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

[2025] SGHCR 39

Originating Claim No 429 of 2025 (Summons No 2221 of 2025)

Between

Sree Ram Construction Pte Ltd

… *Claimant*

And

(1) Green Tag Scaffolding Pte Ltd
(2) Mani Senthil Kumar

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Pleadings — Striking out — Whether defendant may commence fresh claim instead of making counterclaim]
[Civil Procedure — Pleadings — Striking out — Whether abuse of process for defendant to commence fresh claim]
[Restitution — Unjust enrichment — Whether claim disclosed reasonable cause of action — Whether claim factually unsustainable — Whether payment made pursuant to valid contract – Whether claimant taking inconsistent positions]

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Sree Ram Construction Pte Ltd
v
Green Tag Scaffolding Pte Ltd and another

[2025] SGHCR 39

General Division of the High Court — Originating Claim No 429 of 2025
(Summons No 2221 of 2025)
AR Vikram Rajaram
15 September, 9 and 28 October 2025

26 December 2025

AR Vikram Rajaram:

1 Do the Rules of Court 2021 ("ROC 2021") mandate that a defendant bring all claims against a claimant as a counterclaim in the existing action, rather than commencing fresh proceedings? This question arose in the present application, where the Defendants sought to strike out the Claimant's action on the basis that the Claimant should have brought its claims as a counterclaim in related proceedings commenced earlier by the Defendants. The Defendants argued that O 6 r 8(1) of the ROC 2021, which states that a defendant who "intends to counterclaim" against the claimant "must" file the counterclaim with the defence, imposes a mandatory obligation to counterclaim, rather than sue separately. This was a departure from the position under the Rules of Court 2014 ("ROC 2014") where a defendant had the option – but not the obligation – to counterclaim. After considering the parties' submissions, I concluded that despite the change in wording, the position under the ROC 2021 remains

materially the same: the rules enable but do not compel a defendant to bring a counterclaim. I therefore dismissed the striking out application. My full reasons are as follows.

Background

The parties

2 The Claimant in HC/OC 429/2025 ("OC 429") is Sree Ram Construction Pte Ltd ("SRC"). SRC is also the Defendant in a related action, HC/OC 15/2025 ("OC 15"), which was commenced before OC 429. The Director of SRC is Mr Kulandaivelu Chidambaram ("Mr Velu").

3 The 1st Defendant in OC 429 is Green Tag Scaffolding Pte Ltd ("GTS"). GTS is also the Claimant in OC 15. Mr Mani Senthil Kumar ("Mr Kumar") is the Director of GTS. Mr Kumar is also the 2nd Defendant in OC 429. Mr Kumar and GTS will be referred to collectively in these grounds of decision as "GTS Group".

4 Both SRC and GTS are in the business of providing scaffolding services.[1]

5 Before 8 August 2022, Mr Velu and Mr Kumar each owned equal shares in both SRC and GTS.[2] Mr Velu and Mr Kumar were also Directors of both companies.[3] On 8 August 2022, Mr Velu, Mr Kumar, SRC, and GTS entered

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1 Statement of Claim filed in OC 429 at paras 1 and 2 (admitted in the Defence filed in OC 429 at paras 3.2 and 4.2).

2 Statement of Claim filed in OC 429 at para 7 (admitted in the Defence filed in OC 429 at para 9.2).

3 1st Affidavit of Mani Senthil Kumar filed on 9 September 2025 at para 12.

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into a Share Swap Agreement ("SSA") under which they agreed to split the shareholding and assets of SRC and GTS such that Mr Velu would own 100% of SRC, and Mr Kumar would own 100% of GTS.[4]

The first action: OC 15

6 On 7 January 2025, GTS commenced OC 15 against SRC for alleged breaches of the SSA. GTS made the following claims in OC 15:

(a) Under clause 3.1 of the SSA, all scaffold materials belonging to either SRC or GTS would be split equally between the two companies. GTS claimed that it had not received its full 50% share of the total scaffold materials.[5]

(b) Under clause 4.1(a) of the SSA, SRC was required to assign to GTS an amount equivalent to 50% of SRC's account receivables. GTS claimed that SRC breached this provision, alleging that it had not received its full 50% share of SRC's account receivables.[6]

7 GTS also pleaded in its Statement of Claim in OC 15 that on 11 August 2022, SRC transferred to GTS an amount of $200,000 pursuant to a separate

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4 1st Affidavit of Mani Senthil Kumar filed on 9 September 2025 at para 13 and 1st Affidavit of Kulandaivelu Chidambaram filed on 21 August 2025 at para 6.

