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

[2025] SGHC 163

Originating Claim No 300 of 2022

Between

Deutsche Bank AG Singapore Branch

… *Claimant*

And

(1) ARJ Holding Limited
(2) Mohammad Ahmad Ramadhan Juma

… *Defendants*

JUDGMENT

[Contract— Contractual terms — Implied terms in fact]

[Contract — Breach — Whether party could rely on ground for termination which existed at time of termination but which was not relied on by that party at time of termination of contract]

[Banking — Credit and security — Scope of duty of bank when exercising its right to liquidate collaterals]

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Deutsche Bank AG Singapore Branch
v
ARJ Holding Ltd and another

[2025] SGHC 163

General Division of the High Court — Originating Claim No 300 of 2022
Kwek Mean Luck J
7, 8, 9, 11, 14-17 April, 13 August 2025

15 August 2025 Judgment reserved.

Kwek Mean Luck J:

Introduction

1 The main issue at the heart of this dispute is whether the claimant, Deutsche Bank AG Singapore Branch ("DB"), was entitled to reduce the value of the collateral in the portfolio of its client, the first defendant, ARJ Holding Limited ("ARJ"). This reduction led to a shortfall in ARJ's accounts. When the shortfall was not regularised, DB terminated ARJ's loan facilities and demanded full repayment of ARJ's loans. It is ARJ's case that DB relied on conditions that were not communicated to ARJ, and that DB exercised its contractual discretion in breach of an implied term of good faith.

Agreed Facts

2 The following are the agreed facts.[1] On 8 April 2020, ARJ entered into the Deutsche Bank Wealth Management Service Agreement (the "Service Agreement") with DB. ARJ opened account number 6578595 with DB on 21 April 2020. This was followed by the second defendant, Mr Mohammad Ahmad Ramdhan Juma ("Mr Juma"), executing a personal guarantee with DB in favour of ARJ (the "Guarantee"), guaranteeing the due payment of all monies which may be owed by ARJ to DB. Mr Juma is a director and the sole shareholder of ARJ.

3 Sometime in May 2020, ARJ indicated that it would transfer seven securities, with a collective market value of approximately US$700m, to secure the loan facility to be obtained from DB. On 20 May 2020, ARJ and DB executed a facility letter for a loan facility of up to US$100m.

4 On 2 May 2021, Dr Dure Aden Haider Akhter Khan ("Dr Khan"), the Chief Financial Officer ("CFO") of ARJ, e-mailed DB to inquire about the potential lending value of the Nordrock Securities BV 4.5% Bonds (the "NR Bonds"). Dr Khan stated in his e-mail that the NR Bonds were "listed" with a "provisional rating of BBB". Mr Khan attached the listing document for the NR Bonds. On 3 May 2021, DB informed ARJ that the approved lending value for the NR Bonds was 30% for a diversified portfolio. This was followed by ARJ transferring approximately CHF120m worth of NR Bonds to DB sometime in May 2021 as security.

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[1] Parties' Agreed Chronology of Events.

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5 Around May 2021, ARJ informed DB of its intention to transfer, from Société Generale to its accounts with DB, the following three securities (the "Additional Securities"), by end-May 2021: (a) €50m of European Financial Stability Facility; (b) €25m of Republic of France 0.75%-05/28; and (c) around US$46m of MetLife shares.

6 On 10 May 2021, ARJ signed an acknowledgment which provided that account number 7512338 would be governed by the same terms and conditions and agreements / contracts entered into with DB as account number 6578595. ARJ opened account number 7512338 with DB on 1 June 2021.

7 Around 28 June 2021, ARJ informed DB of its intention to transfer Landstone Securities BV 5.75% Bonds ("LS Bonds") to its accounts with DB. DB informed ARJ that the lending value of the LS Bonds was 30%. €100m of LS Bonds were settled in ARJ's accounts with DB sometime in June 2021.

8 In November 2021, ARJ transferred a portfolio of 16 securities with an aggregate value of around US$255m from the Bank of Singapore (the "BOS Transfer"). The BOS Transfer included a transfer of approximately an additional €100m in LS Bonds.

9 On 17 November 2021, DB, by way of a facility letter (the "Facility Letter"), granted ARJ loan facilities of up to an aggregate principal amount of US$400m (the "Loan Facilities") in respect of account numbers 7512338 and 6578595 (the "Accounts"). On 23 November 2021, Mr Juma signed documents on behalf of ARJ confirming the facility agreement between ARJ and DB, whereby DB granted ARJ a loan facility of up to US$400m.

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10 Over the course of January to June 2022, DB informed ARJ that at various instances, the collateral value of ARJ's portfolio had declined below ARJ's total indebtedness. In order to remedy these shortfalls, ARJ transferred an additional €20m LS Bonds to be held with DB. As a result, DB held €220m notional value of LS Bonds and CHF120m notional value of NR Bonds.

11 On 8 March 2022, DB issued a margin call letter to ARJ, requesting that ARJ rectify the shortfall by 9 March 2022. Around 9 and 11 March 2022, ARJ further remitted to DB US$400,000 from Liechtensteinische Landesbank AG and US$2m from Credit Suisse (the "CS Transfer") respectively to partially remedy the shortfalls.

12 On 9 May 2022, DB determined that ARJ's Accounts had entered into a US$6.2m shortfall and issued a margin call letter to ARJ. In response, ARJ represented that it would transfer funds from Mr Juma's personal account with Abu Dhabi Commercial Bank ("ADCB") as "an interim arrangement" (the "AED20m Transfer"). On 10 May 2022, ARJ provided DB with a text notification which indicated a confirmation by ADCB that a sum of AED20m had been debited from Mr Juma's personal account and transferred to ARJ. On 12 May 2022, ARJ forwarded to DB Mr Juma's bank account statement, which indicated that a sum of AED20m had been debited from Mr Juma's account and transferred to ARJ. However, on 23 May 2022, ARJ informed DB that Mr Juma had cancelled the AED20m Transfer as the funds were required for other matters. DB determined that there was a shortfall of US$4.95m in ARJ's Accounts and issued a margin call letter to ARJ.

13 On 15 June 2022, DB issued a margin call letter to ARJ, requesting for ARJ to restore the shortfall by 16 June 2022. DB assessed the shortfall in ARJ's Accounts to be over US$3.48m. On 22 June 2022, Mr Achal Aroura ("Mr

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Aroura"), who was then a Managing Director and Group Head of Deutsche Bank AG, Filiale Dubai, highlighted to ARJ that due to changes in ARJ's portfolio, a fall in value, and the sale of liquid securities, DB's exposure to illiquid securities had "increased sharply, way beyond the permissible limits". On 23 June 2022, Dr Khan responded on behalf of ARJ, informing DB that "we endeavour to restore [DB's exposure] back to permissible limits and that is why we are moving good quality and rated bonds to [DB]".

14 30 June 2022 was the due date for coupon payments on the LS Bonds. However, DB did not receive any coupon payments.

15 On 13 July 2022, Mr Aroura, with his colleague Mr Alok Bansal ("Mr Bansal"), informed ARJ and Mr Juma that there would be cuts in the lending value of the NR and LS Bonds by 15 July 2022, if its portfolio was not diversified by then.

16 31 July 2022 was the due date for coupon payments on the NR Bonds. DB did not receive any coupon payments.

17 On 5 August 2022, DB informed ARJ that it would progressively reduce the collateral value of the NR and LS Bonds by 5%, starting from 10 August 2022, and on the tenth day of every month, until the collateral value of these bonds reached nil.

18 On 10 August 2022, DB informed ARJ that in light of the 5% reduction in the LV percentage on the Bonds, a shortfall of approximately US$11.5m would arise on ARJ's account with DB by the end of the day. DB requested that ARJ take immediate steps to proactively address the situation. On 14 August

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2022, DB informed ARJ that the shortfall in ARJ's Accounts would trigger a margin call on 15 August 2022.

19 On 15 August 2022, DB proceeded to reduce the collateral value of the NR and LS Bonds from 30% to 25%. DB issued a margin call letter to ARJ, giving notice to ARJ that the shortfall in ARJ's Accounts stood at US$11,421,000. DB requested that ARJ regularise the shortfall by 16 August 2022.

20 On 16 August 2022, DB gave notice to ARJ that it was terminating the Loan Facilities and demanded repayment of the entire loan principal amount, together with the accrued interest, by 25 August 2022.

21 On 19 August 2022, DB wrote to ARJ informing that it had assigned nil collateral value to the NR and LS Bonds, resulting in an increased shortfall of over US$102.29m. DB informed ARJ that matters had come to DB's attention regarding the fair value of as well as the veracity of representations regarding the NR and LS Bonds. DB requested information regarding ARJ's financial accounts, ARJ's ownership of the NR and LS Bonds and the payment arrangement between ARJ and the bond issuers. DB asked that ARJ respond by 24 August 2022.

22 On 25 August 2022, DB informed ARJ that any failure to make repayment on the outstanding sums constituted another "Event of Default". DB also informed ARJ that it intended to take steps to liquidate the assets in ARJ's Accounts, following ARJ's failure to make repayment. DB invited ARJ to provide instructions to liquidate the same by 11.59pm, failing which DB would proceed without reference to ARJ.

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23 On 26 August 2022, DB informed ARJ that it would proceed to liquidate the assets in ARJ's portfolio. It also asked ARJ "if [it] would like to provide the instructions to sell [the securities]". On 30 August 2022, DB notified ARJ that it had exercised its right to liquidate the assets in ARJ's account.

24 On 30 September 2022, DB commenced HC/OC 300/2022. DB claims against ARJ:

(a) CHF25,458,565.64 being the outstanding principal amount and accrued interest in CHF denominated loans for account number 6578595 as of 29 September 2022;

(b) €60,342,169.85 being the outstanding principal amount and accrued interest in EUR(€) denominated loans for account number 6578595 and account number 7512338 as of 29 September 2022;

(c) US$70,489.95 and US$30,797.87, being the outstanding custody fees as of 30 September 2022 for account numbers 6578595 and 7512338 respectively, and any additional custody fees; and

(d) interest on the outstanding principal amounts in CHF and EUR(€) denominated loans from 1 October 2022 onwards until the date of full and final payment of the same.

25 DB also brings the same claims against Mr Juma, in his capacity as a personal guarantor for the monies owing by ARJ under the Accounts and the loan facilities.

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DB's case

26 DB's case is that minimally, ARJ was aware that there was a general requirement for a diversified portfolio and that there were concentration issues with the NR Bonds and LS Bonds (collectively, "the Bonds") that ARJ had placed with DB (the "General Diversification Requirement").[2] DB had requested ARJ to resolve such concentration issues over a lengthy period. ARJ had provided assurances that it would do so and take some steps to address this issue.

27 Not only was ARJ aware of the General Diversification Requirement, ARJ was also aware and agreed that the Loan Facilities would be made available by DB to ARJ on terms that, amongst others, included the following condition: ARJ must maintain a diversified portfolio of liquid securities with DB to enjoy standard Advance Ratio (the "AR"), or Lending Value (the "LV"), or Loan-to-Value ratio (the "LTV") (as used interchangeably by parties for the purposes of these proceedings) on the securities. This means, among other requirements, that the lending value of each security in ARJ's portfolio shall not exceed 30% of the total lending value of the securities in the portfolio (the "Diversification Condition").

28 By around early August 2022, ARJ was in breach of the General Diversification Requirement and the Diversification Condition.

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2 In the Defence to Counterclaim at para 6(1), DB stated that ARJ acknowledged and/or agreed that the Loan Facilities will be made available on, *inter alia*, the following terms: "The 1st Defendant must maintain a diversified portfolio of liquid securities with the Claimant to enjoy standard AR on the collaterals. This means that, among other requirements, the lending value of each collateral in the 1st Defendant's portfolio shall not exceed 30% of the total lending value of the collaterals in the portfolio."

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29 In DB's e-mails dated 5 August 2022[3] ("5 August 2022 E-mail") and dated 10 August 2022 ("10 August 2022 E-mail"),[4] DB informed ARJ that the exposure of the illiquid securities in ARJ's portfolio was beyond permissible limits, the NR and LS Bonds were granted a special LV of 30% on the basis that ARJ's portfolio remain diversified, and certain steps requested by DB for ARJ to bring in additional securities had not materialised.

30 ARJ was instructed to restore the shortfall in "Collateral Value" by the deadline set out in the 5 August 2022 E-mail and the 10 August 2022 E-mail.

31 ARJ failed to restore the shortfall by the stated deadlines. This resulted in an "Event of Default" taking place under cll 18(d) and / or 19(a)(ii) of the Service Agreement. The clauses of the Service Agreement state:[5]

> Clause 18 Security
>
> (a) We may (but need not) grant you Facilities in accordance with the terms of this Service Agreement or other terms as may be agreed. All Facilities are made available on an uncommitted basis and subject to provision of adequate Collateral. We may require you to provide (sometimes at very short notice in view of market movements) sufficient Collateral for your Liabilities as determined by us in our discretion. We may from time to time require additional Collateral to meet the requirements for security or margin or collateral prescribed by us ("Collateral Requirement") for the relevant Services.
>
> (b) Collateral shall be valued at such percentage of its market value as we may determine at our sole discretion ("Collateral Value"). The Collateral Value or the acceptability of any Collateral may be determined or changed at any time and from time to time at our discretion.
>
> (c) **We shall in our absolute discretion prescribe the amount of Collateral that you or any other Collateral Provider must provide to us in order to secure your**

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3 1st Affidavit of Evidence in Chief ("AEIC") of Ms June Wong at pp 798–799.

4 1st AEIC of Ms June Wong at pp 808–809.

5 Agreed Bundle of Documents ("ABOD") Vol 1 at p 49.

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Liabilities, and may from time to time in any way amend or add such Collateral Requirements. **If we shall for any reason deem that there is insufficient or ineligible existing Collateral already held by us that is available to satisfy your Liabilities, you shall within one (1) Business Days' notice deliver additional Collateral of a type acceptable to us in our sole discretion** (which Collateral shall be delivered and secured pursuant to any existing security arrangements or other arrangement in a form satisfactory to us in our sole discretion) in an amount as may be required by us …

(d) **If you fail to deliver any Collateral to us when required, such failure shall constitute an Event of Default in respect of you pursuant to Clause 19 below and we shall be entitled to exercise any of our Rights on Termination.**

Clause 19 Event of default

(a) **Each of the following events** in relation to you or any Collateral Provider or Guarantor (collectively the "Parties") **shall be an Event of Default**:

(i) failure to pay when due any sum payable under any Contract with us, our Affiliates or any third party or otherwise on any Account;

(ii) **failure to provide acceptable or additional Collateral as and when we require**;

…

(v) **we conclude that any event or circumstance has arisen which may adversely affect the ability of any of the Parties to perform its obligations under any Contract**;

…

(vii) **any representation or warranty made or considered to be made by any of the Parties is inaccurate, false or misleading in any respect**;

…

(x) **any other matter or event arises, including any regulatory requirement, which we in our discretion determine to be disadvantageous or prejudicial to our interests.**

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[emphasis added]

Defendants' case

32 The first and second defendant's (collectively, the "Defendants") case is that DB was not entitled to reduce the LV of the Bonds in early August 2022. The General Diversification Requirement lacked sufficient specificity. In addition, DB never communicated the Diversification Condition to the Defendants.

33 Further, the Defendants submit that even if there was a General Diversification Requirement / Diversification Condition, DB had to exercise its contractual discretion subject to the operation of an implied term of good faith ("Good Faith term") in the Service Agreement. This required DB not to act in a manner that was irrational, perverse, capricious and arbitrary. DB failed to comply with the Good Faith Term. DB also liquidated ARJ's security portfolio with haste without regard to the low prevailing market prices.

Issues arising

34 Following discussion at the end of trial, parties agreed that the following five issues arise for determination:

(a) First, whether DB communicated the General Diversification Requirement / Diversification Condition to ARJ.

(b) Second, whether DB was entitled to reduce the LV of the Bonds in early August 2022.

(c) Third, whether DB was precluded by the operation of an implied Good Faith term in the Services Agreement from terminating the Loan Facilities and liquidating ARJ's security portfolio.

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(d) Fourth, whether DB can rely on irregularities that existed but were not known to DB to terminate the Loan Facilities.

(e) Fifth, whether the Defendants are entitled to their counterclaim, which is premised on DB causing loss to ARJ by liquidating the securities in ARJ's portfolio in adverse market conditions.

Issue 1: Whether DB communicated the General Diversification Requirement / Diversification Condition to ARJ

35 The first issue is whether DB communicated the General Diversification Requirement / Diversification Condition to ARJ. To recap, these are:

(a) General Diversification Requirement – there was a general requirement for a diversified portfolio and that there were concentration issues with the NR Bonds and LS Bonds that ARJ had placed with DB.

