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

[2025] SGHC 39

Bankruptcy No 1359 of 2024 (Registrar's Appeal No 211 of 2024)

In the matter of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Sin David

Between

Java Asset Holding Ltd

… *Claimant*

And

Sin David

… *Defendant*

JUDGMENT

[Insolvency Law — Bankruptcy — Petition — Conditions for making of expedited bankruptcy application — Section 314 Insolvency, Restructuring and Dissolution Act]

[Insolvency Law — Bankruptcy — Petition — Whether debt incurred in Singapore]
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Java Asset Holding Ltd
v
Sin David

[2025] SGHC 39

General Division of the High Court — Bankruptcy No 1359 of 2024
(Registrar's Appeal No 211 of 2024)
Christopher Tan JC
31 January 2025

10 March 2025 Judgment reserved.

Christopher Tan JC:

1 This judgment addresses, among other issues, the criteria for filing an expedited bankruptcy application under s 314 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA").

2 Under s 312(*a*) IRDA, a debtor is presumed to be unable to pay his debts if, having been served with a statutory demand ("SD"), he has for 21 days neither complied with the SD nor applied to set it aside. The respondent in this appeal ("Respondent") served a SD on the appellant ("Appellant") and thereafter filed a bankruptcy application against the latter. However, the bankruptcy application was filed only 16 days after service of the SD, *ie*, when there were still five days of the 21-day deadline which had yet to elapse. In doing so, the Respondent sought to rely on s 314 IRDA, which reads:

> **Expedited bankruptcy application**
>
> 314. A creditor's bankruptcy application which relies on a statutory demand may be made before the end of the period of 21 days mentioned in section 312(*a*), if —
>
> (*a*) there is a *serious possibility* that the debtor's property, or the value of all or any of the debtor's property, will be *significantly diminished* during that period; and
>
> (*b*) the application contains a statement to that effect.
>
> [emphasis added]

The Appellant sought the dismissal of the bankruptcy application, taking the view that the criterion in s 314(*a*) IRDA of there being a "serious possibility" of significant diminishment in his property was not satisfied in this case. He thus contended that there was no justification for the Respondent to have filed the bankruptcy application before expiry of the 21-day deadline. Concurrently, the Appellant also filed HC/SUM 2149/2024 ("SUM 2149") to stay the bankruptcy application.

3 In the hearing below, Assistant Registrar Randeep Singh Koonar ("AR Koonar") refused to dismiss the bankruptcy application but nevertheless granted the Appellant's application for a stay. This is the Appellant's appeal against the refusal to dismiss the bankruptcy application. I dismiss the appeal and set out my reasons below.

Background

4 The bankruptcy application underlying the present appeal was the *second* of two bankruptcy applications that the Respondent had filed against the Appellant. Both bankruptcy applications filed by the Respondent pertained to a personal guarantee ("Guarantee") dated 13 February 2020 which the Appellant had given the Respondent, as security for a facility agreement extended by the Respondent to a Cayman Islands company called "Oceanfront Investments III

Limited" ("OFIII").[1] The Appellant was the sole director of OFIII.[2] Under cl 2.1(b) of the Guarantee,[3] the Appellant undertook that he would "immediately on demand" pay the amounts which OFIII failed to pay under the facility agreement.

5 On 31 March 2023, the Respondent served a SD on the Appellant demanding payment of a sum of over US$61m, which the Respondent claimed to be due and owing under the Guarantee. The Appellant failed to make payment. On 11 May 2023, the Respondent filed the first bankruptcy application, HC/B 1362/2023 ("First Bankruptcy Application"), against the Appellant. The Respondent took the position that the Appellant was presumed to be unable to pay his debts on account of his failure to satisfy the SD.

6 On 14 July 2023, the Appellant granted a power of attorney to one of his creditors, ESW Holdings Pte Ltd ("ESW"), authorising ESW to sell the Appellant's apartment at Sentosa Cove ("Apartment").[4] This arrangement was entered into in settlement of bankruptcy proceedings that ESW had commenced against the Appellant in 2022.[5] Under the power of attorney,[6] proceeds from the sale of the Apartment would (after setting off various charges and expenses) be paid to ESW in discharge of debts owed to it by the Appellant. On

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[1] Exhibited in Ong Tiong Sin's affidavit dated 15 August 2023 (filed in HC/B 1362/2023) at pp 93–107.