5 Statement of Claim (Amendment No. 1) filed in OC 15 at paras 35 to 37 (see 1st Affidavit of Mani Senthil Kumar filed on 9 September 2025 at p 22).

6 Statement of Claim (Amendment No. 1) filed in OC 15 at paras 39 to 42 (see 1st Affidavit of Mani Senthil Kumar filed on 9 September 2025 at pp 22 to 23).

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agreement.[7] SRC denied this pleading in its Defence filed in OC 15. SRC pleaded as follows in connection with the $200,000 payment: [8]

> (a) Before the SSA was signed, Mr Velu and Mr Kumar agreed by way of a handwritten agreement that Mr Velu would extend a goodwill payment of $200,000 to Mr Kumar.
>
> (b) After the SSA was signed, on 10 August 2022, GTS invoiced SRC for an amount of $200,000 for the "provision of scaffolder, supervisor, scaffold materials, tools and consumables to erect and dismantle the scaffold at various locations" (the "GTS Invoice").
>
> (c) To the best of SRC's knowledge, the GTS Invoice was intended to represent the goodwill payment that had been previously agreed between the parties under the handwritten agreement dated 30 July 2022.
>
> (d) Subject to further and better particulars and production of documents, SRC reserved its right to claim against GTS for the $200,000 payment.

8 When SRC filed its Defence in OC 15 on 31 January 2025, it did not make a counterclaim against GTS.

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7 Statement of Claim (Amendment No. 1) filed in OC 15 at para 17 (see 1st Affidavit of Mani Senthil Kumar filed on 9 September 2025 at p 16).

8 Defence filed in OC 15 at para 20 (see 1st Affidavit of Mani Senthil Kumar filed on 9 September 2025 at pp 44 to 45).

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The second action: OC 429

9 On 31 May 2025, SRC commenced OC 429 against GTS Group (*ie*, against GTS as the 1st Defendant and Mr Kumar as the 2nd Defendant). SRC made the following claims in OC 429:

(a) Under clause 4.1(d) of the SSA, GTS was required to pay SRC for 50% of the tax paid by SRC for various financial years. SRC claimed that GTS breached this clause when it failed to pay for 50% of SRC's corporate tax for the financial year 2022.[9]

(b) Clause 4.1(d) also required GTS to contribute to 50% of the costs incurred to recover accounts receivables from SRC's debtors. SRC claimed that GTS failed to contribute its share of such costs.[10]

(c) GTS caused a company known as Firstpiping Engineering Pte Ltd to terminate its contract with SRC for scaffolding works and to award the same contract to GTS instead. SRC claimed that this amounted to inducement of breach of contract.[11]

(d) GTS, "at the behest of Mr Kumar", transferred SRC's mobile phone number to GTS and/or its agents or servants. SRC claimed that this was done at a time when Mr Kumar was still a Director of SRC. SRC alleged that the transfer of the mobile phone number amounted to

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9 Statement of Claim filed in OC 429 at paras 14 to 17.

10 Statement of Claim filed in OC 429 at paras 18 to 19.

11 Statement of Claim filed in OC 429 at paras 20 to 23.

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"wrongful interference" and, in the case of Mr Kumar, a breach of his fiduciary duties owed to SRC.[12]

(e) The inducement of Firstpiping Engineering Pte Ltd's breach of contract and the wrongful interference relating to the transfer of the mobile phone numbers were carried out by GTS Group pursuant to a conspiracy to injure SRC by unlawful means.[13]

(f) SRC sought the return of the sum of $200,000 that it paid to GTS. SRC pleaded that it paid GTS this amount in or around 11 August 2022 pursuant to the GTS Invoice. SRC pleaded that the payment was "allegedly pursuant to an agreement" for SRC to pay GTS that amount as a form of goodwill and that GTS did not, in fact, provide the services described in the GTS Invoice. SRC pleaded that GTS did not provide any consideration for the payment and so any agreement was invalid for want of consideration. Accordingly, SRC claimed that GTS was unjustly enriched at SRC's expense.[14] SRC's claim for the $200,000 will be referred to as the "Unjust Enrichment Claim".