(b) Diversification Condition – the Loan Facilities would be subject to the condition that ARJ must maintain a diversified portfolio of liquid securities with DB to enjoy standard LV on the securities. This means, among other requirements, that the lending value of each security in ARJ's portfolio shall not exceed 30% of the total lending value of the securities in the portfolio.

DB's case

36 DB's case is that ARJ agreed to both the General Diversification Requirement and the Diversification Condition.

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37 Mr Juma, on ARJ's behalf, agreed by e-mail on 10 May 2021 with the contents of Mr Aroura's e-mail to Mr Juma ("10 May 2021 E-mail"), that the Loan Facilities would be made available on particular terms.[6] Mr Aroura stated:

> In reference to the ongoing communication regarding lending and portfolio offering for your account held with us - ARJ Holding Ltd.
>
> Please note the following basic terms for the transaction:
>
> - Account to be maintained with a diversified portfolio of liquid securities to enjoy standard Advance Ratios. This is an ongoing requirement.
> - For the Bond Nordrock 4.50% 01/31/2024, Nominal Amount CHF 120 Mil, standard AR 30% is being approved despite concentration; for a limited period i.e. until 27 May 2021; cash out is capped at CHF 25MM until diversification is achieved.
> - You will be transferring in 3 additional securities mentioned below on or before May 27
>
> - EU000A1G0AB4 - European Financial Stability Facility – Nominal Amount: Euro 50,000,000.00
> - FR0013286192 - Republic of France 0.75% - 05/28 – Nominal Amount: EUR 50,000,000.00
> - US59156R1086 – Metlife shares – approx. value USD 46'000'000 All incoming transfers to be received from ARJ Holding Ltd. (HK). No 3rd Party Transfer allowed
>
> - You will be transferring around USD 40mil cash as a stop-gap measure. Kindly note that the cash would need to remain in the account until the transfer of the remaining 3 securities is complete. In case of any further cash out requirement from this amount you can close out the CHF loan amount and cash out the balance.
> - The aggregate of collateral value will be for 50% reinvestment in Products offered by Deutsche Bank and 50% cash out.

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6 1st AEIC of Ms June Wong at para 30 and pp 568–569.

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38 Mr Juma responded by e-mail to the 10 May 2021 E-mail on the same day, stating "I confirm the content of your e-mail".

39 As set out in the 10 May 2021 E-mail, the standard LV of NR Bonds of 30% was offered to ARJ on the condition that the three Additional Securities be transferred to DB by 27 May 2021, with US$40m transferred as stop-gap measure until the transfer of the three Additional Securities is complete.

40 Ms Chuah Woei Woei ("Ms Chuah"), who was Team Head of Credit Risk (Wealth Management) in DB in 2017, explained that although the 10 May 2021 E-mail did not explicitly state that each security would be limited to 30% of the total lending value of the securities in the portfolio, this was because at this point of time, the Defendants had only provided one security and it was "very dire".[7] Mr Sudhir Murthy Nemali ("Mr Nemali"), who was previously Managing Director, Chief Operating Officer, IPB Wealth Management APC of DB, explained that at that time, the only other security in ARJ's portfolio besides the NR Bonds, were the Titan Bonds, which were completely illiquid and hence not given any weight.[8]

41 DB submits that on the Defendants' own case, the Defendants minimally accept the General Diversification Requirement. The Defendants knew that the bonds were over-concentrated and that they had to take steps to diversify. They promised to take certain steps, some of which they did not carry out. In addition, ARJ had acknowledged that the NR Bonds and LS Bonds would be assigned an exceptional standard LV of 30% on several conditions, including that the General

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7 Notes of Evidence ("NE") 7 April 2025 Hearing at p 52 line 17–p 53 line 5.

8 NE 11 April 2025 Hearing at p 105 line 8–13.

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Diversification Requirement / Diversification Condition is met by the end of July 2021 and maintained by ARJ. This can be seen from the following.

42 On 3 May 2021, Mr Aroura informed ARJ by e-mail ("3 May 2021 E-mail") that the "approved lending value for the [NR Bonds] is 30% for a diversified portfolio".[9]

43 In the 10 May 2021 E-mail, Mr Aroura informed Mr Juma of the various conditions attached to ARJ's accounts, including that the account was to be maintained with a diversified portfolio of liquid security to enjoy standard AR. On the same day, Mr Juma responded to confirm the contents of Mr Aroura's e-mail.

44 Mr Aroura informed ARJ by e-mail that the approved lending value for the LS Bonds was 30% for a diversified portfolio.[10]

45 By the 10 May 2021 E-mail, ARJ was to ensure that the Diversification Condition was met by 27 May 2021. Ms June Wong ("Ms Wong"), the Asia-Pacific Head of Lending of Deutsche Bank AG, testified that following ARJ's failure to do so, the deadline was extended multiple times, with DB informing ARJ that it was to ensure that the Diversification Condition was met by the end of July 2021, as a condition for the standard LV of 30% being granted to the NR and LS Bonds.[11]

46 Consistent with the above, on 11 July 2021, Mr Aroura met ARJ and highlighted the need for ARJ to have each security (including the NR and LS Bonds) below 30% of ARJ's overall security portfolio lending value in order

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9 1st AEIC of Ms June Wong at para 28 and p 566.

10 1st AEIC of Ms June Wong at para 36 and p 596.

11 1st AEIC of Ms June Wong at para 36.

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for the portfolio to be diversified. It was explained that ARJ had until end July 2021 to do so.[12]

47 DB did not call Mr Aroura as a witness. He had since left DB. Mr Aroura informed DB's solicitors that he was not willing to give evidence.[13]

48 DB relied on an internal e-mail update from Mr Aroura dated 15 July 2021 to his DB colleagues ("15 July 2021 E-mail").[14] There, he stated:

> The current Portfolio and LV composition is as below:
>
> | **Security** | **MV** | **LV %** | **LV** | **LV Utilized** | **LV % exposure** |
> |---|---|---|---|---|---|
> | Nordrock | $136,525,000 | 30% | $40,957,500 | | 42.85% |
> | Landstone | $122,056,000 | 30% | $36,616,800 | | 38.31% |
> | CBQ Deposit | $20,000,000 | 90% | $18,000,000 | | 19% |
> | Titan | $111,000,000 | | $0 | | |
> | Total: | $389,581,000 | | $95,574,300 | $47,000,000 | 49% |
>
> Brief Points:
>
> - I met the client on the 11th July and requested for status update on the other 4 securities transfer as well. He said that they are at it and will transfer the securities before the month end.
> - Explained to him that we have taken approval till end July for the portfolio to be diversified and the securities to be settled in.
> - Also detailed the security wise exposure and the need to have each security lending value exposure below 30% for the

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12 1st AEIC of Ms June Wong at para 38 and p 598.

13 1st AEIC of Ms June Wong at para 138 and pp 1534–1537.

14 1st AEIC of Ms June Wong at para 38 and pp 598–599.

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> portfolio to be diversified, else there would be a Lending Value reduction till the portfolio is diversified.
>
> - He mentioned that he will also invest further and utilize the LV to diversify.
>
> - Have informed that there can be no cash out till the portfolio is diversified.
>
> He has also shown interest in investing Euro 10 Mil ($12Mil equivalent) in our balanced Discretionary offering.
>
> May I please request your approval for investment in Discretionary Portfolio, standard AR is 75% for the discretionary portfolio.
>
> We are engaging quite actively and following up with the client to diversify the portfolio by transferring in liquid securities and increase the investments with us.
>
> Shall keep you updated on the discussions.

49 DB continued to communicate the urgency of the transfers to the Defendants. On 22 June 2022, Mr Aroura e-mailed Dr Khan to summarise the action points following their call, including the transfer of additional securities into ARJ's portfolio in DB ("22 June 2022 E-mail"). Dr Khan replied on 23 June 2022 ("23 June 2022 E-mail"), enclosing his comments.[15] The points raised by Mr Aroura and Dr Khan's response (in italics) are set out below:

> - Standard LTV on Landstone and Nordrock is 0, however special LV of 30% was offered to this relationship on the basis of a diversified portfolio – *its appreciated and we have always reciprocated positively for your decisions*
>
> - However with the changes in portfolio, fall in value, and sale of liquid portfolio the exposure to illiquid securities has increased sharply, way beyond the permissible limits – *we endeavour to restore it back to permissible limits and that is why we are moving good quality and rated bonds to you*
>
> - Need to have liquid securities in with confirmation today, as was discussed and committed last week to correct this situation, so as no further margin call or reduction in Lending

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15 ABOD Vol 4 at pp 626–627.

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> Value on Landstone and Nordrock is triggered due to skewed/high concentration on Landstone and Nordrock – *we have ignited the process from our end despite taking some cuts for foregoing the lucrative offers from the existing lender.*

50 As another example, Ms Deepti Seshadri ("Ms Seshadri") of DB, in her e-mail dated 26 July 2022 ("26 July 2022 E-mail"), informed Dr Khan:[16]

> As you understand we are way over the discussed dates on the transfers and coupon payment. Would request your prompt action in solving the illiquid exposure situation and the non-receipt of coupon. Any further delay will lead to LV cuts on the Landstone and Nordrock.

Defendants' case

51 The Defendants' case is that the only requirement was that ARJ's portfolio be generally diversified. This lacked specificity. There was also no communication of the Diversification Condition to Mr Juma, ARJ, or its employees.[17]

52 The requirement of the three Additional Securities and US$40m, which were raised in the 10 May 2021 E-mail, was in respect of ongoing discussions with DB for the provision of corporate and investment banking services. They were not intended to be collateral for the Loan Facilities, but as collateral held with DB for an anticipated corporate finance facility. The requirement for the transfer of the three Additional Securities was subsequently dropped. To support this, the Defendants rely on an e-mail from Mr Aroura to Mr Juma dated 28 May 2021 ("28 May 2021 E-mail"), where Mr Aroura said:[18]

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16 ABOD Vol 4 at p 644.

17 AEIC of Mr Mohammad Ahmad Ramadhan Juma at para 16; AEIC of Dr Dure Aden Haider Akhter Khan at para 14.

18 AEIC of Mr Mohammad Ahmad Ramadhan Juma at para 18 and p 139.

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> I have a good [*sic*] news to share that we have got transfer of the securities from MARJ approved due to to which [*sic*], you will not be troubled for the transfer.

53 DB subsequently informed ARJ that DB was not willing to offer ARJ corporate banking services.

54 Dr Khan testified that Mr Aroura's statement in the 3 May 2021 E-mail – that DB had approved the "standard AR" of 30% for a diversified portfolio – was understood to mean a general requirement that ARJ's portfolio was to be diversified after the loan facilities were granted.[19]

55 Mr Juma and Dr Khan testified that they did not meet with Mr Aroura on 11 July 2021. Neither did any other members of ARJ. In fact, on 11 July 2021, Dr Khan had sent DB an e-mail wherein Dr Khan had instructed DB's Mr Bansal on the placement of certain securities ("11 July 2021 E-mail"). Mr Aroura was copied. The Defendants submit that one would expect the 11 July 2021 meeting to be mentioned in the 11 July 2021 E-mail if there had been one, but there was no mention of such a meeting.[20]

56 An adverse inference ought to be drawn against DB for its failure to call Mr Aroura to testify, which, if given, would be adverse or prejudicial to DB's case.

57 In addition, the Defendants submit that the pleaded case of DB is that there was a further agreement between the parties outside the Service Agreement on the alleged Diversification Condition. As cl 37(g) of the Service

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19 AEIC of Dr Dure Aden Haider Akhter Khan at para 14.

20 AEIC of Mr Mohammad Ahmad Ramadhan Juma at para 21; AEIC of Dr Dure Aden Haider Akhter Khan at para 26 and p 197.

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Agreement contains a standard "Entire Agreement" provision, such further agreement is against cl 37(g), which states that "[t]his Service Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter".

Decision

58 This issue largely revolves around the evidence over DB's communication to the Defendants of the General Diversification Requirement and the Diversification Condition.

59 Before I delve further into the evidence, I will address the Defendant's submission that the General Diversification Requirement and the Diversification Condition are further agreements and hence contrary to the "Entire Agreement" provision found in cl 37(g) of the Service Agreement.

60 In my view, the Defendants' argument is misplaced. DB is correct in pointing out that an entire agreement clause, entered into at the time the account was opened, applies to the agreement or understanding between the parties at that point in time. It does not seek to prohibit the forming of understandings or agreements in the future, after the date the agreement was entered into. Clause 18(a) of the Service Agreement makes it clear that DB may grant "[f]acilities in accordance with the terms of this Service Agreement or other terms as may be agreed". Thus, even if there are further agreements between the parties, they are not precluded by the entire agreement clause.

61 In any event, DB's pleaded case is not premised on ARJ's subsequent agreement, but that ARJ "acknowledged and / or agreed" that the Loan Facilities would be made available subject to terms including the General Diversification

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Requirement and the Diversification Condition.[21] This brings to fore two points of distinction. First, these terms were imposed pursuant to cl 18 of the Service Agreement, not a subsequent agreement. Second, DB's case was not only premised on ARJ's agreement to these terms, but also that ARJ was informed and was aware of them. Indeed, the substantive evidence of the parties throughout the course of trial was in relation to whether the Defendants were informed of these terms. Notably, at the close of trial, parties also agreed to frame the first issue for closing submissions as whether DB communicated the General Diversification Requirement / Diversification Condition to ARJ, and not whether ARJ agreed to them.

62 I will next turn to the evidence regarding DB's communication on the General Diversification Requirement and the Diversification Condition. I begin by examining the 10 May 2021 E-mail sent by Mr Aroura to Mr Juma. This clearly states that "[a]ccount to be maintained with a diversified portfolio of liquid securities to enjoy standard Advance Ratios. This is an ongoing requirement". Pursuant to this requirement, the 10 May 2021 E-mail sets out various steps to be taken to ensure diversification, through the provision of additional securities.

63 Mr Juma replied by e-mail to say "I confirm the content of [the 10 May 2021 E-mail]". He sought to distance himself from it by saying that this did not mean that he agreed with the terms of the transaction set out in the 10 May 2021 E-mail. According to Mr Juma, there is a difference between him saying he

[21] Defence to Counterclaim at para 6.

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confirmed the content and him confirming the e-mail.[22] During re-examination, he added that he was simply saying that he acknowledged receipt of the e-mail.[23]

64 I find Mr Juma's explanation to be highly unpersuasive. When he said "I confirm the contents", that is plainly understood as him confirming the content of the 10 May 2021 E-mail, which contained the terms of transaction as set out by Mr Aroura. If Mr Juma had intended to simply acknowledge receipt of the e-mail, he could easily have said so. Moreover, Mr Juma accepted during cross-examination that by confirming the contents, it meant that he received the contents of the 10 May 2021 E-mail from DB and that the Defendants would try to achieve the terms set out therein.[24] He also agreed that if he disagreed with the contents of the 10 May 2021 E-mail, he would have said so in his reply.[25]

65 I thus find that by Mr Juma's reply to the 10 May 2021 E-mail, he had confirmed the terms of transaction as set out by Mr Aroura in the 10 May 2021 E-mail.

66 Mr Juma also sought to distance himself from the 10 May 2021 E-mail by claiming that the requirement in the 10 May 2021 E-mail to transfer in the three Additional Securities by 27 May 2021 was not in relation to the Loan Facilities and the Diversification Condition, but in relation to the anticipated provision of corporate and investment banking services by DB, which would include corporate and trade finance facilities.[26]

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22 NE 16 April 2025 Hearing at p 58 line 13–15.

23 NE 16 April 2025 Hearing at p 173 line 3–18.

24 NE 16 April 2025 Hearing at p 55 line 22–p 56 line 14.

25 NE 16 April 2025 Hearing at p 57 line 7–12.

26 AEIC of Mr Mohammad Ahmad Ramadhan Juma at para 18.

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67 I do not find Mr Juma's claim to be credible. The 10 May 2021 E-mail states that the three Additional Securities were to be provided by 27 May 2021. This timing is consistent with the preceding bullet point in the e-mail, that the LV of 30% for the NR Bonds was only until 27 May 2021. In addition, the bullet point on the three Additional Securities was followed by a bullet point stating that ARJ "[would] be transferring around USD 40mil cash as a stop-gap measure". There is no reason why there would be a need for cash transfers to be made as a stop-gap measure for an anticipated corporate finance facility, nor did any of the Defendants' witness provide any such reason.

68 The 28 May 2021 E-mail, which Mr Juma relies on, does not support the Defendants' case. The e-mail does not, on its face, relate to either the contents of the 10 May 2021 E-mail or any anticipated corporate finance facility. Pertinently, Dr Khan accepted, when he was taken through the relevant correspondence leading up to the 28 May 2021 E-mail,[27] that the issue there was that DB had certain requirements for transferring in securities from third parties (which MARJ Holding Limited ("MARJ") was).[28] Dr Khan also accepted that the line from Mr Aroura in the 28 May 2021 E-mail that "you will not be troubled for the transfer" arose from the requirements for transfer of securities from third parties.[29] It would follow from Dr Khan's explanation of the context to the 28 May 2021 E-mail, that there is no basis for the Defendants to say that this line shows that DB agreed to drop the need for the three Additional Securities or for the US$40m to be transferred to DB.