[2] Sin David's affidavit dated 14 July 2023 (filed in HC/B 1362/2023) at para 9.

[3] See cl 2.1(b) of the personal guarantee, exhibited in Ong Tiong Sin's affidavit dated 15 August 2023 (filed in HC/B 1362/2023) at p 96.

[4] Sin David's affidavit dated 16 May 2024 at para 22.

[5] ESW had filed bankruptcy application HC/B 2669/2022 against the Appellant, pursuant to an unsatisfied statutory demand for the sum of S$4m – see Sng Kian Peng's affidavit dated 23 September 2022 at para 17 (filed in HC/B 2669/2022).

[6] Exhibited in Sin David's affidavit dated 16 May 2024 at pp 87–92 – see in particular recital (B) at p 88 and cl 1.4 at p 89.

8 August 2023, ESW (having secured the power of attorney) withdrew the bankruptcy proceedings which it had commenced against the Appellant.

7 On 6 December 2023, ESW (acting pursuant to the power of attorney) granted an option to purchase ("OTP")[7] the Apartment to a purchaser ("the Purchaser").[8] On 15 December 2023, the Appellant informed the Respondent about the power of attorney that he had granted to ESW to sell the Apartment.[9] Concerned that the Appellant was attempting to dissipate his assets while the First Bankruptcy Application was pending, the Respondent lodged a caveat against the Apartment on 26 December 2023.[10]

8 On 6 February 2024, the First Bankruptcy Application was dismissed. As mentioned at [4] above, the Guarantee required the Appellant to pay the guaranteed amount "immediately *on demand*" [emphasis added]. However, the SD underpinning the First Bankruptcy Application was served without any prior demand having been made by the Respondent under the Guarantee. Instead, the Respondent attempted to rely on *the SD itself* as the "demand" that would trigger the Appellant's obligations under the Guarantee. This attempt was rejected by the assistant registrar hearing the First Bankruptcy Application, who decided that a demand had to be made *first*, in order to bring the Appellant's debt under the Guarantee into being – this would then pave the way for the SD (referencing that debt) to be served. Since no prior demand had been made, there was no payable debt in existence at the point the SD was served.[11]

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[7] Exhibited in Sin David's affidavit dated 16 May 2024 at pp 100–105.

[8] Sin David's affidavit dated 16 May 2024 at para 24.

[9] Ong Tiong Sin's affidavit dated 27 June 2024 at para 15(i).

[10] Exhibited in Ong Tiong Sin's affidavit dated 27 June 2024 at pp 70–72.

[11] Transcript of the hearing of HC/B 1362/2023 on 6 February 2024 at pp 3–4, exhibited in Sin David's affidavit dated 16 May 2024 at pp 20–21.

9 On 8 February 2024, *ie*, two days after dismissal of the First Bankruptcy Application, the Purchaser exercised the OTP.[12] One day after that, on 9 February 2024, the Purchaser lodged a caveat against the Apartment.[13] This was notwithstanding the presence of the Respondent's caveat on the register.

10 On 16 February 2024, the Respondent filed HC/RA 36/2024 ("RA 36") against the dismissal of the First Bankruptcy Application. On 1 April 2024, the High Court dismissed RA 36. In doing so, the High Court affirmed the view that the debt had to exist as at the time of service of the SD and that the SD could not be used to crystallise the Appellant's contingent obligation under the Guarantee.[14]

11 On 2 April 2024, *ie*, a day after dismissal of RA 36, the Respondent served a fresh SD on the Appellant.[15] This time, the Respondent ensured that the defect underlying the First Bankruptcy Application (which failed because there was no demand made under the Guarantee prior to service of the SD) was remedied.[16] The 21-day deadline for satisfying this second SD was thus due to expire on 23 April 2024.

12 On 16 April 2024, ESW's lawyers sent a letter to the Respondent demanding the removal of the caveat which the Respondent had lodged (referred to at [7] above). [17] This letter (which I will refer to as the "Demand

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[12] Sin David's affidavit dated 16 May 2024 at para 24.

[13] Exhibited in Ong Tiong Sin's affidavit dated 15 May 2024 at p 33.

[14] Transcript of the hearing of HC/RA 36 on 1 April 2024 at p 54, exhibited in Sin David's affidavit dated 16 May 2024 at p 77.

[15] Ong Tiong Sin's 2nd affidavit dated 27 June 2024 at para 12.

