers to summon witnesses and order the production of information or books.[110] I agreed with Mr Woo that there was

[109] DWS at para 103(c).

[110] DWS at para 103(d).

nothing to stop SEG from filing a complaint; and there was nothing to suggest that the authorities would not thereafter be well-poised to look into the complaint in reliance on their statutory powers of investigation.[111]

166 For these reasons, I declined to lift the *Riddick* undertaking in respect of Purpose 4.

Conclusion on SUM 1956

167 To recap, I made the following orders in relation to the Release Application:

(a) I made no order in relation to Purpose 1.

(b) I decided to lift the *Riddick* undertaking in respect of the CFA for Purpose 2 and the CFA and Mak Statements for Purpose 3 (*ie*, SEG was permitted to use these documents for the specified purposes).

(c) I declined to lift the *Riddick* undertaking in respect of Purpose 4.

168 On Mr Woo's request, and having heard the parties, I directed that the permission granted to SEG to use the aforementioned documents be suspended for 14 days while the time for filing an appeal against those orders ran.

Conclusion

169 In sum:

(a) I granted Mr Woo's Specific Discovery Application in part (see [49] above).

[111] DWS at para 103(d).

(b) I dismissed SEG's Unless Order Application (see [116]–[118] above).

(c) I granted SEG's Release Application in part (see [167] above).

170 As regards the costs of these applications:

(a) *SUM 1671 (Mr Woo's Specific Discovery Application)*: I awarded costs to Mr Woo fixed at $3,500 plus disbursements of $4,641.57. Mr Woo had succeeded on 8 of the 11 categories, and of those, Categories 10 and 11 were only granted after having been substantially reframed. The arguments were mostly factual and were of low to moderate complexity. As regards the figure for disbursements, I agreed with counsel for SEG that SEG should not be made to bear the fees associated with the filing of a covering affidavit that counsel for Mr Woo had filed because they were unable to arrange for Mr Woo to notarise his affidavit in time, and therefore excluded that figure from the disbursements allowed.

(b) *SUM 1955 (SEG's Unless Order Application)*: I awarded costs to Mr Woo fixed at $3,500. SEG rightly accepted that Mr Woo was entitled to costs. This should not have been filed as an unless order application; SEG should, in my view, have considered filing an application for production of unredacted copies of the relevant documents. In coming to my decision, I also took into account my findings that SEG had reasonable grounds to suppose that Mr Woo's explanation for certain categories of redactions might be false (see [75] and [93] above).

(c) *SUM 1956 (SEG's Release Application)*: I awarded costs to SEG fixed at $7,000 plus disbursements of $1,900. SEG had substantially succeeded (though it had not succeeded on Purpose 4, and Purpose 1 had been rendered moot). I also considered the fact that the legal arguments covered what might be considered novel ground (in relation to the legal principles relating to the cogency of the evidence) and that parties had filed supplementary submissions in that regard.

171 Finally, it remains for me to thank counsel for their clear and comprehensive written and oral submissions, which were of great assistance to me in coming to my decision.

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