10 As at the date of commencement of OC 429, SRC was represented by Cornerstone Law LLP ("CLP") in OC 15, and by Forte Law LLC ("FLC") in OC 429. Subsequently, SRC filed a Notice of Change of Solicitors in OC 15 on 30 June 2025, such that it became represented by FLC in both proceedings from that date.

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12 Statement of Claim filed in OC 429 at paras 24 to 28.

13 Statement of Claim filed in OC 429 at paras 29 to 30.

14 Statement of Claim filed in OC 429 at paras 31 to 35.

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The striking out application

11 In SUM 2221, GTS Group sought to strike out and dismiss OC 429 pursuant to O 9 r 16 of the ROC 2021 on two grounds.

12 First, GTS Group contended that SRC was required under O 6 r 8(1) of the ROC 2021 to bring its claims in OC 429 as a counterclaim with its defence in OC 15. GTS Group submitted that O 6 r 8(1) of the ROC 2021 was worded in mandatory terms. Since OC 429 was brought in breach of O 6 r 8(1), GTS Group submitted that OC 429 should be struck out in its entirety on the ground of abuse of process and/or that it was in the interests of justice to do so.[15]

13 Secondly, GTS Group submitted that the Unjust Enrichment Claim should be struck out because it disclosed no reasonable cause of action and/or should be struck out as an abuse of process or in the interests of justice because it was plainly and obviously unsustainable.

14 SRC's submissions against the application were that: (a) the separate proceedings were not commenced for any collateral purpose; (b) OC 15 and OC 429 could be consolidated for a just, expeditious and economical disposal of the dispute; and (c) there were issues of law and fact relating to the Unjust Enrichment Claim that needed to be proven.[16]

15 SRC also provided varying explanations for why it did not make a counterclaim in OC 15. This requires some explanation:

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15 1st Affidavit of Mani Senthil Kumar filed on 9 September 2025 at paras 5 to 8 and 22 to 24 and Defendants' Written Submissions filed on 12 September 2025 at paras 15 to 32.

16 Claimant's Written Submissions filed on 12 September 2025 at para 3.

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(a) SRC's first explanation was set out in its affidavit in reply to SUM 2221, which was deposed to by Mr Velu ("Mr Velu's 1st Affidavit"). In Mr Velu's 1st Affidavit, SRC explained that it initially intended for CLP to represent SRC for both its defence and a counterclaim in OC 15. However, CLP apparently advised SRC that it could only act for SRC for the conduct of its defence against the claim in OC 15. This was due to a complaint that GTS Group had made to the Law Society of Singapore (the "Law Society") against CLP. SRC therefore decided to instruct separate solicitors (*ie*, FLC) to commence a separate action against GTS Group (*ie*, OC 429).[17]

(b) GTS Group's written submissions for SUM 2221 filed on 12 September 2025 highlighted that Mr Velu's 1st Affidavit did not specify when the Law Society informed CLP of the complaint, and whether this occurred before the date when the Defence in OC 15 was filed. The written submissions further stated that Mr Kumar was willing to file a supplementary affidavit with supporting documents to clarify that to the best of Mr Kumar's knowledge, the Law Society did not contact CLP until after 11 February 2025 (which was *after* SRC's Defence in OC 15 was filed).[18]

(c) At the first hearing of SUM 2221 on 15 September 2025, I granted both parties permission to file supplemental affidavits to address the matters that GTS Group had raised in its written submissions regarding the timeline of the complaint against CLP.

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17 1st Affidavit of Kulandaivelu Chidambaram filed on 21 August 2025 at paras 11 to 14.

18 Defendants' Written Submissions filed on 12 September 2025 at paras 35 to 36.

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(d) Mr Kumar's supplementary affidavit filed on 3 October 2025 explained that his solicitors first raised an issue regarding CLP's conflict of interest (due to CLP's alleged involvement in drafting the SSA for SRC and GTS) on 8 November 2023. Thereafter, Mr Kumar did not intend to pursue the matter further as there were ongoing settlement discussions. When it became clear that settlement was not possible, OC 15 was commenced on 7 January 2025, and Mr Kumar then filed his complaint against a solicitor in CLP on 22 January 2025. Mr Kumar also stated that he had confirmed with the Law Society and the Inquiry Panel that the solicitor in question at CLP was only notified of the complaint on 11 March 2025.[19] This was after the Defence in OC 15 was filed on 31 January 2025.