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27 ABOD Vol 2 at pp 451–455.

28 NE 15 April 2025 Hearing at p 121 line 12–20.

29 NE 15 April 2025 Hearing at p 121 line 21 – p 122 line 9.

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69 I note that when this was put to Dr Khan, he disagreed, stating that this was DB's interpretation.[30] However, given Dr Khan's explanation of the circumstances surrounding the 28 May 2021 E-mail, what was put to him by DB is the only logical interpretation. Dr Khan did not provide any other plausible interpretation. In addition, Mr Juma himself also accepted that the 28 May 2021 E-mail was about the resolution of DB's issues with the third-party transfer of assets from MARJ.[31]

70 The 10 May 2021 E-mail itself does not explicitly contain the Diversification Condition, *ie*, that the lending value of each security in ARJ's portfolio shall not exceed 30% of the total lending value of the securities in the portfolio. At the same time, the e-mail does state that for NR Bonds "standard AR 30% [was] being approved despite concentration; for a limited period i.e. until 27 May 2021". In the 10 May 2021 E-mail, DB conveyed that there were concentration issues with the NR Bonds.

71 I thus find that on the basis of the 10 May 2021 E-mail, the Defendants were, minimally, aware of the General Diversification Requirement. This finding is also consistent with the subsequent correspondence between the parties.

72 Indeed, the Defendants accepted in their submissions and evidence that ARJ was aware of DB's requirement that ARJ's portfolio of securities be generally diversified and that pursuant to this requirement, DB requested ARJ to take certain actions to bring in additional securities into its portfolio by

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30 NE 15 April 2025 Hearing at p 122 line 10–p 123 line 11.

31 NE 16 April 2025 Hearing at p 98 line 14–p 99 line 12.

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specific timelines.[32] Mr Juma confirmed on the stand that he was aware of subsequent correspondence from DB regarding the need for a diversified portfolio of securities, including the need for each security's lending value to be below 30%, and that the Defendants had in return made various promises to do so.[33]

73 Dr Khan also testified that there was a diversification issue to address, and ARJ knew of the concentration issues with the NR Bonds and were taking steps to "comply" with that.[34]

74 In so far as the Defendants seek to defend against the General Diversification Requirement by alleging that there was insufficient specificity about what a diversified portfolio was, I find that their case is undermined by:

(a) specific references in the correspondence about the concentration issues with the NR Bonds and the LS Bonds;

(b) DB's numerous requests to transfer the Bonds out because of the concentration issues of the Bonds;

(c) the complete absence of any written correspondence from ARJ or Mr Juma questioning the lack of specificity about the diversification requirements; and

(d) ARJ taking active steps to reassure DB or to improve the diversification of the portfolio.

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32 AEIC of Dr Dure Aden Haider Akhter Khan at para 35; Defendants' Opening Statement ("DOS") at paras 24–25.

33 NE 16 April 2025 Hearing at p 59 line 5–13, p 78 line 23–p 79 line 22, p 80 line 8–24 and p 81 line 9–14.

34 NE 15 April 2025 Hearing p 67 line 17–22 and p 68 line 4–13.

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75 The above points will be evident from my more detailed examination below of the other evidence on DB's communication to ARJ of the Diversification Condition.

76 The LS Bonds were only settled in ARJ's accounts with DB sometime in June 2021. Even after the transfer of the LS Bonds, DB conveyed its concerns with the high concentration on the NR Bonds and LS Bonds and stressed the need for liquid securities. Documentary evidence of such a communication exists from as early as July 2021. On 15 July 2021, Mr Aroura sent a detailed internal update to his DB colleagues. The 15 July 2021 E-mail states that the lending value exposure of the NR Bonds at that point was 42.85%, while the lending value exposure of the LS Bond then was 38.31%. This would have placed both bonds above the 30% limit in the Diversification Condition. Mr Aroura also stated that he had conveyed concerns with this to ARJ and informed them that they needed to diversify their portfolio of securities.

77 The contents of the 15 July 2021 E-mail are consistent with the subsequent correspondence and conduct between the parties. For example, in early August 2021, due to ARJ's non-compliance with the Diversification Condition, DB had lowered the LV of the LS and NR Bonds by 10%.[35] This was not met with protest by ARJ, but rather with attempts at rectification.[36] On 22 April 2022, Mr Aroura sent an e-mail to ARJ reminding them that the concentration of LS and NR Bonds were too high. Mr Aroura also stated in the e-mail that "if the concentration is not sorted … there would be a reduction in AR on these two papers".[37] Further, in the 26 July 2022 E-mail, Ms Seshadri of

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35 1st AEIC of Ms June Wong at para 40.

36 1st AEIC of Ms June Wong at paras 41–42.

37 1st AEIC of Ms June Wong at p 770.

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DB wrote to Dr Khan and requested "prompt action in solving the illiquid exposure situation and the non-receipt of coupon. Any further delay will lead to LV cuts on the Landstone and Nordrock".

78 The exchange between ARJ and DB on 22 June 2022 and 23 June 2022 is particularly telling. In Mr Aroura's 22 June 2022 E-mail to ARJ, he informed ARJ that "with the changes in portfolio, fall in value, and sale of liquid portfolio the exposure to illiquid securities has increased sharply, way beyond the permissible limits". Notably, Dr Khan replied to this point in his 23 June 2022 E-mail, stating that "we endeavour to restore it back to permissible limits and that is why we are moving good quality and rated bonds to you". The use of the phrase "permissible limits" by both Mr Aroura and Dr Khan suggests that there were certain specific limits, albeit they were not expressly identified in the 22 June E-mail.

79 Dr Khan sought to distance himself from this by claiming that while he mentioned "permissible limits" in his 23 June E-mail, he was not referring to any specific limits. He testified that in making this statement, he was simply seeking to assure DB that ARJ was taking steps to meet DB's request for a portfolio with more liquid collaterals to diversify the ARJ portfolio to a level that DB would be satisfied with, even though ARJ was not obliged to do so.[38]

80 I do not find Dr Khan's explanation to be credible. There is no reason for both Mr Aroura and Dr Khan to refer to "permissible limits" if there were no specific limits. It is also highly questionable why Dr Khan would, as CFO of ARJ, commit to restoring the portfolio "back to permissible limits" if there were no specific limits. If indeed Dr Khan did not know what the "permissible limits"

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[38] AEIC of Dr Dure Aden Haider Akhter Khan at para 35.

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referred to, it would have made more sense for him to clarify with Mr Aroura what such limits were, so that ARJ could assess if they were viable and, if they were, for ARJ to work towards it. However, Dr Khan did not disagree with Mr Aroura or seek to clarify the limits. Instead, Dr Khan sought to assure DB that ARJ was moving towards the steps set out by Mr Aroura for the Defendants in the 22 June E-mail. Such steps are consistent with the General Diversification Requirement and the Diversification Condition.

81 I therefore find that the contents of the 15 July 2021 E-mail are consistent with the correspondence and conduct between the parties.

82 One of the disputed issues arising from the 15 July 2021 E-mail is whether Mr Aroura met with ARJ on 11 July 2021, as he claimed in said e-mail, and conveyed the points stated therein.

83 The Defendants point to the absence of mention of such a meeting in Dr Khan's e-mail on 11 July 2021 to Mr Bansal, to support their case that such a meeting did not take place. However, this e-mail from Dr Khan was made in response to Mr Bansal's earlier e-mail dated 5 July 2021, about a separate investment opportunity with the Commercial Bank of Qatar. The correspondence is not related to ARJ's Loan Facilities with DB. Moreover, Dr Khan's e-mail simply instructs Mr Bansal to place US$20m in the captioned note. Contrary to the Defendants' submission, there is nothing unexpected about such an e-mail making no mention of Mr Aroura's meeting with Dr Khan about a separate matter, namely ARJ's Loan Facilities.

84 The Defendants also point to the absence of Mr Aroura as a witness in court to testify to whether he did indeed meet with ARJ on 11 July 2021. For completeness, I note that DB gave Notice to Admit Documentary Hearsay dated

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26 December 2024 in respect of Mr Aroura's e-mails, pursuant to ss 32(1)(*b*) and 32(1)(*j*) of the Evidence Act 1893 (2020 Rev Ed) ("EA"). I find that Mr Aroura's e-mails are admissible pursuant to these provisions.

85 The Defendants do not submit that DB was not entitled to rely on these EA provisions to admit Mr Aroura's e-mails, including the 15 July 2021 E-mail. Instead, the Defendants submit that an adverse inference ought to be drawn against DB for its failure to call Mr Aroura to testify, which if given, would be adverse or prejudicial to DB's case. They rely on *Cheong Ghim Fah v Murugian s/o Rangasamy* [2004] 1 SLR(R) 628 at [42]–[45], which held that the court may draw an adverse inference from a party's failure to call a material witness where the reason for the witness' absence is not satisfactory.

86 I find that DB has given a credible explanation for Mr Aroura's absence. Ms Wong testified that Mr Aroura had left DB and declined to appear as a witness when DB's solicitors contacted him. Contrary to the Defendants' submission, there is no suggestion on the evidence before the court that Mr Aroura's e-mail was false, or that his evidence, if he testified, would be prejudicial to DB's case. If anything, it falls to DB to prove its case in the absence of Mr Aroura's personal testimony. In this respect, I find that Mr Aroura's absence does not affect DB's case. As I have set out above, the veracity of Mr Aroura's content in his 15 July 2021 E-mail can be examined with reference to its consistency with the correspondence and conduct between the parties. It is also consistent with the other evidence before the court. There is hence no basis to draw an adverse inference against DB.

87 While Dr Khan and Mr Juma provided personal testimony, this did not strengthen the Defendants' case. Their position was a simple denial that such a meeting took place with ARJ.

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88 In fact, the credibility of Dr Khan's denial was undermined by his testimony on the stand. He claimed that this meeting on 11 July 2021 could not have taken place, as 11 July 2021 was a Sunday, a day of rest, and thus they tended to give some time to family on Sundays.[39] However, it was then pointed out to him that in Dubai, Saturday / Sunday only moved to become the weekend in January 2022. When he was queried as to why he did not inform the court that Sunday was actually a weekday at the material time on 11 July 2021, Dr Khan replied "When was I required to say that that it was a weekday?"[40] Given that this information would have materially affected the weight of Dr Khan's testimony about Sunday being a day of rest, his lack of care about withholding relevant information when testifying raises concerns about his credibility as a witness. In addition, Dr Khan himself had adduced the 11 July 2021 E-mail, which is an e-mail sent by Dr Khan on 11 July 2021 to a DB officer giving instructions on the placement of certain securities. When this was pointed out to him by counsel, he agreed that 11 July 2021 was a working day and he could be working as per usual.[41]

89 While in isolation, it could be said from the above exchange that Dr Khan was merely a careless witness, there were other aspects of his testimony on other evidence which seriously affected his credibility as a witness. For example, during cross-examination, he changed his evidence several times on when a waiver to the first coupon payment for the Bonds was agreed on, adjusting them to a later date on each production of an e-mail by counsel for DB that contradicted his earlier position. Dr Khan appeared to be making up evidence as he went along. I will elaborate on this below in the

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39 NE 15 April 2025 Hearing at p 86 line 14–20.

40 NE 15 April 2025 Hearing at p 86 line 21–p 87 line 15.

41 NE 15 April 2025 Hearing at p 88 line 18–22.

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section assessing the evidence on whether the Bonds were fully paid up when ARJ transferred them to DB as securities.

90 Mr Juma's testimony also did not add to the Defendants' case, since he simply testified that he did not meet Mr Aroura and he did not know who Mr Aroura met. It was also his testimony that as the owner, he was more into the "general thing[s]" and he left the details of operations to Dr Khan as the CFO.[42]

91 Having assessed the evidence as a whole, I find that the Loan Facilities contained the General Diversification Requirement / Diversification Condition. In relation to this condition, DB had informed ARJ that they were to provide the three Additional Securities by 27 May 2021, and as events transpired, to provide other forms of securities within further timelines. ARJ also sought to reassure DB that it was doing so, and took steps in that direction.

Issue 2: Whether DB was entitled to reduce the LV of the Bonds in early August 2022

92 The second issue is whether DB was entitled to reduce the LV of the Bonds in early August 2022. DB implemented a progressive reduction of 5% to the LV of the Bonds starting from 10 August 2022 and reduced the LV of the Bonds to nil on 19 August 2022.

DB's case

93 DB's case is that it was entitled to reduce the LV of the Bonds in early August 2022. In the 5 August 2022 E-mail, Mr Aroura informed ARJ and Mr Juma that DB would be implementing a reduction in the LV of the LS and NR Bonds by 5%, starting from 10 August 2022, and on the tenth day of every

42 NE 16 April 2025 Hearing at p 31 line 1–15.

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month, until the LV of these two bonds reached nil. DB explained that the reduction in the LV was due to the following:[43]

(a) The standard LV on the LS Bonds and NR Bonds was nil, but an exception was granted for the LV to be 30%, on the basis that ARJ's portfolio would be and remain diversified.

(b) DB's exposure to illiquid securities had increased sharply due to the concentration of LS Bonds and NR Bonds, and such exposure was beyond permissible limits.

(c) DB's intention to reduce the LV on the LS Bonds and NR Bonds was communicated to ARJ on 15 July 2022 and an extension was granted by DB on the basis that the NatWest Transfer and CS Transfer would be completed. However, both transfers had not been initiated.

(d) DB had not received the coupon payments for the LS Bonds, which was due on 30 June 2022, and the NR Bonds, which was due on 2 August 2022.

94 In the 10 August 2022 E-mail, DB informed ARJ and Mr Juma that DB would be implementing a reduction of 5% to the LV of the LS Bonds and NR Bonds, which would result in a shortfall of about US$11.5m, which ARJ was to take immediate steps to address.[44]

95 On 15 August 2022, DB issued a margin call letter to inform ARJ that, following the 5% reduction in the LV of the LS Bonds and NR Bonds, ARJ's

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43 1st AEIC of Ms June Wong at para 89 and p 798.

44 1st AEIC of Ms June Wong at para 93 and p 808.

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accounts were in a shortfall of US$11.421m.[45] DB gave notice to ARJ through its letter dated 16 August 2022 ("16 August 2022 Letter") that it was terminating the Loan Facilities and demanded repayment of the entire loan principal amount, together with the accrued interest, by 25 August 2022.[46]

96 DB asserts that they had validly determined that there was a shortfall in the Collateral Value. DB adduced a Collateral Sheet produced by a Mr Alok Rathi on or around 10 August 2022.[47] This shows that the concentration of LS Bonds stood at 37.9%, while collectively, the concentration of the Bonds stood at 59.5%. Ms Wong gave unchallenged evidence as to its contemporaneity.[48]

97 Ms Wong also exhibited a Collateral Sheet which showed the concentration levels of the securities in ARJ's portfolio on or around 11 August 2022 and 15 August 2022.[49] The concentration of the LS Bonds and NR Bonds as at 11 August 2022 was at 38% and 22%, respectively. After the reduction of the LV of the LS and NR Bonds by 5% on 15 August 2022, the concentration of the LS Bonds and NR Bonds as at 15 August 2022 was at 32% and 15% respectively. Hence, even after the reduction in the LV of the LS Bonds from 30% to 25% on 15 August 2022, the LS Bonds remained in breach of the Diversification Condition, which is that the lending value of *each* security in ARJ's portfolio shall not exceed 30% of the total lending value of the securities in the portfolio.

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45 1st AEIC of Ms June Wong at para 103 and p 830.

46 AEIC of Mr Sudhir Murthy Nemali at pp 941–942.

47 Bundle of Disputed Documents at p 217.

48 Claimant's Closing Submissions at para 56.

49 1st AEIC of Ms June Wong at para 95 and pp 811–815.

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98 DB submits that it had complied with cll 18(c) and (d) of the Service Agreement. There is no confusion amongst parties between the phrases "Lending Value", "advance rates" and "Collateral Value". From the evidence, it is clear that these terms have been used and understood interchangeably. Prior to the 5 August 2022 E-mail, DB had on multiple occasions used the phrase "Lending Value" in its correspondence with the Defendants and this was used interchangeably with the term "Collateral Value".[50] Furthermore, nothing in the plain wording of these clauses obliges DB to inform the Defendants of the collateral value of the Bonds or DB's reasons for determining that there is insufficient collateral. Clause 18(c) of the Service Agreement simply provides that DB is to give the Defendants one business days' notice to deliver additional acceptable collateral in an amount as required by DB. Clause 18(d) of the Service Agreement provides that an event of default arises if the Defendants failed to deliver the collateral when required.