[16] Ong Tiong Sin's affidavit dated 15 May 2024 at p 16, para 4.

[17] Exhibited in Ong Tiong Sin's 2nd affidavit dated 27 June 2024 at p 77.

Letter") asserted that the Respondent's caveat was "baseless and/or without merit", seeing as how both the First Bankruptcy Application and RA 36 were dismissed. The letter further stated that the sale of the Apartment was scheduled for completion on 19 April 2024, *ie*, in less than three days from the Demand Letter, and threatened legal action for any losses incurred if completion was delayed or frustrated by the Respondent's caveat.

13 On 18 April 2024, the following events transpired:

(a) Firstly, the Respondent's lawyers sent a letter to ESW's lawyers, responding to the Demand Letter.[18]

(b) Thereafter, the Respondent filed a second bankruptcy application against the Appellant ("Second Bankruptcy Application").[19] The application was thus filed only ***16*** *days* after the service of the underlying SD (which had been served on 2 April 2024).

(c) After the filing of the Second Bankruptcy Application, ESW's lawyers sent a letter to the Respondent's lawyers, responding to the letter that the Respondent's lawyers sent earlier in the day (*ie*, in (a) above).[20] By their letter, ESW's lawyers proposed to the Respondent that any net proceeds from the sale of the Apartment could be paid into court pending a determination of how the sale proceeds were to be treated. In exchange, the Respondent would have to withdraw its caveat.

14 On 23 April 2024, the 21-day deadline for paying the debt under the SD expired, without the Appellant having made payment. On 25 April 2024, the

[18] Exhibited in Ong Tiong Sin's 2nd affidavit dated 27 June 2024 at pp 83–84.

[19] Ong Tiong Sin's affidavit dated 16 July 2024 at para 5.

[20] Exhibited in Ong Tiong Sin's 2nd affidavit dated 27 June 2024 at p 86.

Respondent proceeded to serve the Second Bankruptcy Application on the Appellant's lawyers.[21]

15 On 26 April 2024, the Respondent agreed with ESW's lawyers that the Respondent would withdraw its caveat, in exchange for the sale proceeds to be held in escrow by a third party.[22] That same day, the sale of the Apartment was completed and the Respondent applied to withdraw its caveat.[23]

16 On 12 November 2024, AR Koonar heard both the Second Bankruptcy Application and SUM 2149, the latter being the Appellant's application to stay the hearing of the Second Bankruptcy Application pending the Appellant's application in HC/OSB 69/2024 ("OSB 69") for an interim order under s 276 IRDA. At the hearing, the Appellant argued that the conditions for an expedited bankruptcy application under s 314 IRDA were not met, such that the filing of the Second Bankruptcy Application was invalid. On this basis, the Appellant submitted that the Second Bankruptcy Application should be dismissed and not merely stayed,[24] notwithstanding the stay application filed by the Appellant.

17 AR Koonar refused to dismiss the Second Bankruptcy Application but nevertheless granted the Appellant's application in SUM 2149 to stay the bankruptcy proceedings, pending the conclusion of OSB 69.[25] The Appellant appealed against AR Koonar's refusal to dismiss the Second Bankruptcy Application.

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[21] Ong Tiong Sin's 2nd affidavit dated 27 June 2024 at para 15(cc).

[22] Ong Tiong Sin's 2nd affidavit dated 27 June 2024 at para 15(ee).

[23] Ong Tiong Sin's 2nd affidavit dated 27 June 2024 at para 15(hh).

[24] Defendant's Written Submissions for HC/B 1359/2024 dated 9 July 2024 at paras 21–47.

[25] Transcript of the hearing of HC/B 1359/2024 on 12 November 2024 at pp 15–19.

The appeal

18 Section 311(1) IRDA sets out the threshold requirements for when a bankruptcy application may be made. The provision reads:

> **Grounds of bankruptcy application**
>
> **311**.—(1) *Subject to section 314, no bankruptcy application may be made to the Court in respect of any debt or debts unless at the time the application* is made —
>
> (*a*) the amount of the debt, or the aggregate amount of the debts, is not less than $15,000;
>
> (*b*) the debt or each of the debts is for a liquidated sum payable to the applicant creditor immediately;
>
> (*c*) *the debtor is unable to pay the debt* or each of the debts; and
>
> (*d*) where the debt or each of the debts is incurred outside Singapore, such debt is payable by the debtor to the applicant creditor by virtue of a judgment or an award which is enforceable by an enforcement order in Singapore.
>
> [emphasis added]

This provision thus actively *prohibits* a bankruptcy application from being filed, unless the four conditions in limbs (*a*) to (*d*) are cumulatively met *as at the point the bankruptcy application is made*. Further, as seen from the extract above, the prohibition is expressed to be subject to s 314(1) IRDA (reproduced at [2] above), being the provision that lies at the heart of the present appeal.