(e) In Mr Velu's supplementary affidavit filed on 3 October 2025, Mr Velu stated that CLP informed him of the Law Society complaint "sometime on or around 24 March 2025".[20] Mr Velu also stated that he wished to clarify that the reason why OC 429 was not commenced as a counterclaim in OC 15 "was not due to the complaint against CLP" and that "[t]his was a miscommunication with SRC's present solicitors."[21] SRC's revised explanation was as follows:

(i) From Mr Velu's recollection, when OC 15 was commenced, the parties were still in the midst of negotiating a

19 2nd Affidavit of Mani Senthil Kumar filed on 3 October 2025 at paras 5 to 10.

20 3rd Affidavit of Kulandaivelu Chidambaram filed on 21 August 2025 at para 5.

21 3rd Affidavit of Kulandaivelu Chidambaram filed on 21 August 2025 at para 6.

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settlement. Thus, the commencement of OC 15 came as a surprise to SRC.[22]

(ii) Further, "SRC was not informed that a counterclaim had to be filed at the time of the filing of the Defence in [OC 15] and [Mr Velu] was under the impression that there would not be any issues if [they] chose to make a claim against [GTS Group] at a later stage".[23]

The issues

16 Having regard to the arguments made, I had to consider two issues:

(a) whether the entire action ought to be struck out on the basis that OC 429 should have been commenced as a counterclaim in OC 15 ("Issue 1"); and

(b) whether the Unjust Enrichment Claim alone should be struck out ("Issue 2").

The applicable legal principles

17 There were two aspects to consider in terms of the legal principles:

(a) the general principles that the Court will apply when considering whether to strike out an action under O 9 r 16 of the ROC 2021; and

22 3rd Affidavit of Kulandaivelu Chidambaram filed on 21 August 2025 at para 7.

23 3rd Affidavit of Kulandaivelu Chidambaram filed on 21 August 2025 at para 8.

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(b) the position under the ROC 2021 on the making of a counterclaim and whether that position is different from that under the ROC 2014.

General principles

18 Under O 9 r 16(1) of the ROC 2021, the Court is empowered to strike out or amend any part of a pleading on the ground that: (a) it discloses no reasonable cause of action or defence; (b) it is an abuse of process of the Court; or (c) it is in the interests of justice to do so. Order 9 r 16(2) of the ROC 2021 prohibits the admission of evidence for an application to strike out a pleading on the basis that there is no reasonable cause of action.

19 The Court of Appeal in *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 ("*Iskandar bin Rahmat*") set out (at [17] to [19]) the applicable tests for each limb:

(a) For an application under O 9 r 16(1)(*a*) (which is the "no reasonable cause of action" limb), the Court is to consider "whether the action has some chance of success when only the allegations in the pleadings are concerned". If that standard is satisfied, the action will not be struck out.

(b) For an application under O 9 r 16(1)(*b*) (which is the "abuse of process" limb), the Court's inquiry will include "considerations of public policy and the interests of justice". The Court's concern is to ensure that its processes are used *bona fide* and properly, and without abuse. The Court will act to prevent an improper use of its processes as a means for vexation or oppression.

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(c) Order 9 r 16(1)(*c*) (which is the "interests of justice" limb) gives effect to the Court's inherent jurisdiction to prevent injustice. The third limb will be engaged, for example, where the claim is "plainly or obviously unsustainable".

20 When considering the third limb, the Court of Appeal in *Iskandar bin Rahmat* cited its prior decision in *The "Bunga Melati 5"* [2012] 4 SLR 546 ("*Bunga Melati 5*"), which was decided under the ROC 2014. In *Bunga Melati 5*, the Court of Appeal held (at [39]) that a "plainly or obviously" unsustainable action would be one that is either: (a) *legally* unsustainable because it is clear as a matter of law that the party will not be entitled to relief even if all facts are proved in his favour; or (b) *factually* unsustainable because it is "possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance", for example, where the facts are "contradicted by all the documents or other material on which it is based".