99 DB submits that in addition, it was also entitled to lower the Collateral Value of the Bonds to nil pursuant to cl 18(b) of the Service Agreement, on the basis of their discovery that ARJ had not fully paid up for the Bonds.

100 On or around 15 August 2022, DB received information from Mr Lars Magnusson ("Mr Magnusson"), the Chief Executive Officer of the Larmag Group, that the NR and LS Bonds which ARJ had pledged as security to DB had not been fully paid for.

101 In light of this discovery, DB sent a letter to ARJ on 19 August 2022 ("19 August 2022 Letter") stating that "matters [had] come to [DB's] attention regarding the fair value and veracity of representations regarding the [NR and

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50 ABOD Vol 3 at pp 64 and 101, ABOD Vol 4 at pp 626–627, 633 and 643–644.

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LR Bonds]".[51] Given these concerns, DB assigned nil Collateral Value to the Bonds in the Accounts. This led to an increased shortfall of US$102,297,356. DB reiterated that DB was entitled to exercise such rights in respect of ARJ's Event of Default under the Service Agreement, and gave notice that unless DB received full repayment of the sums demanded in its 16 August 2022 Letter by the stated deadline of 25 August 2022, DB would take further recourse.

102 In relation to the Defendants' argument that DB is estopped from relying on the illiquidity of the Bonds to reduce the collateral value of the Bonds, DB submits that this was not pleaded and should fall *in limine*. In any event, the Defendants' case on estoppel is unsustainable. First, there is no evidence that DB represented to the Defendants that it would not alter the collateral value of the Bonds for reasons related to the illiquidity of the Bonds. Clauses 18(b) and (c) of the Service Agreement provide DB with sole discretion to prescribe or alter the collateral value of any collateral at any time. Second, the Defendants have not shown that they suffered detrimental reliance. The Defendants in fact benefited from significant loan facilities extended on the security of the Bonds. Third, DB did not reduce the collateral value of the Bonds solely because of illiquidity. DB's pleaded case is that it did so for various reasons, including the overconcentration of the Bonds, the lack of coupon payments on the Bonds and the failure of the Defendants to make good on their promise to transfer out the Bonds to NatWest.

Defendants' case

103 The Defendants submit that DB was not entitled to cut the LV of the Bonds progressively for the following reasons.

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[51] ABOD Vol 5 at p 63.

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104 First, the Loan Facilities did not contain the Diversification Condition. The reference in DB's 5 August 2022 E-mail to a breach of "permissible limits" was in relation to this condition.

105 Second, DB's 5 August 2022 E-mail was unclear as to its reliance on cl 18(c) of the Service Agreement. While cl 18(c) states that DB shall have absolute discretion to prescribe the amount of Collateral that the Defendants are to provide, the 5 August 2022 E-mail does not use the phrase "Collateral Value" but "Lending Value" and does not define what this means. Although DB stated in its 15 August 2022 Letter that there was insufficient collateral, this was premised on the 5 August 2022 E-mail. As the 5 August 2022 E-mail did not prescribe the amount of collateral required to secure the customer's liabilities or the type of collateral required, cl 18(c) was not complied with and DB was precluded from relying on it.[52]

106 Third, even if the Diversification Condition existed, DB has not proven that ARJ was in breach on 5 August 2022. Contrary to its own pleaded case, there was in fact no "*excessive concentration*" on both the LS Bonds and NR Bonds.

107 Fourth, DB has not satisfied its burden of proving that the Bonds were not fully paid up. Ms Wong gave evidence of her exchanges with Mr Magnusson. He was not called, and his statements are inadmissible hearsay evidence. Mr Magnusson was prepared to testify on behalf of DB, but they did not call him. This warrants the drawing of an adverse inference. DB did not carry out independent due diligence on the Bonds before accepting them as collateral. It has only itself to blame for the situation it found itself in.

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[52] Defendants' Closing Submissions at paras 124–127.

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Ultimately, the undisputed fact remains that the Bonds had been registered in ARJ's name, and ARJ had good title to them. This, in and of itself, ought to be taken as conclusive that the Bonds have been fully paid for.

108 Fifth, DB is estopped from relying on the fact that the Bonds were illiquid as a reason for reducing the collateral value of the Bonds, as DB was allegedly aware of the same from the outset.

Decision

109 I find that DB was entitled to cut the LV of the Bonds progressively starting 10 August 2022.

110 I have held above that the Loan Facilities contained the Diversification Condition, and that DB communicated this to ARJ. There was a series of correspondence between parties where DB informed ARJ of the concentration issues with the Bonds and asked ARJ to take steps to address this. ARJ made various assurances to DB and also took certain steps to seek to do so. I therefore find no merit to the Defendants' first submission that DB was not entitled to cut the LV of the Bonds progressively because the Loan Facilities did not contain the Diversification Condition.

111 At the trial, the Defendants questioned the authenticity of the Collateral Sheets adduced by DB, but did not take this up in their closing submissions. For completeness, I am satisfied with Ms Wong's explanation of how DB prepared the Collateral Sheets. They drew on data feed that was available to DB, including from Bloomberg. Ms Wong testified that she prepared this contemporaneously, drawing on data as stated in the dates in the Collateral Sheet.

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112 I also find no merit to the Defendants' second submission that the 5 August 2022 E-mail should not be construed as relying on cl 18(c) of the Service Agreement, because it did not explicitly mention the phrase "Collateral Value". This argument was only raised by the Defendants in their Closing Submissions. It was not taken up earlier, and they did not question nor put this to any of DB's witnesses. The Defendants would be precluded from raising this on this ground alone.

113 Even if I were to allow this to be raised at this late stage, I would find that there is no substance to the submission.

114 It is apparent from the face of the 5 August 2022 E-mail that DB was referring in substance to the "Collateral Value" when it referred to the "Lending Value". It made reference to previous correspondence and communications which stated that a lending value of 30% would be offered on the NR and LS Bonds on the basis of a diversified portfolio and that this was beyond the permissible limits. As set out above, and as pointed out by DB, there is abundant written communication on this very issue between the parties regarding the "Collateral Value", where the phrase "Lending Value" was used and understood interchangeably[53], leading up to the points described in the 5 August 2022 E-mail about the "Lending Value". It would have been clear to the parties that the "Lending Value" referred to in the 5 August 2022 E-mail is the same as the "Collateral Value" in the Service Agreement.

115 In any event, cl 18(c) gives DB the absolute discretion to prescribe the amount of required collateral, and if DB deems the collateral to be insufficient, cl 18(c) only requires that DB give one business days' notice to deliver

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[53] ABOD Vol 3 at pp 64 and 101; ABOD Vol 4 at pp 626–627, 633 and 643–644.

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additional collateral of a type acceptable to DB in their sole discretion. There is no stated requirement in cl 18(c) for DB to prescribe the required collateral in the notice. Despite the absence of such contractual requirements, the 5 August 2022 E-mail nevertheless ends off with a list of steps for ARJ to take to reduce exposure on the Bonds before the reduction scheduled on 10 August 2022. I hence find no merit to the Defendants' submission that cl 18(c) of the Service Agreement was not complied with in the 5 August 2022 E-mail.

116 The Defendants' third submission is that it is DB's own pleaded case, that there was "excessive concentration" on both the LS Bonds and NR Bonds and DB has not proven that ARJ was in breach of this on 5 August 2022. However, this misconstrues DB's case. The Defendants had initially submitted at the close of trial that DB had stated this point in their 5 August 2022 E-mail.[54] There is nothing in the 5 August 2022 E-mail that states this and the Defendants have not reiterated this position in their Closing Submissions. They have instead reframed it to submit that it is DB's pleaded case that there was excessive concentration in both the LS and NR Bonds. However, the Defendants do not identify where in DB's pleading they make this their case. Neither do I find it in DB's pleading. I hence find no merit to the Defendants' third submission.

117 The Defendants' fourth submission is that DB has not satisfied its burden of proving that the Bonds were not fully paid up. First and foremost, DB did not rely on the Bonds not being fully paid up as a reason for reducing the LV of the Bonds, when DB informed ARJ and Mr Juma in its 5 August 2022 E-mail that DB would be reducing the LV of the LS Bonds and NR Bonds. Instead, DB referred to other reasons, namely, the 30% LV for the Bonds being offered on the basis of a diversified portfolio, the current exposure being beyond

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54 NE 17 April 2025 Hearing at p 101 line 22–p 102 line 2.

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permissible limits and that the coupons on the Bonds had not been received. Thus, this submission of the Defendants does not affect DB's case for reducing the LV of the Bonds, pursuant to these reasons.

118 Nevertheless, DB did submit that it was also entitled to lower the Collateral Value of the Bonds to nil pursuant to cl 18(b) of the Service Agreement, on the basis of their discovery that ARJ had not fully paid up for the Bonds. This was conveyed by DB to the Defendants in their 19 August 2022 Letter. It is in respect of this that the Defendants assert that DB have not satisfied their burden of proof of showing that the Bonds were not fully paid up.

119 There is however some inconsistency in the Defendants' position on this. The Defendants had earlier applied to amend their Defence and Counterclaim ("D&CC") dated 7 August 2023 in their Single Application Pending Trial. They had originally pleaded in their D&CC, that DB acted in breach of the alleged good faith obligation by assigning nil value to the Bonds on or around 19 August 2022. In this context, the Defendants' position was that the Bonds had been "fully paid". After DB requested the Defendants to produce documents relating to the payment of the Bonds, the Defendants proposed to delete references in the D&CC relating to DB's concerns with the payment for the Bonds and the decision to assign nil lending value to the Bonds. Mr Juma testified that the Defendants no longer alleged that DB's exercise of discretion to reduce the lending value of the Bonds from 25% to nil was in breach of an implied term of good faith and that the Defendants' defence is centred on DB's exercise of its discretion to reduce the LV from 30% to 25%.[55] The Defendants

[55] Agreed Bundle of Interlocutory Affidavits ("ABIA") Vol 6 at p 400, para 28.

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argued that following from this, the documents sought by DB relating to the payment of the Bonds were "irrelevant".[56]

120 Given that the Defendants had resisted production of documents relating to the payment of the Bonds on the basis that they no longer contested DB's discretion to reduce the LV of the Bonds from 25% to nil, it is highly inconsistent for them to now argue that DB is not entitled to such reduction of the LV of the Bonds, on the grounds that DB has not proven that the Bonds were not fully paid up.

121 The Defendants were eventually ordered by the court to comply with a production order in relation to such documents. Dr Khan filed a supplementary AEIC, testifying that all the documents in the Defendants' possession and control had been produced. Dr Khan also testified in his supplementary AEIC that the Bonds were fully paid up,[57] and set out the Defendants' evidence to show that the Bonds were fully paid up when they were transferred to DB. Dr Khan maintained this position when he was cross-examined on the stand.[58] At no time during this period did the Defendants assert that the burden of proof was on DB, rather than the Defendants. Such a submission was only put forth after the trial, after Dr Khan had taken the stand and was cross-examined on this evidence.

122 In any event, I find no merit to the Defendants' submission that the burden of proof of showing that the Bonds were fully paid up is on DB.

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56 ABIA Vol 6 at pp 470–471, paras 36–37.

57 Supplementary AEIC of Dr Dure Aden Haider Akhter Khan at para 15.

58 NE 14 April 2025 Hearing at p 30 line 14–15, p 31 line 15–17.

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123 First, what DB relies on is cl 19 of the Service Agreement. Pursuant to this, an event of default occurs where any event arises that may adversely affect the ability of any of the parties to perform their obligations, or where an event arises that DB determines may be prejudicial to its interests. This could include an event that raises doubts about whether the Bonds were fully paid up. DB did not assert that they had proof that the Bonds were not fully paid up. Instead, in the 19 August 2022 Letter, they informed ARJ that matters had come to their attention regarding the fair value of as well as the veracity of representations made about the Bonds and asked ARJ to provide information that would allow DB to evaluate the appropriate value of the Bonds by 24 August 2022. However, ARJ did not provide such information. DB continued to seek such information through its request that the Defendants produce documents relating to the payment of the Bonds. It was the Defendants who resisted such production.

124 Second, the Defendants themselves had pleaded that the Bonds were at all material times "performing assets and were not distressed"[59]. They also asserted through their witness, Dr Khan, that the bonds were fully paid up.

125 Third, s 108 of the EA provides that when "any fact is especially within the knowledge of any person, the burden of proving that fact is upon him". Whether the Bonds were fully paid up is especially within the Defendants' knowledge.

126 I am therefore of the view that the burden of proof of showing that the Bonds were fully paid up is on the Defendants.

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[59] Defence and Counterclaim at para 8(x).

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127 I find that on the evidence before the court, the Defendants have not shown that the NR Bonds and LS Bonds were fully paid up when ARJ transferred them to DB. This means that contrary to ARJ's claims, it did not provide DB with adequate collateral. DB was consequently also entitled to reduce the LV of the Bonds to nil, starting 19 August 2022. I examine this in more detail below.

128 Ms Wong testified that Mr Magnusson informed her in mid-August 2022 that the Bonds were not fully paid up. Mr Nemali corroborated Ms Wong's evidence, stating that he was on the call. DB subsequently wrote to the Defendants in the 19 August 2022 Letter, where they stated:

> We hereby notify you that matters have *come to our attention* regarding the fair value and veracity of representations regarding [NR and LS Bonds] … Given these concerns, we have since assigned nil Collateral Value
>
> In order for us to evaluate the appropriate value of the Bonds … please provide the following information [such as the accounts/other relevant information between ARJ and the Larmag group] by 24 August 2022: …
>
> > c. We were earlier provided a property summary, a copy of which is enclosed here. Please provide an updated summary to reflect the current financials and property portfolio in Landstone BV ("Landstone") and Nordrock Securities B.V ("Nordrock").
> >
> > d. Please provide a copy of the initial Re-insurance policy with each of the issuer listed below on the Landstone Bond issue, and to provide amendments or updates with each of the issuer to date (at as August 2022).
> > …
> >
> > e. Please provide audited accounts for last 3 years of Larmag Realty Group BV Amsterdam or the company holding the properties / that was supposed to acquire or and/or transfer the properties to the issuers (Landstone and Nordrock) as security for the bond. Please also confirm the identity of the auditor of Larmag Holdings B.V. (Issuer Holdco) and Larmag Real Estate 5

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> B.V. (Borrower in the Nordrock Bond) and Larmag Real Estate 3 B.V. (Borrower in the Landstone Bond).
>
> f. Please provide information on the contractual or other relationship between ARJ Holdings Limited and the Larmag Group.
>
> g. Please provide any other relevant information that is not captured in the above relating to ARJ Holding Limited's ownership of the Landstone Bond and Nordrock Bond holdings that you wish to bring to our attention.

[emphasis in original omitted]

129 The Defendants submit that an adverse inference should be drawn against DB for Mr Magnusson's absence at trial. I decline to do so. I find that DB has given a credible explanation for his absence, which I elaborate on below. Furthermore, there is no evidence to suggest that Mr Magnusson's testimony would be contrary to what he stated in his e-mails and would instead corroborate the Defendants' case that the Bonds were fully paid up for.

130 The Defendants also submit that Mr Magnusson's e-mails are documentary hearsay evidence. DB had given Notice to Admit Hearsay dated 26 December 2024 to admit Mr Magnusson's e-mails pursuant to ss 32(1)(*b*) and 32(1)(*j*) of the EA. I find that DB is entitled to admit the e-mails even if they were hearsay, pursuant to ss 32(1)(*b*), 32(1)(*j*)(iii) and 32(1)(*j*)(iv) of the EA.

(a) The e-mails are record statements made in the ordinary course of business and hence satisfy s 32(1)(*b*) of the EA.

(b) Unlike the situation in *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686, where s 32(1)(*j*)(iii) of the EA was not met because there was no evidence of efforts made to contact the surveyors who prepared the report, DB did

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reach out to Mr Magnusson. His solicitors requested that DB share their procedural strategy in the litigation before he would consider DB's request to testify. Given that such strategy is confidential to DB and privileged, and Mr Magnusson had a longer history of interaction with the Defendants than DB, it would have been unreasonable to expect DB to agree to this condition to secure Mr Magnusson as a witness. I agree with DB that it would not be practicable to secure Mr Magnusson's attendance for the purposes of s 32(1)(*j*)(iii) of the EA.

(c) For similar reasons, it can also be construed that Mr Magnusson is competent but not compellable and refused to give evidence on behalf of DB for the purposes of s 32(1)(*j*)(iv) of the EA.

131 Turning to Dr Khan's evidence on whether the Bonds were fully paid up, I find a significant number of inconsistencies and flaws in his evidence.

132 First, Dr Khan testified in his supplementary AEIC at para 33 that partial coupon payments were received for the NR Bonds on 31 January 2022 and LS Bonds on 30 June 2022. However, his evidence does not support this claim:

(a) The credit advice that Dr Khan exhibited to show such payments, were for payment made to Mr Juma, not ARJ, which is the holder of the Bonds.[60] Dr Khan said that this was because Mr Juma was the ultimate beneficial owner of the bonds. When asked for evidence or documentation to show that an issuer of the Bonds can ignore the bondholder to make payment to the ultimate beneficial owner, Dr Khan

[60] Supplementary AEIC of Dr Dure Aden Haider Akhter Khan at pp 30 and 32.