19 Before me, the Appellant raised two grounds of appeal, which I set out below.

20 The first ground centred on the condition in limb (*c*) of s 311 IRDA, *ie*, that the debtor is unable to pay his debt:

> (a) In the present case, the Respondent was relying on non-satisfaction of the SD served on 2 April 2024 (referred to at [11] above) to trigger the presumption, set out in s 312(*a*) IRDA, that the

Appellant was unable to pay his debt. The Appellant contended that even if he could be presumed to be unable to pay his debt *as at the expiry* of the 21-day deadline set by the SD, the fact remains that when the Second Bankruptcy Application was filed on 18 April 2024, the 21-day deadline had yet to expire. The Appellant could thus not be deemed as unable to pay his debts *as at the point when the Second Bankruptcy Application was made*. The condition in limb (*c*) of s 311 IRDA, which requires that the debtor be unable to pay his debts at the point of making the bankruptcy application, was thus not fulfilled.

(b) This in turn segued to the nub of the Appellant's first ground of appeal. Given that s 311(1) IRDA is expressed to be subject to s 314 IRDA, the failure to meet limb (*c*) of s 311(1) IRDA on account of the presumption in s 312(*a*) IRDA having yet to be triggered as at the point of the bankruptcy application's filing could still be immunised by the operation of s 314 IRDA. However, the Appellant maintained the position which he took at the hearing below: that when the Second Bankruptcy Application was filed, there was no "serious possibility" of the Appellant's property being diminished, meaning that s 314 IRDA was inapplicable.[26] Without the saving effect of s 314 IRDA, the filing of the Second Bankruptcy Application would continue to run afoul of the prohibition in s 311(1) IRDA, on account of limb (*c*) not having been satisfied. The Appellant thus argued that the Second Bankruptcy Application could not stand.

Given the above, the Appellant contended that the bankruptcy application must be dismissed, since r 99(*a*) of the Insolvency, Restructuring and Dissolution

[26] Defendant's Written Submissions for HC/RA 211/2024 dated 16 December 2024 at paras 28–42.

(Personal Insolvency) Rules 2020 ("PIR") mandates such dismissal if the creditor is not entitled to make the application under (*inter alia*) s 311 IRDA.

21 The second ground of appeal related to the condition in limb (*d*) of s 311 IRDA. Specifically, the Appellant alleged that the debt underlying the Second Bankruptcy Application was incurred outside Singapore but the requirements applicable to foreign debts, as set out in limb (*d*) of s 311(1) IRDA (extracted at [18] above), were not met.[27] This was a fresh contention that had not been raised by the Appellant below.

22 I address both these grounds of appeal in turn.

Whether s 314 IRDA operated to sanction the early filing of the Second Bankruptcy Application

23 Section 314 IRDA (extracted at [2] above) provides that a creditor may make a bankruptcy application before expiry of the 21-day deadline if "there is a *serious possibility* that the debtor's property … will be *significantly diminished* during that period" [emphasis added]. There are thus two key elements which must be established under s 314(*a*) IRDA:

(a) there must be a *serious possibility* of diminishment; and

(b) the diminishment must be *significant*.

The second element was not at issue in this appeal. Specifically, there was no dispute that the sale of the Apartment would significantly diminish the Appellant's assets. During the hearing, the Respondent said that the Apartment

[27] Defendant's Written Submissions for HC/RA 211/2024 dated 16 December 2024 at paras 43–49.

was being sold for $8.1m[28] which, after setting off various payments, would leave a balance of about $5.1m. The Respondent contended that the bulk (or even the entirety) of this balance was meant to be applied towards discharging the Appellant's indebtedness to ESW.[29] At the hearing before me, the Appellant did not challenge this contention.

24 The dispute between the parties thus centred on whether there was a "serious possibility" of that diminishment coming to pass, as at the point of the Respondent filing the Second Bankruptcy Application.