Counterclaims under the ROC 2021

21 The provision under the ROC 2014 on the making of a counterclaim in an action was O 15 r 2(1). That provision stated that "... a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) ***may***, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he ***must*** add the counterclaim to his defence" [emphasis added in bold italics].

22 The word "may" in O 15 r 2(1) suggested that it was not mandatory under the ROC 2014 for a defendant to bring a claim against the claimant as a

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counterclaim in the same action. The word "must" only appeared in the later part of the provision in connection with the mechanism that was to be followed by a defendant who elected to bring a counterclaim – such a defendant "must add the counterclaim to his defence".

23 The case law confirms that it was not mandatory under the ROC 2014 for a defendant to bring a claim against a plaintiff as a counterclaim in the same action. In *Ram Thayalan Raman Siv and another v Liew Yap Tong (trading as Tong Heng Motor Work)* [2002] 2 SLR(R) 706 ("*Ram Thayalan Raman Siv*"), the High Court was concerned with two actions that were started following a collision between a lorry and a bus. The first action was commenced by the bus's owner ("SBS") against the lorry's owner ("Mr Liew"). Mr Liew's insurers appointed solicitors to defend the first action. Mr Liew then appointed his own solicitors to file a second action against SBS and the bus driver. SBS and the bus driver then applied to strike out the second action on the ground that it was an abuse of process, arguing that Mr Liew should have made his claim for damages as a counterclaim. The application failed at first instance and on appeal to the District Court. A further appeal to the High Court was dismissed. In dismissing the appeal, the High Court considered O 15 r 2(1) of the ROC 2014. The High Court reasoned (at [40]) that O 15 r 2(1) "… is an enabling provision under which a defendant in an existing action may make a counterclaim in that action instead of bringing a separate action" and that "… it does not compel the defendant to make his claim by way of a counterclaim".

24 The successor to O 15 r 2(1) of the ROC 2014 is O 6 r 8(1) of the ROC 2021. That provision is framed more concisely. Order 6 r 8(1) of the ROC 2021 states that "***[i]f the defendant intends to counterclaim*** against the claimant, the

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defendant ***must*** file and serve the counterclaim with the defence" [emphasis added in bold italics].

25 While O 6 r 8(1) of the ROC 2021 omits the word "may" (which was found in O 15 r 2(1) of the ROC 2014), my view was that O 6 r 8(1) of the ROC 2021 is materially the same as its predecessor. Order 6 r 8(1) still contains enabling language – the provision begins by stating that it applies ***if*** the defendant has an intention of bringing a counterclaim. If the defendant has such an intention, O 6 r 8(1) of the ROC 2021 states that the defendant "must" bring the counterclaim with the defence. On this reading, the word "must" in O 6 r 8(1) of the ROC 2021 serves the same purpose as the equivalent word in O 15 r 2(1) of the ROC 2014 (see [22] above) – to specify the mechanism by which a defendant who elects to make a counterclaim must bring that counterclaim.

26 The view that O 6 r 8(1) of the ROC 2021 is not materially different from its predecessor is also supported by the following:

(a) The *Civil Justice Commission Report* (29 December 2017) (Chairperson: Justice Tay Yong Kwang) ("Civil Justice Commission Report") does not state that the drafters intended to change the established position under the ROC 2014 – *ie*, that it is not mandatory for a defendant to bring a claim that it wishes to bring against the claimant as a counterclaim in the same action (see [23] above). Given the absence of a statement of an intention to change the position under the ROC 2014, the more likely explanation for the difference in wording is the drafters' intention for the ROC 2021 to be drafted in a more accessible manner by using "relatively short sentences and paragraphs": see Civil Justice Commission Report, Introduction, at para 2.