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said the evidence of this was the credit advice.[61] However, there is nothing of such on the credit advice.

(b) Dr Khan admitted that the invoice was just a credit advice showing monies reaching Mr Juma's account. It does not show payment for specific bonds. On the face of the credit advice, there is no indication that the amount transferred was made as partial coupon payment for the Bonds.[62]

(c) Dr Khan could not clearly identify who the payor was. He claimed that there was a call between Mr Magnusson and Mr Juma about this transfer,[63] but he was not present at the call nor did he have any documentary evidence of such a discussion.[64] His understanding was that the payment came from Mr Magnusson, but when asked who the payor was, Dr Khan said it is not mentioned in the credit advice and he could not assume something which is not written there. He did not have information on which entity made the transfer.[65]

(d) Dr Khan confirmed he did not have any documents to show where the transfers came from.[66] Mr Juma also confirmed that he did not have proof that the transfers were made for the purpose of the coupon

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61 NE 14 April 2025 Hearing at p 37 line 5–19.

62 NE 14 April 2025 Hearing at p 38 line 8–18.

63 NE 14 April 2025 Hearing at p 41 line 19–p 42 line 4.

64 NE 14 April 2025 Hearing at p 44 line 25–p 45 line 6.

65 NE 14 April 2025 Hearing at p 46 line 3–13.

66 NE 14 April 2025 Hearing at p 51 line 16–p 52 line 5.

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payments nor any proof as to who the monies stated in the credit advice came from.[67]

133 Second, Dr Khan changed his evidence on the stand several times when testifying that there was a waiver of the first coupon payment. His testimony on this matter was highly inconsistent.

134 Dr Khan made this claim for the first time on the stand, stating that Mr Magnusson requested for the waiver and Mr Juma agreed.[68] Dr Khan initially testified that he knew of the waiver of coupon payment for the LS Bonds by *end June 2022*,[69] that the waiver of the coupon payment for the LS Bonds was on 30 June 2022 and the waiver of the coupon payment for the NR Bonds was close to the end of July 2022.[70] Notably, Dr Khan was unable to provide information on the date which the issuer of the Bonds made such a request, which entity agreed to the waiver, or supporting documents to show that such a waiver was agreed to.

135 When counsel for DB suggested to Dr Khan that he had never informed DB of such a waiver, Dr Khan disagreed. Dr Khan was then shown an e-mail from him to Mr Aroura dated 7 July 2022.[71] There, Dr Khan informed Mr Aroura that Mr Magnusson had, on 30 June 2022, informed ARJ of an upcoming part coupon payment, but Dr Khan did not inform Mr Aroura in the e-mail that there was a waiver. When counsel pointed out to Dr Khan that he

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67 NE 16 April 2025 Hearing at p 116 line 8–p 118 line 2.

68 NE 14 April 2025 Hearing at p 73 line 23–25.

69 NE 14 April 2025 Hearing at p 81 line 5–13 and p 82 line 22–25.

70 NE 14 April 2025 Hearing at p 83 line 16–21.

71 ABOD Vol 4 at pp 629–630.

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could have but did not inform DB in his e-mail dated 7 July 2022 that the first coupon payment for the LS Bonds (which was due on 30 June 2022) had already been waived, Dr Khan said that he did not do so as Mr Magnusson was still trying to pay.[72] This was not part of his initial evidence on the stand.

136 When it was pointed out that Dr Khan had not informed DB of the waiver even in his e-mail update to DB dated 21 July 2022,[73] Dr Khan then changed his evidence to say that the 30 June 2022 date in his supplementary AEIC was only the due date for coupon payment and that consent of waiver took place at the end of July.[74] After counsel pointed out that this was different from his earlier evidence, Dr Khan said that he would make a slight change to his evidence and that it was not waiver "on 30 June" but "for 30 June".[75] He effectively took a different position from his earlier evidence.

137 When Dr Khan was later shown another e-mail from a DB officer to him dated 3 August 2022[76] about the lack of coupon payment, Dr Khan changed his evidence yet again. He said that he was not sure whether they had given the exemption or not and that *this must have happened during the earlier dates and 3 August 2022*.[77] This is different from his initial evidence that the waiver for the LS Bonds was on 30 June 2022, and also different from his modified evidence that consent of waiver took place at the end of July.

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72 NE 14 April 2025 Hearing at p 85 line 1–6.

73 ABOD Vol 4 at p 638, NE 14 April 2025 Hearing at p 85 line 21–p 86 line 6.

74 NE 14 April 2025 Hearing at p 88 line 19–p 89 line 7.

75 NE 14 April 2025 Hearing at p 89 line 8–22.

76 ABOD Vol 4 at p 662.

77 NE 14 April 2025 Hearing at p 97 line 11–22.

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138 Dr Khan's evidence regarding the alleged waiver of coupon payment for the Bonds is also incongruent with the representations made then by the Defendants to DB. There were consistent assurances from the Defendants to DB that the coupon payments on the LS Bonds, which were due on 30 June 2022, would be paid soon. As at 7 July 2022, Dr Khan informed DB that the coupons "shall be paid in the first week of July due to a pending transaction".[78] On 21 July 2022, Dr Khan informed DB that the coupons would reach the bondholder's account in a day or two.[79] On or around 12 August 2022, Dr Khan claimed that the coupon payments were "deferred".[80] Minimally, Dr Khan's representations conveyed that the coupon payments on the LS Bonds would eventually be paid, and not that they would be waived.

139 Third, Dr Khan testified that he agreed with the DB witnesses that bonds should have been paid up before they were released into the banking system. Without payment, the bond cannot be in the payment system or in the banking system.[81] He maintained that the Bonds were fully paid up when they were transferred to DB, and thus DB was entitled to rely on them as security.

140 Dr Khan affirmed that when ARJ transferred the NR Bonds to DB on 12 May 2021, they were fully paid up.[82] However, in Dr Khan's supplementary AEIC at para 9, he said that there was a partial payment for the NR Bonds on 20 May 2021. This was described in a table by Dr Khan as a "SWIFT transfer from ARJ Holding Limited to Larmag Real Estate 2 B.V" for "EUR

78 ABOD Vol 4 at p 630.

79 ABOD Vol 4 at p 638.

80 ABOD Vol 4 at p 666.

81 NE 14 April 2025 Hearing at p 127 line 19–p 128 line 3.

82 NE 14 April 2025 Hearing at p 103 line 3–13, p 131 line 1–6.

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13,657,000" in relation "120 million NR Bonds". This raises questions about whether the NR Bonds could have been fully paid up by 12 May 2021. I will turn to this shortly.

141 I would first highlight that even on this, the evidence does not support the claim that there was a partial payment. Nothing on the face of the SWIFT transfer receipt shows that the transfer of €13,657,000 was intended as payment for the NR Bonds. It did not contain any reference to the NR Bonds, but only contained a generic phrase "*PURCHASE OF BONDS*", which could refer to any other bonds. There is also no explanation why the payment of the NR Bonds purportedly took place on 20 May 2021 (the date of the SWIFT transfer), when the CHF120m of NR Bonds were already transferred to DB a week earlier on or around 12 May 2021. I note that there are similar evidential issues with the SWIFT receipt for the €7,471,325.11 that Dr Khan alleges was made for the €100m of LS Bonds on or around 3 November 2021. The SWIFT transfer receipt merely states the purpose of the transfer as for "*INVESTMENT*".

142 Returning to the partial payment made on 20 May 2021, counsel suggested that on Dr Khan's own evidence, the NR Bonds were not fully paid up before they were transferred to DB.

143 Dr Khan then said that the 20 May 2021 payments were for another lot of about CHF130m of NR Bonds, which were part of a larger parcel of CHF250m of NR Bonds that were acquired from the issuer after 12 May 2021, which were not pledged with DB.[83] This is new evidence and contradicts what Dr Khan states in his supplementary AEIC at para 9. It also makes no sense. The court had ordered ARJ to disclose documents evidencing ARJ's purchase

[83] NE 14 April 2025 Hearing at p 137 line 16–p 138 line 9.

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of the NR and LS Bonds.[84] This would clearly have been in reference to the NR Bonds and LS Bonds held by DB, and not any other bonds that had not been pledged by ARJ with DB. There is no reason why Dr Khan would have provided evidence in his supplementary AEIC of payments for completely unrelated bonds.

144 The above exchanges raise grave doubts about Dr Khan's credibility as a witness. Dr Khan came across as a witness who is willing to make up evidence and has no qualms changing his testimony to the court as he goes along, particularly when he finds himself faced with contradictions in his earlier evidence.

145 Fourth, when counsel for DB pointed out to Dr Khan that he had not produced evidence of full payment of the NR Bonds and the LS Bonds, Dr Khan claimed that the LS Bonds and NS Bonds were acquired at a discount. The NR Bonds were acquired for €114m and the LS Bonds were acquired for the same price.[85] The payments indicated in his supplementary AEIC did not add up to the discounted price of €114m. Dr Khan said that the rest of the payments were made by other entities. This was one of many instances where Dr Khan sought to address evidential gaps by referring to material evidence not found in his AEICs.

146 Dr Khan said that he had not disclosed this previously and was not able to provide any supporting documents evidencing these alleged other payments,

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84 Decision in HC/SUM 2575/2024 dated 10 October 2024.

85 NE 14 April 2025 Hearing at p 118 line 8–13 and p 152 line 18–21.

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because ARJ encountered an IT crash a couple of times, which took most of the documents lying with them.[86] This was not in his supplementary AEIC.

147 When it was suggested to Dr Khan that while ARJ may not have the documents due to the alleged IT crashes, it would have ledgers and records showing how much payment was made by the other entities, Dr Khan again introduced a new element to his evidence, which is not found in his AEICs. He made the fresh claim that ARJ did not have such records because the payments were made by other entities, which were not under his control or under Mr Juma's control.[87]

148 Leaving aside that this appeared to be yet another instance of evidence being made up, I find it hard to believe that as the holder of the NR and LS Bonds, ARJ would not have a single document evidencing such payment from the other entities, even if ARJ and Mr Juma did not exercise control over them. As the bond holder, it would have been in ARJ's interest to have records that payments, even from other sources, had been made to the bond seller.

149 Fifth, Dr Khan's evidence in his supplementary AEIC, that there was a set off of the first coupon payment against the NR Bonds purchase price, also indicates that the NR Bonds were not fully paid when transferred to DB.

150 Dr Khan sought to explain this by saying that ARJ acquired the Bonds at a discount and part of the arrangement with Mr Magnusson for this discounted price was that he would be repaid with an offset of a subsequent coupon

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86 NE 14 April 2025 Hearing at p 116 line 9–16.

87 NE 14 April 2025 Hearing at p 120 line 11–18.

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payment.[88] Again, this arrangement of payment back to Mr Magnusson through the offset of the coupon payment is new evidence that Dr Khan introduced on the stand. Dr Khan had no documentary proof of this arrangement.[89]

151 Such an arrangement is also contradictory to what ARJ represented to DB in their correspondence. For example, Dr Khan wrote to Mr Aroura on 1 June 2022 to inform him that ARJ had instructed the issuer of the Bonds to transfer the coupon payments to ARJ's designated accounts and the issuer had adhered to this, and that "for them there is no default in coupon payments.[90]

152 Sixth, Dr Khan claimed that there was a transfer of 720 shares of Thermo Fisher Scientific Inc as part payment for the LS Bonds. However, the document he produced to evidence this is simply a short e-mail from an entity named "Swiss Invest" acknowledging receipt of these shares. The e-mail does not mention that the transfer of these shares was as part payment for the LS Bonds. There is no evidence of the recipient or beneficiary of the 720 shares. Dr Khan claimed that there was a message trail, that he did not know why they were not exhibited and then claimed that DB would be in the best position to locate the movement.[91] Given that Dr Khan's supplementary AEIC was to show ARJ's evidence that the Bonds were paid up, and that it was Dr Khan himself who claimed that the transfer of these shares were made as part payment, it is both weak and incredible that he would seek to extricate himself by saying that DB is in the best position to produce the message trail.

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88 NE 14 April 2025 Hearing at p 146 line 18–22.

89 NE 14 April 2025 Hearing at p 168 line 20–24.

90 ABOD Vol 4 at pp 492–493.

91 NE 14 April 2025 Hearing at p 171 line 2–12.

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153 Seventh, Dr Khan claimed that there was a cryptocurrency payment from Mr Juma in the amount of €7.37m as part payment for the LS Bonds, but neither he nor Mr Juma had any documentary proof of such payment. The Defendants provided no evidence as to the type of cryptocurrency transferred, the amount transferred or the crypto wallet IDs. Mr Juma claimed that the documents were deleted and that he forgot the "12 numbers" to access the cryptocurrency wallet. These reasons were not raised earlier, despite a court order to produce documents. Even if Mr Juma had forgotten the access numbers, that does not provide a satisfactory explanation of why he did not have any of the other basic details relating to this alleged cryptocurrency transfer.

154 As can be seen from the above analysis of the Defendants' evidence, the Defendants have completely failed in seeking to show that the Bonds were paid up when ARJ transferred them to DB to serve as security.

155 I find that on the evidence, the NR Bonds and LS Bonds were not fully paid up when ARJ transferred them to DB. Under the Service Agreement, an event of default arises where there is an event that "may adversely affect the ability of any of the Parties to perform its obligations under any Contract" (cl 19(a)(v)) or when any event arises which DB in its discretion determines to be disadvantageous or prejudicial to its interests (cl 19(a)(x)). DB was therefore justified in relying on this further ground in the 19 August Letter to terminate the Loan Facilities.

156 Following the trial, the Defendants sought to side-step the weakness of its evidence on whether the Bonds were fully paid up, by submitting that it is immaterial that the Bonds were not fully paid up, since the Defendants have good title to the Bonds. However, leaving aside whether they do have good title to the Bonds, this misses the primary point in DB's case, which is that DB is

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entitled to terminate the Facilities pursuant to cl 19 of the Service Agreement, where any event arises that may adversely affect the ability of any of the parties to perform their obligations, or where an event arises that DB determines may be prejudicial to its interests. It is DB's case that such an event occurred when it received information that the Bonds were not fully paid up. DB asked ARJ for information to verify this but ARJ did not provide such. Whether the Defendants have good title to the Bonds does not affect DB's case.

157 The Defendants' fifth submission is that of estoppel by representation. They submit that DB is estopped from relying on the fact that the Bonds were illiquid as a reason for reducing the collateral value of the Bonds.

158 I find no merit to this. First, estoppel was never pleaded by the Defendants, not to mention the material facts supporting a claim in estoppel. Notably, the Defendants' reliance on estoppel is absent from the joint Scott Schedule for Agreed Factual and Legal Issues submitted by parties ahead of trial, the Defendants' Opening Statement, and even the list of issues for closing submissions which counsels agreed on at the close of trial. As DB correctly point out, in the Defendants' pleadings, their case was that DB exercised its discretion wrongly, not that DB was estopped from exercising its discretion.

159 Second, there is no evidence adduced by the Defendants that DB had ever represented that it would not reduce the collateral value of the Bonds for reasons related to the illiquidity of the Bonds. The Defendants' case is that DB represented by its *conduct* of accepting the Bonds as collateral at the outset, that it would not take issue with the illiquidity of the Bonds and rely on it to effect the LV cuts or insist that they be replaced. However, DB's conduct by acceptance of the Bonds does not in itself translate into such representation. On the contrary, ARJ transferred the NR Bonds to DB as security, after DB had

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informed ARJ on 3 May 2021 that the approved lending value for the NR Bonds was 30% for a diversified portfolio.[92] The LS Bonds were similarly settled into ARJ's account at DB after DB had informed that the approved lending value for the LS Bonds was 30% for a diversified portfolio.[93] In this respect, the Defendants' reliance on *Lam Chi Kin David v Deutsche Bank AG* [2011] 1 SLR 800 (CA) ("*Lam Chi Kin*") is misplaced. There was a material promise made in *Lam Chi Kin*, whereas there is no evidence of any representation made here by DB to the Defendants.

160 Third, and in any event, it is not DB's case that they reduced the collateral value of the Bonds solely because of the illiquidity of the Bonds. DB's pleaded case cites other reasons, which DB relies on, including the overconcentration of the Bonds, the lack of coupon payments on the Bonds and failure of the Defendants to make good on their promise to transfer out the Bonds to NatWest.[94]

161 For completeness, I will also deal with the Defendants' related submission that the issues with the Bonds arose because of DB's lack of proper due diligence on the Bonds. I find no merit to this. First, it was the Defendants who represented to DB that the Bonds were of value, when they transferred them to DB. The Defendants continued to maintain this even at trial, with Dr Khan putting in a supplementary affidavit testifying that the Bonds were fully paid up. I have found above that they were not. In such circumstances, it does not behove the Defendants to then say that DB should have been better at detecting the Defendants' false representations. Second, it is clear from the

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92 1st AEIC of Ms June Wong at p 566.