25 Before proceeding any further, I set out some background to the purpose behind s 314 IRDA. Once a bankruptcy application is filed, the following prophylactic mechanisms come into play to protect creditors against depletion of the debtor's assets:

(a) The court is empowered to appoint an interim receiver (under s 324 IRDA), as well as to order a stay (under s 325 IRDA) of any action, enforcement order or other legal process instituted against the debtor.

(b) Any disposition of the bankrupt's property made after the filing of the bankruptcy application is void under s 328 IRDA, unless ratified by the court.

26 Given that these provisions do not bite *prior to* a bankruptcy application being filed, it is apparent that s 314 IRDA, by allowing the application to be filed earlier (*ie*, before the 21-day deadline is up), serves to enhance the protection afforded to creditors against asset dissipation by facilitating *early*

[28] Land register search record of the caveat lodged by Pak Aleksandra on 9 February 2024, exhibited in Ong Tiong Sin's affidavit dated 15 May 2024 at p 33.

[29] Ong Tiong Sin's affidavit dated 15 May 2024 at para 12(a).

triggering of the mechanisms in the preceding paragraph. That this was the rationale of s 314 IRDA can be gleaned from the speech of then Senior Minister of State for Law Indranee Rajah during the Parliamentary debates on the Bankruptcy (Amendment) Bill, where she discussed the purpose of s 63A of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("BA"), which was later re-enacted as s 314 IRDA (Singapore Parl Debates; Vol 93, Sitting No 20; Page 104; [13 July 2015] (Indranee Rajah, Senior Minister of State for Law):

> The amendments are being introduced because, currently, a creditor can only appoint an interim receiver or prevent the bankrupt's property from being transferred after a bankruptcy application has been filed, which can only be done after the 21-day period has expired. There is a risk that the debtor could dissipate his assets during this 21-day period. *The amendments will, therefore, allow the creditor to take steps to preserve assets available for distribution to the creditors at an earlier stage, although the bankruptcy order will only be made upon the expiry of the 21-day period.* This is to ensure that the debtor will still have the full 21-day period to settle or set aside the statutory demand. [emphasis added]

27 What is less clear, however, is how the term "serious possibility" in s 314 IRDA should be construed. When the standards of proof employed in different legal contexts are laid across the table, they convey a spectrum of probabilities – the question in this appeal is where the term "serious possibility", as it is employed in s 314 IRDA, should sit within that spectrum. Parties were unable to find any case law on how the term should be construed, in the context of expedited bankruptcy applications, whether from Singapore or foreign jurisdictions with substantially similar insolvency regimes.

28 Given the dearth of direct authority, parties sought to draw guidance from the principles governing the grant of Mareva injunctions. These hold some relevance to the present appeal because the Mareva injunction, like s 314 IRDA, is a legal mechanism often deployed under pressing circumstances to prevent the dissipation of a defendant's assets. Specifically, an applicant seeking a

Mareva injunction must demonstrate that there is objectively a "real risk" that a judgment may not be satisfied because of unjustified dealings with assets: *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 at [64]. That threshold is crossed if the party applying for a Mareva injunction can show a "plausible evidential basis sufficient to establish a good arguable case that there is a risk of dissipation, which is not a particularly onerous test to meet": *Quek Jin Oon v Goh Chin Soon* [2020] SGHC 246 ("*Quek Jin Oon*") at [81], citing *Lakatamia Shipping Company Limited v Toshiko Morimoto* [2019] EWCA Civ 2203 at [35]–[36] and [38]. Even then, the "real risk" threshold is not crossed if the party applying for a Mareva injunction relies on a "mere possibility or unsupported fear of dissipation" (*Bahtera Offshore (M) Sdn Bhd v Sim Kok Beng and another* [2009] 4 SLR(R) 365 at [70]). Likewise, a "mere inference" or "bare assertions of fact" will not suffice (*Quek Jin Oon* at [81]).