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(b) The authors of *Singapore Rules of Court: A Practice Guide* (Chua Lee Ming ed-in-chief and Paul Quan gen ed) (Academy Publishing, 2023), when explaining the rationale for O 6 r 8(1) of the ROC 2021, allude (at para 06.025) to the enabling nature of the provision. The authors take the view that the provision *allows* and *enables* a defendant who wishes to bring a counterclaim to file and serve the counterclaim with the defence. The relevant portion of the authors' commentary is set out below:

> Rule 8(1) ***allows*** a defendant who wishes to counterclaim against the claimant to file and serve his or her counterclaim with the defence. This ***enables*** the defendant to include his or her claims in the action brought by the claimant, instead of bringing a separate action against the claimant altogether.
>
> [emphasis added in bold italics]

27 To sum up, my view was that the position under the ROC 2021 on the making of a counterclaim remained the same as under the ROC 2014 despite the difference in wording between O 15 r 2(1) of the ROC 2014 and O 6 r 8(1) of the ROC 2021. The rules do not compel a defendant to bring a claim that he wishes to bring against a claimant as a counterclaim in the main action. Instead, the rules *enable* a defendant to bring a counterclaim, if he wishes to do so, by making the counterclaim with the defendant's defence to the action.

Issue 1: Whether OC 429 should be struck out in its entirety

28 I decided not to strike out OC 429 on the basis that it should have been commenced as a counterclaim in OC 15. My reasons were as follows.

29 On my view of the law as set out above, it was not mandatory for SRC to have brought its claims as a counterclaim in OC 15. Thus, SRC did not contravene the ROC 2021 when it decided to bring a fresh action (*ie*, OC 429).

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30 However, this did not mean that the bringing of a separate action could not be challenged. If the circumstances show that a refusal to make a counterclaim in the same action is an abuse of process, that could well be a basis for striking out the second action. Here, the circumstances did not show an abuse of process.

31 I accepted that SRC's explanation for why it did not bring a counterclaim in OC 15 was not satisfactory. As explained above, the initial explanation in Mr Velu's 1st Affidavit that CLP was constrained from acting in a counterclaim in OC 15 due to a Law Society complaint (see [15(a)] above) was contradicted by the evidence in both Mr Kumar's supplementary affidavit and Mr Velu's supplementary affidavit. Mr Kumar's supplementary affidavit stated that the solicitor in question from CLP was only notified of the complaint on 11 March 2025 (see [15(d)] above). Mr Velu's supplementary affidavit stated that he was informed of the complaint sometime on or around 24 March 2025 (see [15(e)] above). These dates were well after the Defence in OC 15 was filed on 31 January 2025. Thus, SRC's initial explanation was clearly incorrect based on the now undisputed chronology of events.

32 The subsequent "clarification" in Mr Velu's supplementary affidavit that the initial explanation was based on "a miscommunication with SRC's present solicitors" was also unsatisfactory. Mr Velu was the deponent of both affidavits filed by SRC in SUM 2221. Mr Velu should have been aware of the timeline of events in early 2025 leading up to the commencement of OC 15 and subsequently OC 429. It was not clear how a miscommunication with Mr Velu's solicitors would have resulted in Mr Velu deposing to an incorrect factual account in Mr Velu's 1st Affidavit.

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33 However, the change in SRC's explanation for why it did not commence a counterclaim, and the unsatisfactory explanation for the change, while concerning, did not establish that there was an abuse of process in the circumstances of this case. The changing positions were not indicative of abusive conduct of OC 429. I did not find that there was any collateral purpose being served by SRC's decision to bring its claims against GTS Group by commencing OC 429, instead of making a counterclaim in OC 15. I note here that GTS Group submitted that by filing OC 429, SRC had the benefit of voluntary further and better particulars in OC 15 and the production of documents in OC 15 and had been able to take these matters into consideration in framing its claims in OC 429.[24] My view was that even if SRC benefited from developments in OC 15 when it framed its claims in OC 429, that did not amount to an abuse of process. It is not inherently objectionable for a litigant to adjust its case based on developments and revelations in the course of litigation. For example, it is not uncommon for litigants to amend their pleadings to take into consideration documents disclosed in the course of the proceedings, and this would not ordinarily be viewed as objectionable or abusive conduct of litigation. SRC could therefore have sought to make such amendments to its pleadings in OC 15 even if it had brought a counterclaim in OC 15. This would have allowed SRC to frame the hypothetical counterclaim in OC 15 in the same way as the claim in OC 429. Thus, in the circumstances of this case, I did not find that GTS Group had shown that SRC's conduct in commencing OC 429 (instead of bringing a counterclaim in OC 15) amounted to an abuse of process.