93 1st AEIC of Ms June Wong at p 596.

94 Defence to Counterclaim at para 37(5).

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terms of the Service Agreement that DB is entitled to request for changes in the quantum or type of collateral it receives, in order to meet the General Diversification Requirement and Diversification Condition. This is what DB did, and the Defendants did not question such requests. Instead, they acknowledged them and took steps to try to meet the requests, as can be seen for example, from the AED20m Transfer and the NatWest Transfer.

162 For the reasons set out above, I find that DB was entitled to reduce the LV of the Bonds in early August 2022.

Issue 3: Whether there is an implied Good Faith term in the Service Agreement and if DB breached such term

163 The third issue is whether DB was precluded by the operation of an implied Good Faith term in the Services Agreement from terminating the Loan Facilities and liquidating ARJ's security portfolio. Two sub-issues arise:

(a) First, whether there is basis to imply a Good Faith term in the Service Agreement.

(b) Second, if such a term is implied in the Service Agreement, whether DB was in breach of the term.

Defendants' case

164 Clause 18(b) of the Service Agreement states that collateral shall be valued at such percentage of its market value as DB may determine at its sole discretion. Clause 18(c) states that DB has absolute discretion to prescribe the amount of Collateral that ARJ must provide in order to secure ARJ's liabilities.

165 The Defendants submit that nevertheless, DB's exercise of the discretion in cl 18 is subject to an implied Good Faith term, that DB shall exercise such

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discretion in good faith and not arbitrarily, perversely, capriciously or irrationally.

166 The Defendants submit that while *Ng Giap Hon v Westcomb Securities Pte Ltd and others* [2009] 3 SLR(R) 518 ("*Ng Giap Hon*") held that a duty of good faith cannot be a term implied in law in contracts as a whole, a series of High Court decisions stand for the narrower proposition that where a particular provision in a contract confers a discretion on one party and the exercise of that discretion may adversely affect the interests of the other party, there is an implied Good Faith term in relation to the exercise of contractual discretion; *MGA International Pte Ltd v Wajilam Exports (Singapore) Pte Ltd* [2010] SGHC 319 at [102]–[106] ("*MGA International*"); *Edwards Jason Glenn v Australia and New Zealand Banking Group Ltd* [2012] SGHC 61 ("*Edwards Jason Glenn*") at [100]; *Leiman, Ricardo and another v Noble Resources Ltd and another* [2018] SGHC 166 ("*Leiman*") at [112]; *AL Shams Global Ltd v BNP Paribas* [2019] 3 SLR 1189 ("*AL Shams*") at [44]–[47].

167 The Defendants submit that there is also basis for a Good Faith term to be implied in fact. The test as set out in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp Marine*") is satisfied.

168 The Defendants submit that DB, in exercising its discretion to cut LV of the Bonds progressively on the basis that NR and LS Bonds taken separately and individually exceed 30% concentration, had acted in bad faith on two grounds.

169 First, DB communicated that there was excessive concentration in both Bonds when it was only excessive concentration in one bond.

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170 Second, when DB reduced the LV of the Bonds progressively there was no immediate risk to DB, since as of 5 August 2022, discussions for diversification, in particular the NatWest transfer, were still going smoothly.[95] In an e-mail from Dr Khan to Mr Aroura dated 17 August 2022, ARJ explained that the transfer to NatWest was still underway and that "[a]ny selling at this stage will change the composition of the portfolio and the entire arrangement will be compromised." ARJ also informed that the "CS transfer is in place and [they] need the credit line to be intact for [DB] to receive the transfer". Even as of 24 August 2022, NatWest was still assuring DB that the "operation [was] still pending" and requested more time for NatWest to obtain the relevant approvals.

DB's case

171 DB submits that there is no basis to imply a Good Faith term in the Service Agreement in law. A term can only be implied in law for reasons of justice and fairness and public policy. No such reasons exist, and the Defendants have not explained otherwise. Furthermore, the Court of Appeal had in *Ng Giap Hon* held that the unsettled concept of "good faith" should not be implied in law, given its potential to affect all future contracts of the same type.

172 There is also no basis to imply a Good Faith term in the Service Agreement in fact. As the Service Agreement is a standard form contract, parties would not have any presumed intentions. The Defendants have also not produced any evidence of any such presumed intention by parties to imply a Good Faith term in the Service Agreement.

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95 Defence and Counterclaim at para 8; DOS at paras 71–73.

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173 Even if an implied Good Faith term form part of the Service Agreement, they require a party not to act irrationally, capriciously, perversely or arbitrarily. However, DB had good reasons for exercising its discretion to reduce the LV of the NR and LS Bonds from 30% to 25% in or around 10 August 2022:

(a) ARJ had failed, at all material times, to meet the Diversification Condition;

(b) DB had discovered, sometime around late January / February 2022, that the NR and LS Bonds were in fact private placement bonds. Accordingly, the LV of NR and LS Bonds should have been nil, but DB had assigned a LV of 30% for the NR and LS Bonds only on the basis that ARJ's portfolio would be diversified;

(c) the Defendants have persistently failed to deliver on its promises to diversify ARJ's portfolio, including the AED20m Transfer that was abruptly cancelled by Mr Juma due to an alleged "unavoidable emergency situation" and the NatWest Transfer that never materialised; and

(d) DB never received the coupon payments for the LS Bonds and NR Bonds, which were due on 30 June 2022 and 2 August 2022 respectively.

174 DB had only granted a LV of 30% on the NR and LS Bonds on the basis that ARJ would comply with the Diversification Condition. When ARJ persistently failed to meet the Diversification Condition as of 10 August 2022, despite the various promises that it would, DB acted entirely rationally and logically by reducing the LV of the NR and LS Bonds to minimise DB's exposure with regards to these two illiquid bonds.

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175 Furthermore, on or around 15 August 2022, DB was informed by Mr Magnusson that the NR and LS Bonds which ARJ had pledged as security to DB had not been fully paid for. It is inconceivable that the NR and LS Bonds were not fully paid for, given that:

(a) ARJ represented to DB that the NR and LS Bonds were fully paid up, by furnishing them as collaterals to secure against its loans or liabilities;

(b) the NR and LS Bonds were registered under ARJ's name and should therefore have been paid up and freely traded. Indeed, the NR and LS Bonds had been in circulation and had been furnished to other banks as collateral, further giving the impression that the Bonds had been fully paid up; and

(c) ARJ had forwarded an e-mail from Mr Magnusson to DB, which stated a coupon payment on the LS Bonds would be made in early July 2022.

176 Having discovered that the Bonds were unpaid, DB exercised its discretion on or around 19 August 2022 to reduce the Collateral Value of the NR and LS Bonds to nil. Notably, the Defendants no longer object to DB's exercise of discretion on this instance. The Defendants had deleted their earlier averment with respect to the 19 August 2022 Letter.[96] Mr Juma testified in his affidavit that such deletion is to:[97]

> ensure that it is abundantly clear that the Defendants' defence is centred on the Claimant's exercise of its discretion to reduce the LTV percentage from 30% to 25%. For the avoidance of

[96] Agreed Bundle of Pleadings ("ABOP") at p 104.

[97] ABIA Vol 6 at p 400, para 28.

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> doubt, the Defendants are **not** alleging that DB's exercise of its discretion to reduce the LTV percentage from 25% to nil, as communicated by DB in its letter dated 19 August 2022, is a breach of the Good Faith Implied Terms.
>
> [emphasis in original]

177 When DB sought to apply for discovery of certain documents relating to the issue of whether the Bonds have been fully paid in HC/SUM 2575/2024 ("SUM 2575"), the Defendants resisted this. Mr Juma testified:[98]

> 36. …DB states that the documents sought in S/N 1, 3 and 4 of the Schedule relates to the issue of whether the Bonds have been fully paid. This in turn relates to the question of whether DB's decision to terminate the loan facilities on 16 August 2022 and to reduce the AR value of the Bonds to nil on 19 August 2022, was in breach of the Good Faith Implied Terms.
>
> 37. I am advised and verily believe that these documents are irrelevant as they do not relate to DB's exercise of its discretion to reduce the AR value of the Bonds from 30% to 25% on or before 5 August 2022....

178 Consequently, the Defendants are not entitled to claim that the reduction of the LV of the Bonds to nil, as communicated through the 19 August Letter, was in breach of any implied Good Faith term in the Service Agreement. Ironically, on the Defendants' case, they no longer object to DB reducing the Collateral Value of the Bonds to nil, but maintain their objection to DB reducing the collateral value on 15 August 2022, notwithstanding that the reduction was of relatively less magnitude.

Decision

179 It would be useful to start with a closer examination of the Court of Appeal's decision in *Ng Giap Hon,* which DB relies on. The implied term in question there was framed in very broad terms (at [42]):

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98 ABIA Vol 6 at pp 470–471, paras 36–37.

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> [T]here was *an implied duty of good faith* between the [appellant] and [the first respondent] as between agent and principal. *Further or in the alternative, it was an implied term of the [A]gency [A]greement that the [first respondent] would not do anything to deprive the [appellant] from earning his commission.* [emphasis in original]

180 The breadth of such a term can be seen from the court's consideration of legal treatises and legal reforms in other jurisdictions on questions such as whether parties owe each other a duty to negotiate in good faith, and whether once the contract is concluded, parties owe each other a duty to perform and enforce the contract in good faith; at [54] and [58]. The court also noted that there are differing views as to what the doctrine of good faith means as well as how it is applied, and that there could be both a subjective and objective element to the doctrine of good faith; at [47]–[48]. It was in this context that the court in *Ng Giap Hon* held at [60] that much clarification of the doctrine of good faith is required and that until the theoretical foundations as well as the structure of the doctrine are settled, it would be inadvisable to apply it to the practical sphere.

181 The High Court decisions relied on by the Defendants deal with a far narrower proposition, namely good faith in the exercise of contractual discretion. The scope of such a good faith term is also clear and consistent across the authorities. In *MGA International*, the High Court held at [106]:

> The courts will not intervene so long as the contractual "discretion is exercised honestly and in good faith for the purposes for which it was conferred, and provided also that it was a true exercise of discretion in the sense that it was not capricious or arbitrary or so outrageous in its defiance of reason that it can be properly categorised as perverse" …

182 In *Edwards Jason Glenn*, the High Court reviewed *MGA International* at [100] and agreed with the proposition that the exercise of contractual discretion has to be done honestly and in good faith, in the sense that it is not arbitrary, capricious or perverse.

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183 The decision in *Leiman* came after the decision in *Sembcorp Marine*, which set out the test for implying a term in fact. In *Leiman* at [112], the court held:

> It is now established that where one party to a contract is given the power to exercise a discretion, the courts will seek to ensure that such contractual powers are not abused by implying a term as to the manner in which such powers may be exercised. Such a term may vary according to the terms of the contract and the context in which the decision-making power is given: *Braganza* at [18]. In cases such as the present one, the court will imply "a term that the decision-making process be lawful and rational in the public law sense, [and] that the decision is made rationally (as well as in good faith) and consistently with its contractual purpose": *Braganza* at [30]. In other words, "in the absence of very clear language to the contrary, a contractual discretion must be exercised in good faith and not arbitrarily or capriciously": *British Telecommunications plc v Telefonica O2 UK Ltd* [2014] UKSC 42 ("*British Telecommunications*") at [37].

184 This was followed by the High Court's decision in *AL Shams*, where the court considered at [44]–[47], *MGA International* and *Edwards Jason Glenn*, and applied the principles there, assessing on the facts if the exercise of discretion was arbitrary, capricious or perverse.

185 These High Court decisions are not inconsistent with the Court of Appeal's decision in *Ng Giap Hon*, which dealt with a much broader concept of implied good faith in contract law, and for which the scope of the doctrine was unclear. In contrast, these decisions deal with a much narrower doctrine of good faith in relation to the exercise of contractual discretion, containing a clearly defined scope, namely that the exercise of such discretion should not be arbitrary, capricious or perverse.

186 DB's response to these line of High Court authorities is two-fold. First, neither *AL Shams* nor *Leiman* explicitly states that the implied term applied was one that is to be implied in law. If they had intended to, they would have

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referenced *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another and other appeals* [2006] 3 SLR(R) 769 ("*Jet Holding*"), which is the seminal case on the implication of terms in law. Second, the Defendants have not explained why a good faith term in law ought to be implied in the present circumstances. A term will be implied in law only if there were general reasons of justice and fairness, and public policy reasons to justify the same; *Jet Holding* at [92].

187 It is clear from a review of the High Court authorities that they proceeded on the basis of an implied term in law rather than an implied term in fact, even without the citation of *Jet Holding*. The reasons for such a term were also identified in Belinda Ang J's (as she then was) judgment in *MGA International* at [103]–[104] when she reviewed the English authorities, namely that it is presumed to be the reasonable expectation and therefore the common intention of parties that there should be a genuine and rational exercise of discretion, and that there is a concern that the decision maker's discretion should not be abused. This was cited with approval by Tay Yong Kwang J (as he then was) in his decision of *Edwards Jason Glenn* at [100]. I find that such reasons are broadly applicable and certainly applicable here to DB's exercise of contractual discretion under cl 18 of the Service Agreement.

188 I therefore find that there is an implied Good Faith term in law, in relation to the exercise of contractual discretion in cl 18 of the Service Agreement. I note that parties agree that the scope for such a term is that the exercise of discretion should not be arbitrary, capricious or perverse.

189 In light of this, it is not necessary to consider the Defendants' alternative argument that there is also basis to imply a similar Good Faith term in fact.

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190 In relation to the application of such an implied term, I find, on the evidence, that DB had good reasons for exercising its discretion to progressively reduce the LVs of the NR and LS Bonds. Its exercise of discretion was not made with arbitrariness, capriciousness and perversity.

191 The Defendants' first ground is that there was bad faith as DB communicated that there was excessive concentration in both Bonds when it was only excessive concentration in one bond. I find that this ground is not made out. DB did not communicate to the Defendants that there was excessive concentration in both Bonds. The 5 August 2022 E-mail explained that DB had decided to cut the LV of the Bonds on the basis of several grounds, one of which was that:

> The current exposure to illiquid securities in the portfolio has increased sharply, which is way beyond the permissible limits and is skewed towards concentration on Landstone and Nordrock

192 There is nothing factually incorrect about this statement. Contrary to the Defendants' submission, DB did not claim that both LR and NS Bonds were in breach of the Diversification Condition.

193 Moreover, parties agree that the Diversification Condition is breached as long as the lending value of an *individual* security in ARJ's portfolio exceeds 30% of the total lending value of the securities in the portfolio. Even if DB had communicated that both the LS and NR Bonds were in excess of 30% (which I do not find), that would not render DB's termination of the Loan Facilities to be made in bad faith. The evidence shows that the Diversification Condition was breached, as the LS Bonds were in excess of 30% of the total lending value of the securities in the portfolio.

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194 Furthermore, DB had also explained that it was reducing the LV of the Bonds for other reasons, including the fact that DB had not received the coupons on Landstone, which was due on 30 June 2022, and Nordrock, which was due to 2 August 2022. There is no dispute that DB was accurate in stating this.

195 The Defendants' second submission is that when DB reduced the LV of the Bonds progressively, there was no immediate risk to DB, since discussions for diversification, in particular the NatWest transfer, were still going smoothly. I find that this submission is also not made out, for the following reasons.

196 First, DB had communicated the Diversification Condition to the Defendants since at least July 2021. ARJ was aware of this and had made assurances to DB that it would meet this condition and taken some steps in this direction.

197 Second, the concentration level of the LS Bonds was still in breach of the Diversification Condition, as of August 2022.

198 Third, DB had informed ARJ that the lack of coupon payments was a material concern to them and that DB would have to make cuts to the LV of the Bonds if the coupon payments were not received. DB never received the coupon payments for the LS Bonds and NR Bonds, which were due on 30 June 2022 and 2 August 2022 respectively.

199 Fourth, the assurances made by ARJ, that it would transfer additional securities of various forms to its portfolio with DB to meet the Diversification Condition, were shown to be unreliable. This is evidenced by the AED20m Transfer and the NatWest transfer.

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200 The AED20m transfer was cancelled by the Defendants in May 2022 on the ground that the funds were required for other matters, despite several forms of assurances being made by ARJ to DB that it would be going through.

201 The NatWest transfer had been raised by ARJ since around February or March 2022. The intention was for NatWest to acquire all of ARJ's securities held in its portfolio with DB, in return for a cash payment from NatWest to DB.

202 ARJ points to correspondence from NatWest around August 2022 suggesting that it would eventually happen. However, there were similar correspondence in the period leading up to August 2022. I agree with Mr Nemali's observation that the NatWest e-mails contained no specific commitments. I note that even in NatWest's last e-mail dated 24 August 2022, there was nothing firm. No timelines were provided. NatWest indicated that the "operation [was] still pending", asked for a little more time to obtain the relevant approvals, and ended by stating that a couple of colleagues are still not back in the office.[99]

203 Mr Nemali testified that in typical transactions of this nature, there would be a clear exchange of commitments between the two banks that could be described as an arrangement. A Letter of Understanding ("LOU") would be part of such a process.[100] Ms Wong highlighted that there was no LOU even after several months.[101] In this case, by August 2022, NatWest had not provided any indication of how much they were willing to pay to take ARJ's securities portfolio.

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99 1st AEIC of Ms June Wong at p 687.

100 NE 11 April 2025 Hearing at p 98 line 2–16.

101 NE 8 April 2025 Hearing at p 98 line 16–21 and p 154 line 24–p 155 line 6.

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204 The Defendants had also suggested that since they had left it to NatWest to sort out the transfer, they could not be blamed for the delay. In this respect, I find that Mr Nemali made a valid observation, which is that what DB had asked ARJ to do was to provide further securities. ARJ had different options of doing so, such as a cash top-up. It was ARJ that chose the NatWest option, which did not progress despite the passage of five to six months.[102] ARJ hence could not hide behind NatWest for the lack of progress.

205 Mr Nemali and Ms Wong's evidence on the above was unchallenged. I accept their evidence.

206 Assessing the evidence on the NatWest transfer as a whole, I note that DB had allowed ARJ and NatWest some five to six months to meet the Diversification Condition. Despite the passage of that time, there was still no clear commitment from NatWest. There was no LOU, nor any indication of what price NatWest might be willing to pay for the ARJ's securities portfolio which was held by DB. Since it was ARJ that chose the NatWest transfer option instead of some other means that could address the Diversification Condition, ARJ cannot hide behind NatWest for such delays. Moreover, by around 2 August 2022, ARJ had failed to transfer to DB the coupon payments that had fallen due for the Bonds, despite assurances that it would, and despite DB giving ARJ warning that it would cut the LV of the Bonds if such coupon payments were not received. In the circumstances, I find that DB was not irrational, arbitrary, perverse or capricious in choosing not to wait further for the NatWest transfer to materialise, before it proceeded to terminate the Loan Facilities.

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102 NE 8 April 2025 Hearing at p 79 line 25–p 80 line 9.

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Issue 4: Whether DB can rely on irregularities that existed but were not known to DB, to terminate Loan Facilities

207 DB submits that it is also entitled to rely on other irregularities that had existed as of 16 August 2022, but were not known to DB then, to justify its termination of the Loan Facilities on 16 August 2022. As I have found above that DB is entitled to terminate the Loan Facilities pursuant to its primary case, it is not necessary for DB to rely on this.

208 I would thus make only the following brief observations.

209 A party who elects to terminate a contract may subsequently rely upon another ground for termination if that ground had existed at the time of termination, regardless of whether he was aware of it at the time, subject to exceptions which do not apply to this case. This principle was affirmed in *CAA Technologies Pte Ltd v Newcon Builders Pte Ltd* [2017] 2 SLR 940 ("*CAA Technologies*") at [31], along with two exceptions:

> Although the innocent party must justify an election to terminate for breach of contract by the other party, any ground of termination which existed at the time of election may subsequently be relied upon, unless one of the two exceptions to this rule applies (at [63]). First, where the innocent party's conduct was such that it would be unfair or unjust for him to later rely on a different ground for termination. This exception is premised on the traditional doctrines of waiver and estoppel (at [65]). Second, where the party in breach could have rectified the situation had it been afforded the opportunity to do so (at [67]).

210 In *Alliance Concrete Singapore Pte Ltd v Comfort Resources Pte Ltd* [2009] 4 SLR(R) 602 ("*Alliance Concrete*") at [63], it also held that a party may subsequently rely on a ground of termination which had in fact existed, "*whether he was aware of it or not*" [emphasis added].

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211 The Defendants submit that *CAA Technologies* and *Alliance Concrete* do not apply.

212 Their first reason is that these cases concern the validity of termination whereas the issue here is the validity of the exercise of rights under cl 20(a) of the Service Agreement. I do not find this to be a material distinction. DB is relying on these cases to assert a right to terminate on the basis of another ground which existed at the time of election. These cases squarely apply.

213 The Defendants' second reason is that these cases deal with termination of a common law right as opposed to a contractual right. However, *CAA Technologies* at [31] makes clear that the principle it elucidates is in relation to a breach of contract. As pointed out by DB, there are also English authorities to the same effect, namely, *And So To Bed Ltd v Dixon* [2000] Lexis Citation 4231 (HC) at [35]; *Reinwood Limited v L Brown & Sons Ltd (No 2)* [2008] All ER (D) 177 (Oct) at [51]).

214 Third, the Defendants submit on the basis of *Trademark Licensing Co ltd v Leofelis* [2012] EWCA Civ 985 ("*Leofelis*") at [33] that the principle only operates as a shield against a party alleging wrongful termination and not as a sword to claim damages arising from termination. However, as pointed out by the learned author of Edwin Peel, *Treitel on the Law of Contract* (Sweet & Maxwell, 16th Ed, 2025) at para 18-070, the issue in *Leofelis* was whether an injured party that relies on a further repudiatory breach which would have justified termination so that the injured party himself is not guilty of repudiatory breach by wrongful termination, can also bring a claim for "loss of bargain" damages. What the court in *Leofelis* held was that the injured party has to establish that the "loss of bargain" was caused by the repudiatory breach upon which he now relies, and cannot do so where it was, in fact, caused by the

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erroneous decision to terminate on the strength of the breach which was alleged at the date of termination. In this case, the additional grounds relied on by DB are to justify termination of the Loan Facilities, and not to claim for bargain damages. DB's recovery of a crystalised debt under the outstanding loan is pursuant to the Defendants' liability upon such termination. Notably, there is no such limitation, in the manner described by the Defendants, when the Court of Appeal set out the principles in *CAA Technologies* at [33].

215 In or around October 2022, DB discovered several typographical errors in ARJ's financial statements for FY 2018 and FY 2019, which Dr Khan submitted to DB as part of the account opening process. DB reached out to Ernst & Young in Hong Kong ("EYHK"), who had allegedly audited ARJ's FY 2019 and FY 2020 financial statements, to find out more about the financial statements. EYHK responded to DB that ARJ's financial statement for FY 2020 "were not signed by EYHK back in 2020/2021". EYHK later confirmed this in their letter to DB's solicitors dated 13 December 2024.

216 I do not find merit to the Defendants' submission that EYHK's responses are inadmissible hearsay evidence. DB gave Notice to Admit Documentary Evidence dated 26 November 2024 pursuant to ss 32(1)(*b*) and 32(1)(*j*) of the EA. I find that they satisfy s 32(1)(*b*) of the EA, being statements made in the ordinary course of business. They also satisfy s 32(1)(*j*)(iv) of the EA, as EYHK are competent but not compellable and refused to give evidence.[103]

217 Dr Khan testified that ARJ has been conducting internal investigations into this matter. However, despite the conduct of such internal investigations,

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103 2nd AEIC of Ms June Wong at para 22.

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Dr Khan testified that he has not seen ARJ's engagement letter with EYHK.[104] Nor was Dr Khan able to point to anything to refute EYHK's claim.

218 In view of this, I find that on the evidence before the Court, the ARJ financial statements for FY 2020, which ARJ had submitted to DB as being audited by EYHK, were not audited by them.

219 In addition, Dr Khan stated on the stand that the signatures made above his name in the ARJ financial statements were not his and that he knew of this but he nevertheless submitted the financial statement to DB for ARJ's account opening. He said this was because he did not have reservations on the numbers.[105]

220 DB had asked for ARJ's financial statements when considering the increase of credit limit for ARJ from US$100m to US$400m.[106] ARJ's submission to DB of its financial statement for FY 2020, on the basis that it was audited by EYHK (when there is no evidence that it was) and containing a forged signature of Dr Khan, provides an additional ground for termination of the Loan Facilities. It would constitute an event of default under cl 19(vii) of the Service Agreement, which states that "any representation or warranty made or considered to be made by any of the Parties [to be] inaccurate, false or misleading in any respect" shall be an "Event of Default".

221 The two exceptions identified in *CAA Technologies* at [31] do not apply here. ARJ was well aware of this issue and had in fact been conducting internal

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104 NE 14 April 2025 Hearing at p 212 line 1–2.

105 NE 14 April 2025 Hearing at p 205 line 6–20 and p 207 line 8–p 210 line 13.

106 ABOD Vol 2 at p 504.

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investigation into EYHK's claims. It had thus been afforded opportunity and time to rectify or come up with a solution. Coming out of such investigation, ARJ furnished no evidence to refute EYHK's claims. The Defendants suggest in the Closing Submission that ARJ was deprived of the opportunity of persuading DB to waive the irregularity if the contents of the financial statements were otherwise correct. However, despite ARJ being aware of this, and claiming that it has appointed auditors to verify, ARJ has not produced anything to suggest that the contents of the financial statements could be or were indeed correct. There is also nothing in DB's conduct that would make it unfair or unjust for them to rely on this ground.

222 DB raised other post termination irregularities that it subsequently discovered, which it submits it can also rely on. As I have found that DB succeeds on its main grounds, and even on the post termination ground in relation to the EYHK reports, it is not necessary to examine the other irregularities.

Issue 5: Whether the Defendants are entitled to the counterclaim

223 The fifth issue is whether the Defendants are entitled to the counterclaim. This is premised on DB causing loss to ARJ by liquidating the securities in ARJ's portfolio in adverse market conditions.

Defendants' case

224 The Defendants' case is that DB liquidated all the assets in ARJ's account in adverse market conditions in one fell swoop, at a time when the prices for such securities were at a low. The assets were sold at a significantly lower price compared to the target sales value or even purchase value. DB liquidated the ARJ portfolio, which was acquired at US$93,932,980.63, for a

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total price of US$80,390,752.33. The Defendants adduced Bloomberg charts that showed an upward price trend in the period after 2 September 2022. They submit that if DB had waited, they could have liquidated the shares at a higher price.

225 In so far as DB relies on *Beckkett Pte Ltd v Deutsche Bank AG and another and another appeal* [2009] 3 SLR(R) 452 ("*Beckkett*"), the Defendants submit that the holding there was made in that specific context and factual matrix regarding the duties of a mortgagee when exercising a power of sale. It has no application to the facts of the present case, where what is alleged against the lender is that it had failed to take reasonable steps when realising the security to mitigate and reduce the quantum of the remaining debt which it is entitled to recover from the borrower.

DB's case

226 DB's case is that it is "not required to wait for the most propitious market conditions to sell or to delay a sale in the hope of obtaining a better price"; *Beckkett* at [27]. The Court of Appeal has also held in *Malayan Banking Bhd v Hwang Rose and others* [1997] 1 SLR(R) 353 ("*Hwang Rose*") at [70] that where a pledgor alleges that its pledged securities have been sold (by virtue of the pledgor's default) at an undervalue by the pledgee, the burden is on the pledgor to show that the price at which the securities were sold was not the true market price or the proper price at the time of the sale.

227 The Defendants have adduced no evidence to show that the price at which the securities in ARJ's portfolio were sold was not the "true market price" or the "proper price" at the time of the sale.

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228 Ms Wong and Mr Nemali also testified the price charts, which the Defendants exhibited showing an upward trend had the benefit of hindsight. It would not have been apparent at the point that DB liquidated, that waiting would necessarily result in higher prices, as it could also have resulted in prices declining.

229 In any event, cl 18(g) of the Service Agreement confers upon DB a discretion as to how and when to liquidate the securities in ARJ's portfolio:

> Notwithstanding that we may be appointed as custodian or agent or otherwise act in any other capacity for all or part of the Collateral, we may upon the enforcement of our rights, sell, dispose of, realise or otherwise deal with the Collateral as your agent or as mortgagee or pledgee thereof, as the case may be, as we may at our discretion deem fit without any liability whatsoever.

230 The Defendants do not plead that the discretion conferred in cl 18(g) to liquidate ARJ's portfolio was exercised unlawfully. Nor do the Defendants contest DB's position that cl 18(g) exempts DB for liability when exercising such a discretion.

Decision

231 DB liquidated the securities in ARJ's portfolio over the course of about five days in late August.[107] I note that DB has no obligation under the Service Agreement to wait and liquidate the securities only at a time of higher prices. The Defendants rely on *The "Asia Star"* [2010] 2 SLR 1154 (CA) to submit that DB had a duty to mitigate its losses flowing from the Defendants' breach. However, it has been pointed out by the learned author of *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd

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107 ABOD Vol 6 at pp 34–35.

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Ed, 2022) ("*Law of Contract*") at paras 22.197–22.198 that the concept of mitigation does not apply to an action for recovery of a debt (which is what DB is proceeding on here).

232 The Defendants accept the principles set out in the *Law of Contract*, but submit that it does not apply on the present facts, as the debt which DB seeks to recover from the Defendants only crystalised after DB had liquidated the securities in ARJ's portfolio and applied the proceeds thereof towards settlement of ARJ's debt. However, DB had terminated the facilities and demanded repayment of the debt through its 16 August 2022 Letter, which set out the sums outstanding under the Service Agreement as of the date of the letter. ARJ's debt had crystalised by then. While the crystalised amount of debt was subsequently reduced by the application of the proceeds from the liquidation of ARJ's portfolio, that did not alter the fact that the debt had crystalised by 16 August 2022.

233 The Defendants have also not made any principled distinction as to why the principle in *Beckkett*, which was articulated in the context of a mortgagee's duty of sale, should not be equally applicable here to DB as the lender, given that in both scenarios, the principle is applied to the sale of securities under charge. I agree with the holding in *Beckkett* at [27]. Applying it here, DB is "not required to wait for the most propitious market conditions to sell or to delay a sale in the hope of obtaining a better price".

234 In addition, I also accept Ms Wong's and Mr Nemali's testimony that the Defendants' argument relying on the Bloomberg charts showing post-liquidation upward price trend of the shares in ARJ's portfolio is flawed, as it is based on hindsight. There is no perfect way of knowing whether stock markets would have gone up or down. By waiting, the prices could also have dropped.

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The Defendants have not shown that it would have been apparent to a broker that, at the time of liquidation, prices would go upwards if DB had waited, such that proceeding to liquidate at that time would be considered irrational, capricious, perverse or arbitrary. Applying *Hwang Rose* at [70], the burden is on the Defendants to show that the price at which the securities were sold was not the true market price or the proper price at the time of the sale. As explained, the Bloomberg charts do not indicate that the prices at which the securities were sold were not the true market price or proper price at the time of the sale. The Defendants have not adduced any other evidence in support.

235 The Defendants' counterclaim is consequently dismissed.

Guarantee

236 In their Closing Submissions, the Defendants raise the new argument that the letter of guarantee dated 20 April 2020 which DB relies on is insufficient. The Loan Facilities contemplated that fresh guarantees were to be procured from Mr Juma. The 20 April 2020 Guarantee predates the two Loan Facilities. No further guarantees however were procured as a matter of fact.

237 DB responds by pointing out that clause 1 of the personal Guarantee, which Mr Juma signed, states that he unconditionally and irrevocably guarantees due payment of all monies which are now or shall be owing to DB on any account opened before or after the signing of the Guarantee. Pursuant to this, Mr Juma is already liable for ARJ's liabilities under the Loan Facilities.

Decision

238 I note that the Defendants' argument is inconsistent with the position they had earlier adopted in their Opening Statement at [73]. There, they

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submitted that as of 5 August 2022, not only was the transfer to NatWest still ongoing, there was no immediate risk to DB because there was no shortfall in ARJ's account and DB still had Mr Juma's unlimited personal guarantee.

239 This new point was not raised in Mr Juma's AEIC or during his evidence on the stand when he was asked about the following clause in the Acknowledgment to the Notice of Individual Guarantors:[108]

> In relation to the indebtedness and liabilities of the Customer, ARJ HOLDINGS LIMITED, I acknowledge, consent to and accept the terms of the Notice, and confirm that my Guarantee shall secure (please tick and sign next to the box to confirm your choice):
>
> *(1) All the Customer's indebtedness and liabilities Unlimited in amount* [signed by Mr Juma]
>
> [emphasis added]

240 Mr Juma affirmed that he signed the Guarantee.[109]

241 In *Balfour Williamson (Singapore) Pte Ltd v Lee Yon Yin Joyce (Chee Ming & another, third parties)* [1989] 1 SLR(R) 540, the court held that the guarantee there was valid for a contract concluded after the guarantee had been entered into, for two reasons. First, the express provisions of the guarantee extended to any liability arising out of the series of transactions within its scope (at [17]). Second, the court found that the essential feature of that guarantee was to guarantee a series of future transactions as described (at [16] and [17]). The changes (*ie*, the future contract) were commercially expected and did not alter the nature of the transactions as to take them out of the ambit of the guarantee.