34 The cases that GTS Group cited in support of its arguments for abuse of process were distinguishable. The cases cited involved a party bringing

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[24] Defendants' Written Submissions filed on 12 September 2025 at para 28.

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duplicative claims. For example, *Terrestrial Pte Ltd v Allgo Marine Pte Ltd and another and another appeal* [2013] 3 SLR 527 ("*Terrestrial Pte Ltd*") was a case where a party made a counterclaim in an action which was duplicative of a separate action that the same party had started. The Court decided to strike out the separate action on the basis that it was frivolous or vexatious and an abuse of the process of the court. The circumstances of the present case were different from *Terrestrial Pte Ltd*. SRC had not made a duplicative claim. SRC was the defendant in OC 15, and it did not make a counterclaim in OC 15 that was duplicative of its claims in OC 429.

35 For completeness, if my view of the law was wrong and if it was mandatory for SRC to have brought its claims as a counterclaim in OC 15, I would have exercised my power under O 3 r 2(1) of the ROC 2021 and I would have found that SRC should be permitted to bring its claims in OC 429 despite the presence of the imperative word "must" in O 6 r 8(1):

> (a) Order 3 r 2(1) of the ROC 2021 subjects every requirement in the ROC 2021 to the Court's discretion to order otherwise in the interests of justice, even if the requirements in the rules are expressed using imperative words such as "must", "is to" or "shall".
>
> (b) Even with the unsatisfactory explanations provided by SRC for why it did not make a counterclaim in OC 15, this would have been a suitable case for the exercise of the Court's powers under O 3 r 2(1) of the ROC 2021. Striking out would have served no real purpose. If I had struck out OC 429, SRC would have been able to apply for leave to amend the Defence in OC 15 to include a counterclaim in the same terms as set out in the present Statement of Claim in OC 429. Apart from the Unjust Enrichment Claim, which I considered separately under Issue 2,

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there was no contention by GTS Group that the other claims were liable to be struck out. Thus, an amendment application might have succeeded.

(c) Since the pleadings in OC 429 had all been filed, it was in better keeping with the Ideals in O 3 r 1 of the ROC 2021 (in particular, the ideal of expeditious proceedings) for OC 429 to remain and for an appropriate order to be made in due course for a consolidation or joint hearing of the two actions.

Issue 2: Whether the Unjust Enrichment Claim should be struck out

36 I turn next to consider whether the Unjust Enrichment Claim should be struck out. GTS Group advanced two main arguments in support of its application to strike out the Unjust Enrichment Claim:

(a) First, the Unjust Enrichment Claim was unsustainable because a claim for unjust enrichment could not be brought where there is a valid and enforceable contract between the parties pursuant to which the enrichment was conveyed, unless unjust enrichment is being relied on as an alternative cause of action. GTS Group submitted that SRC's pleaded case was that the $200,000 payment was made pursuant to a contract – namely, a contract for the services described in the GTS Invoice and a prior handwritten agreement. GTS Group cited *Ng Chee Tian and another v Ng Chee Pong and others* [2025] 3 SLR 235 at [52], where the Court held that "…unjust enrichment should only generally be allowed to operate in situations where other more established causes of action are unavailable". GTS Group's submission was that SRC was pursuing the Unjust Enrichment Claim in contravention of this principle

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because there was a cause of action for breach of contract available to SRC.[25]

(b) Secondly, the Unjust Enrichment Claim was factually unsustainable because SRC was taking inconsistent positions in its OC 15 and OC 429 pleadings. In OC 15, SRC claimed that the payment was made out of goodwill. In OC 429, SRC asserted that the payment was made on the basis of an invoice for scaffolding materials and services, and that such materials and services were not in fact provided by GTS. GTS Group submitted that this was an inconsistent position to take. SRC could not say that the payment was made out of goodwill, and also that the payment was made in consideration of materials and services which were not in fact provided.[26]

37 I will deal with each argument in turn.

The first argument

38 I found that the principle that GTS Group relied on (namely, that an unjust enrichment cause of action could not be pursued where there is a valid and subsisting contract between the parties) was not engaged based on how the Statement of Claim was framed. SRC did not plead in the Statement of Claim that there was a valid and enforceable contract pursuant to which the payment was made. SRC expressly pleaded at para 33 of the Statement of Claim that any

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25 Defendants' Written Submissions filed on 12 September 2025 at paras 37 to 45 and Defendants' oral submissions on 9 October 2025.