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108 ABOD Vol 1 at p 184.

109 NE 16 April 2025 Hearing at p 17 line 9–12.

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242 The construction of the guarantee in question is thus important. In this case, cl 1 of the Guarantee states that the guarantor:[110]

> … HEREBY UNCONDITIONALLY AND IRREVOCABLY guarantee the due payment of and undertake to pay the Bank on demand without set off or counterclaim that may be available to the Guarantor(s) or the Customer all monies which are now or *shall at any time be owing to the Bank on any account whatsoever whether opened before or after the signing of this Guarantee* …
>
> [emphasis added]

Clause 3 of the Notice to Individual Guarantors states:[111]

> If you sign the Guarantee, the Bank has the rights and powers referred to therein. If the liabilities of the Customer secured by the Guarantee are unlimited as to amount, *you will be liable for all the actual and contingent liabilities of the Customer, whether now or in future. …*
>
> [emphasis added]

243 The clauses of the Guarantee are wide enough to cover future liabilities accrued by ARJ and owing to DB. Hence, on the proper construction, Mr Juma's personal guarantee covers ARJ's liabilities to DB that accrued after the signing of the Guarantee.

244 For completeness, the clause which the Defendants submit was not complied is set out in the Facility Letter and states:[112]

> GUARANTEE
>
> You agree to procure a guarantee given by MOHAMMAD AHMAD RAMADHAN JUMA (or such other person(s) as we may accept and in such form and substance as we may require) in our favor to secure all your liabilities.

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110 ABOD Vol 1 at p 171.

111 ABOD Vol 1 at p 179.

112 ABOD Vol 1 at p 201.

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245 This clause places an obligation on ARJ to procure a further personal guarantee from Mr Juma. It is ARJ that failed to do so. It is the prerogative of DB to nevertheless proceed with the loan, which they did. As highlighted above, DB already had Mr Juma's personal guarantee, which is wide enough to cover the future loans taken by ARJ in their facility with DB.

246 I therefore find that Mr Juma is liable for ARJ's liabilities under the Loan Facilities, pursuant to the Guarantee.

Pre- and post- judgment interest

247 The Defendants do not dispute DB's claim for pre-judgment interest up till 29 September 2022, as pleaded and quantified in the Statement of Claim at paras 25(2), 25(4) and 25(6).[113] DB also claims for interest at the contractual rates as set out in the Facility Letter,[114] from 1 October 2022 until the date of full and final payment of the judgment sum. The Defendants do not object to DB's claim for the contractual interest rates to be applied for pre-judgment interest from 1 October 2022 till the date of judgment.[115] The pertinent terms state:[116]

> **Interest Rate: For Account no. 6578595:**
>
> (i) For Short Term Loans: **1.25%** per annum plus our cost of funds.
>
> (ii) For Overdrafts: **1.25%** per annum plus the higher of cost of funds or our prime rate.
>
> **For Account no. 7512338**

113 NE 13 August 2025 at p 6 lines 20–24.

114 ABOD Vol 1 at p 200.

115 Defendants' Further Submissions on Interest at para 2.

116 ABOD Vol 1 at p 200.

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> (i) For Short Term Loans: **0.75%** per annum plus our cost of funds.
>
> (ii) For Overdrafts: **0.75%** per annum plus the higher of our cost of funds or our prime rate.
>
> **Repayment:** Each loan utilized under this Facility shall be repaid together with interest thereon on the last day of the relevant interest period (based on a 360-day year or 365-day year for drawdown in any currency, whichever is applicable and for the actual number of days elapsed) in the currency of the drawdown, subject always to our option to require repayment in a currency acceptable to us. In the event that repayment is made in such other currency, that currency will be converted to the currency of the drawdown at such rate as we may determine and you agree to indemnify us for any shortfall due to the conversion.
>
> We may at our sole discretion allow the rollover of a loan for similar/different interest period subject to such conditions as we may deem fit.

248 I therefore award interest up to 29 September 2022 on the outstanding principal amounts as pleaded at the Statement of Claim at paras 25(2), 25(4) and 25(6), and interest at the contractual rates as pleaded by DB on the outstanding principal amounts from 1 October 2022 till the date of judgment.

249 The Defendants' objections relate to post-judgment interest, in particular, to it being awarded at the same contractual interest rate. They submit that the default statutory interest rate of 5.33% per annum as prescribed in O 17 r 5 of the Rules of Court 2021 ought to apply. They rely on a line of cases, which examined the relevant contractual interest payment clause, to determine if the wording leaves no doubt that the contractual interest rate applies after judgment. In *Wardley Ltd v Tengku Aishah and others* [1991] 1 SLR(R) 390 ("*Wardley (1)*") at [33], the High Court considered it material that the interest clause stated that the prescribed rate applied "up to the time of actual payment (as well after as before judgment)". The High Court therefore allowed the

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lender's claim for post-judgment interest at the contractual rate, finding that the interest clause was an independent covenant and not incident or ancillary to the covenant to repay the principal sum together with interest. In *Wardley Ltd v Tunku Adnan and another* [1991] 1 SLR(R) 661 ("*Wardley (2)*"), the High Court considered a provision which was almost identical to the one in *Wardley (1)*, and held that it continued to apply post judgment. The provision read "as well after as before judgment". The court noted at [26] that this phraseology was treated as a term of art to express an interest provision as an independent covenant in several standard texts. The Court of Appeal in *Tengku Aishah and others v Wardley Ltd* [1992] 3 SLR(R) 503 ("*Tengku Aishah"*) heard the appeals against both cases together (at [5]) and affirmed the High Court's decisions.

250 The Defendants contend that unlike *Wardley (1)* and *Wardley (2)*, the said interest provisions in the present case do not expressly state that such rate of interest applies and continues to apply "after as before judgment" or any other words in similar terms or to similar effect. Therefore, the interest provisions do not and cannot survive any judgment for the principal debt.

251 In response, DB contends that the obligation to pay interest is an independent covenant which remains due regardless of whether judgment has been handed down. DB relies on two additional clauses in the Service Agreement.[117]

> Clause 20(b) [under the header "Remedies"]
>
> Forthwith upon the occurrence of any Event of Default, all Liabilities owing by you to us shall become immediately payable on demand, and interest at the rate which we will notify to you will accrue on the monies due in accordance with Clause 8.

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117 ABOD Vol 1 at pp 45, 51.

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> Clause 8(b) [under the header "Fees and payment obligations"]
>
> You have to pay us all interest on monies due to us at such rate(s) and on such terms as we may specify from time to time. … A higher rate of interest may be charged on amounts not paid when due or overdrawn without prior agreement, compounded as we may notify you from time to time.

These two clauses indicate that the agreement by parties on interest to be paid is an independent covenant as it is stated to be a specific obligation under Clause 8(b), and interest would continue to be charged on "amounts not paid". This means that interest would continue to run from the time it fell due until it was paid, whether such payment was before or after judgment was obtained.

252 DB further notes that it had notified ARJ that charges and interest would continue to accrue.

(a) In the 16 August 2022 Letter, DB informed ARJ to "note that until final payment of all outstanding amounts is received, charges and interests will continue to accrue".[118]

(b) In letters dated 30 August 2022 and 2 September 2022, DB reiterated that "[c]harges and interests will also continue to accrue on the sums owing until full repayment of the Outstanding Sums is received".[119]

Therefore, DB had specified the terms upon which ARJ would have to repay interest – until the final repayment of all outstanding amounts was received, regardless of whether judgment had been obtained.

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118 ABOD Vol 4 at pp 707–708.

119 ABOD Vol 5 at p 668; ABOD Vol 6 at pp 34–36.

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253 DB relies on the High Court decision in *Hong Leong Finance Ltd v Famco (S) Pte Ltd* [1992] 3 SLR(R) 36 ("*Hong Leong Finance"*) to contend that, contrary to the Defendant's suggestion, it is not necessary for a clause to expressly state that the contractually agreed interest rate applies after judgment. It suffices that the clause provides that interest will accrue until full payment on the principal debt is made.

254 On the applicable law, I agree with DB that in considering whether an obligation to pay interest is an independent covenant, it is not necessary for the clause to expressly state that the contractually agreed interest rate applies after judgment. An express stipulation is only *one* possible way that would make clear that a clause is an independent covenant. Absent the word "judgment" on the face of a clause, it is nonetheless possible for the clause to be *interpreted* to be an independent covenant and therefore apply after judgment. In *Hong Leong Finance*, the relevant clause there provided that the hirer shall pay interest on overdue amounts at the overdue instalment rate of 16% "from the due date until payment is made". There was no express mention that the interest would run post-judgment. Judith Prakash JC (as she then was) nevertheless accepted the clause as formulated to be clear that interest at 16% per annum was to continue to run from the date it fell due "until payment is actually made, whether such payment is before or after judgment is obtained". This indicated that the clause was an independent covenant that allowed the contractual rate of interest to continue post judgment; at [58].

255 This approach in *Hong Leong Finance* is also consonant with the view taken by Professor Jeffrey Pinsler SC, which was cited to me by DB (see Jeffrey Pinsler, *Singapore Civil Practice* (LexisNexis, 2022) at para 35-114):

> The agreement must constitute an independent covenant which does not merge with the judgment debt. So, for example, where

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> a contract provides for the repayment of the 'principal sum with interest', the right of interest merges with the principal sum in the judgment. However, a separate covenant to pay interest so long as any part of the principal remains due would not be construed to merge with the debt. …

256 In my assessment, in the present case, the crucial phrase is in Clause 8(b), which states that "all interest on monies due would have to be paid at such rate(s) and on such terms as we may specify from time to time". Clause 20(b), in turn, states that interest at the rate that DB will notify ARJ will accrue on the monies due in accordance with Clause 8, upon the occurrence of any Event of Default. Pursuant to DB's contractual rights under these two clauses, the three letters issued by DB were effective in specifying the terms relating to the payment of interest, namely that the interest will continue to accrue on the outstanding sums until final repayment was received. The scope of this obligation is akin to that in *Hong Leong Finance*. The terms upon which ARJ is to pay interest is until full payment of outstanding sums is actually made, whether such payment is made before or after judgment is obtained. Counsel for the Defendants accepted that the literal reading of the material phrase in this case, "until payment is made", would extend to include until payment is made *after judgment*, but submitted that the acceptance of this phrase would create a slippery slope where such clauses are used.[120] However, the material question is whether on the construction of these specific phrases, there is an obligation to pay interest that operates as an independent covenant. As it is clear in this case that on the construction of the clauses and relevant phrases there is such an independent covenant, the agreed contractual interest would continue to apply post-judgment.

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120 NE 13 August 2025 at p 3 at lines 17–24.

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257 I next turn to the ambit of this contractual interest. Two sub-issues arise. First, the Facility Letter that DB referenced only mentions a prescribed interest plus the "cost of funds". However, DB in its submissions included an Annex that referred to a higher rate that is termed "margin rate". While Clause 8(b) allows DB to impose a higher interest rate "as [DB] may notify … from time to time", DB did not notify ARJ of the application of a higher interest rate in the three letters that it relied on. This was accepted by counsel for DB.[121] In the same vein, while Clause 8(b) obligates ARJ to pay "all interest on monies due to [DB] at such rate(s) and on such terms as [DB] may specify from time to time", there is no indication that a higher rate was specified to ARJ. Contractual interest post-judgment would hence be only at the rates prescribed in the Facility Letter, which only mentions a fixed rate with a "cost of funds" rate, and not "margin rate".

258 Second, DB submits that contractual interest post-judgment should be computed on the basis of compound interest. The Facility Letter does not prescribe that the agreed contractual interest is to be on a compound interest basis. While Clause 8(b) allows DB to impose compound interest as notified by DB and obligates ARJ to pay interest to DB on such terms DB may specify, DB did not state in the three letters that it relied on that it would be imposing compound interest. DB submits that from the amount indicated for interest in the three letters, it would be apparent that interest was calculated on a compound interest basis.[122] In other words, the presentation of calculation of interest on compound basis served as notice that DB was imposing compound interest. There does not appear to be any evidence from DB's witnesses that the interest was calculated on a compound interest basis in those letters. However, even if

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121 NE 13 August 2025 at p 4 lines 20–24.

122 NE 13 August 2025 at p 6 line 26 to p 7 line 1.

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there is evidence of such, I do not find that the presentation of such figures suffices as notice. If indeed DB was imposing a higher contractual rate or compound interest rate, it should notify ARJ by stating so. Indeed in its letters to ARJ, DB only conveyed that interest would *continue* to accrue. The use of the word "continue" implies that the accrual of interest would be a *continuation* on the same terms as that set out in the Facility Letter – which is that it applies only to the principal sum and not on a compound basis.

259 Putting aside the issue of whether DB had properly specified or notified ARJ of changes in the applicable interest rate, in any case, DB is not entitled to pursue the "margin rate" or compound interest because it is bound by its pleaded case. DB pleaded at para 25(9) of its Statement of Claim that the Defendants are liable to DB for "[i]nterest which continues to accrue on the *outstanding principal amounts* … at the *Rates* (as set out at paragraph 24 [of the Statement of Claim] above) from 1 October 2022 until the date of full and final payment of the same" [emphasis added]. In the same vein, Prayer 5 of the Statement of Claim seeks "[i]nterest on the *outstanding principal amounts* … at the *Rates* (as set out at paragraph 25(9) [of the Statement of Claim] above) from 1 October 2022 onwards until the date of full and final payment of the same" [emphasis added]. Two points arise from an examination of DB's pleaded case.

(a) DB's pleaded case was premised on interest accruing at the "Rates". This was defined at para 24 of the Statement of Claim to be the contractual interest rates prescribed in the Facility Letter. The "Rates" were then referred to in its pleading on liability (at para 25(9)) and its prayer (at Prayer 5). No reference was made to a higher interest rate or any change in the applicable interest rate.

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(b) DB's pleaded case was for interest on the *outstanding principal amounts* until the date of full and final payment of the same. This was the formulation used in both its pleading on liability (at para 25(9)) and its prayer (at Prayer 5). No reference was made to the interest rate being applicable on a compound basis.

260 The general rule is that "parties are bound by their pleadings and the court is precluded from deciding on a matter that the parties themselves have decided not to put into issue"; *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 ("*V Nithia*"); at [38]. Despite this general rule, the court is "not required to adopt an overly formalistic and inflexibly rule-bound approach", thus departure from this general rule is permitted in limited circumstances, "where no prejudice is caused to the other party in the trial or where it would be clearly unjust for the court not to do so"; at [39]–[40]. In my view, DB cannot avail itself to any of these exceptions. The issues of "margin rate" and compound interest were only belatedly ventilated by DB some *three months after trial*, on 13 August 2025 when I convened a hearing to clarify DB's supplementary submissions on interest. While DB had indicated amounts due for interest in its letters to ARJ and again in Ms Wong's 1st AEIC furnished in this proceeding,[123] this did not sufficiently put the *manner* of calculating interest into dispute. As a result of DB's positions taken in its pleaded case, potential issues of fact, *eg*, whether ARJ was notified of the "margin rate" and the possible computation of interest on a compound basis, were not properly canvassed at trial and put to the witnesses. The Court of Appeal in *V Nithia* noted that it is likely to be uncommon for a case to arise in which no prejudice

[123] 1st AEIC of Ms June Wong at para 136.

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will be caused by reliance on an unpleaded cause of action or issue that has not been examined at trial; at [41]. One such scenario identified by the Court of Appeal was where both sides have come to court ready to deal with it as an issue despite its omission from pleadings. This was not the case here.

261 I therefore award post-judgment interest at the contractual rates pleaded by DB and as set out in the Facility Letter, and only in relation to the outstanding principal amounts. The default statutory rate of 5.33% per annum is to apply to the other constituent sums in the judgment debt.

Conclusion

262 In view of the above, I allow DB's claims as prayed for at Prayers 1 to 3 of their Statement of Claim. The agreed contractual interest rate is to apply on the outstanding principal amounts from 1 October 2022 until the full and final payment of the same. Post-judgment, the default statutory rate of 5.33% per annum is to apply to the other constituent sums in the judgment debt.

263 As costs follows the event, DB is entitled to costs. If parties are unable to agree on the quantum of costs, they are to be fixed by me. Where parties are unable to agree, they are to file submissions on the quantum of costs, of not more than seven pages, within two weeks of this Judgment.

Kwek Mean Luck
Judge of the High Court

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Ong Boon Hwee William, Lim Jun Rui Ivan, Chua Xinying, Kay Tan Jia Xian and Seth Yeo Ao-Wen (Allen & Gledhill LLP) for the claimant;
Ling Daw Hoang Philip (Wong Tan & Molly Lim) (instructed), Li Jiabao (LVM Law Chambers LLC) for the defendant.

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