26 1st Affidavit of Mani Senthil Kumar filed on 9 September 2025 at paras 27 to 30 and Defendants' oral submissions on 9 October 2025.

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agreement between the parties in connection with the $200,000 payment was "invalid for want of consideration":

> 33. GTS has not provided any consideration for the payment. As such, any such agreement is invalid for want of consideration from GTS.

39 This was not a case where a party was accepting the validity of a contract pursuant to which the enrichment was made and also seeking restitution due to a failure to perform the contract. SRC's pleaded case was that there was no valid contract between the parties due to a lack of consideration. Given the way that the Unjust Enrichment Claim was framed in the Statement of Claim, the principle that GTS Group cited was not engaged. Thus, the first argument was rejected.

The second argument

40 Turning next to the second argument, my view was that the threshold for factual unsustainability was not satisfied on the evidence:

(a) As I noted at [20] above, in *Bunga Melati 5*, the Court of Appeal held that a factually unsustainable action would be one where it was "possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance", for example, where the facts are "contradicted by all the documents or other material on which it is based".

(b) I accepted that there was some inconsistency between SRC's pleaded position in OC 15 and its position in OC 429. In OC 15, SRC appeared to accept that the $200,000 payment was made pursuant to a

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handwritten agreement and the GTS Invoice.[27] In contrast, in its Statement of Claim in OC 429 at para 32, SRC stated that the $200,000 payment was made pursuant to the GTS Invoice and that this was allegedly pursuant to an agreement to make a goodwill payment. The inconsistency was that in OC 429, SRC appeared to be contesting the existence of an agreement to make a goodwill payment of $200,000. Further, in OC 429, SRC was expressly contested the *validity* of such an agreement on the basis that there was a lack of consideration.

(c) I did not think that the inconsistency between SRC's pleaded positions was so fundamental as to warrant a striking out. SRC's pleadings in OC 15 and OC 429 both referred to the GTS Invoice and the agreement between Mr Velu and Mr Kumar, save that SRC's pleadings in OC 429 went further to plead that any such agreement would be invalid due to a lack of consideration. In this regard, there were factual questions to be tried about the circumstances under which the $200,000 payment was made. The handwritten agreement, the GTS Invoice and Mr Velu's and Mr Kumar's discussions regarding the payment, if any, needed to be examined at trial to determine whether the $200,000 was indeed paid pursuant to a valid agreement supported by consideration.

41 Accordingly, I dismissed the application to strike out the Unjust Enrichment Claim.

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[27] See SRC's Defence in OC 15 at para 20(a) to 20(c).

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Costs

42 After hearing from the parties, I decided to order GTS Group to pay SRC the costs of SUM 2221 fixed at S$6,000, all-in. My reasons were as follows:

(a) The range in Appendix G to the Supreme Court Practice Directions 2021 for a striking out application is S$6,000 to S$20,000. My view was that SUM 2221 was not a complex striking out application. There were only two issues, though there was some novelty in considering the first issue due to the difference in wording between O 6 r 8(1) of the ROC 2021 and O 15 r 2(1) of the ROC 2014. However, the parties' written and oral submissions were not extensive, and the pleadings under consideration were not lengthy. Given these circumstances, I would have awarded costs of around S$8,000, all-in.

(b) I deducted S$2,000 from the costs I would have awarded on account of the time that was wasted at the first hearing and the additional work involved in filing a second round of affidavits due to the error in Mr Velu's 1st Affidavit. Mr Velu's 1st Affidavit should have set out an accurate account of the reasons why a counterclaim was not pursued in OC 15. The inaccurate account necessitated adjourning the first hearing and requiring the parties to take further instructions and file supplemental affidavits. SRC was responsible for the wasted hearing and the additional work in preparing further affidavits.

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Conclusion

43 For the reasons set out above, I decided to dismiss SUM 2221 and I awarded costs in favour of SRC fixed at S$6,000, all-in.

Vikram Rajaram
Assistant Registrar

Celine Liow Wan-Ting (Forte Law LLC) for the claimant;
Low Shauna (Jacob Mansur & Pillai) for the defendants.

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