29 While both parties agreed that guidance can be drawn from the authorities governing what constitutes a "real risk" in the Mareva injunction context, their positions differed as follows:

(a) The Appellant took the view that the "real risk" threshold, as applied in the Mareva injunction context, can be imported *as is* to the s 314 IRDA context.[30]

(b) The Respondent, on the other hand, argued that the "serious possibility" threshold underpinning s 314 IRDA should be set *lower* than that of a "real risk" of dissipation employed for Mareva

[30] Defendant's Written Submissions for HC/RA 211/2024 dated 16 December 2024 at paras 33–41.

injunctions.[31]

30 Some support for the Appellant's position may, at first blush, be found in the report of the Insolvency Law Reform Committee ("ILRC"). In proposing legislative amendments to the BA, the report used the term "real risk" (*ie*, the language used for Mareva injunctions) at multiple junctures when discussing proposing the introduction of what has eventually become s 314 IRDA – see *eg*, Ministry of Law, *Report of the Insolvency Law Reform Committee: Final Report* (2013) (Chairperson: Lee Eng Beng SC):

(a) Paragraph 26 at p 34:

> In conclusion, the Committee is of the view that the provisions on proceedings in bankruptcy in the Bankruptcy Act can largely be adopted into the New Insolvency Act, with the inclusion of a procedure for an expedited bankruptcy application where there is a *real risk* that the debtor's assets would be diminished. [emphasis added]

(b) Paragraph 65(2) at p 48; Recommendation 3.2 in Appendix 1:

> The provisions on proceedings in bankruptcy in the Bankruptcy Act can largely be adopted into the New Insolvency Act, with the inclusion of a procedure for an expedited bankruptcy application where there is a *real risk* that the debtor's assets would be diminished. [emphasis added]

However, I did not consider the passages above to be persuasive support for the Appellant's view. While the term "real risk" was repeatedly used in the report, the fact remains that Parliament ultimately did not use the term "real risk" in s 63A BA (the precursor to s 314 IRDA). There was thus a *deviation* from the language used in the Mareva injunctions context, as regards the test for dissipation. The reason for this deviation is unclear. It is not apparent whether

[31] Claimant's Written Submissions for HC/RA 211/2024 dated 16 December 2024 at para 34.

Parliament expressly considered and deliberately rejected adopting the term "real risk" (which applies to Mareva injunctions) or whether this was simply a case of the draftsman modelling the language in s 63A BA (and thus s 314 IRDA) on the language of equivalent provisions in the United Kingdom Insolvency Act 1986 (*ie*, s 270) and Hong Kong Bankruptcy Ordinance (Cap 6) (*ie*, s 6C), both which also employ the term "serious possibility" as the threshold for expedited bankruptcy petitions. In either event, it remains the case that the term "real risk" failed to find its way into the text of s 63A BA/s 314 IRDA, despite having been placed before Parliament by virtue of its inclusion in the ILRC's discrete recommendations. Accordingly, the intentions behind the ILRC's use of the term "real risk" (whatever that may have been) cannot without more simply be imputed to Parliament, as the Appellant would suggest. Furthermore, it is at best ambiguous whether the ILRC's use of the term "real risk" was a deliberate invocation of the legal standard used for Mareva injunctions, rather than an ordinary turn of phrase without an intended technical meaning. In this respect, I note that the ILRC's report used the term "real risk" in passing, without any explanation as to its meaning and without any reference to Mareva injunctions.

31 The plain language of s 314 IRDA does not appear to import any specific legal standard of proof that currently exists in the authorities. From that starting point, I take the view that the hurdle which a creditor needs to cross in establishing a "serious possibility" of diminishment under s 314 IRDA ought to be set *lower* than that faced by an applicant seeking to show a "real risk" of dissipation that justifies a Mareva injunction. This appears to be sound as a matter of principle, considering the very different ramifications flowing from both legal apparatuses. Far more draconian consequences arise from the Mareva injunction, which has been described as "one of the law's two 'nuclear' weapons" (*Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 at [1], citing *Bank*

Mellat v Nikpour [1985] FSR 87 at 90–92), given the debilitating effects of an asset freeze, compounded by the potential for extraterritorial reach. In contrast, an expedited bankruptcy application carries far less scope for prejudice to the debtor:

(a) Firstly, notwithstanding the early filing of the bankruptcy application, the court *cannot* grant a bankruptcy order until the full 21 days afforded for satisfying the SD have elapsed: see s 316(2) IRDA. This means that the debtor still retains the benefit of the full 21 days to pay off the debt. If the debtor is able to make payment, the bankruptcy application can be dismissed or withdrawn, in which case the premature timing of the filing becomes inconsequential. If the debtor is unable to meet his financial obligations and could not have paid the debt within those 21 days *in any case*, his predicament would be no different from if the bankruptcy application had been filed after those 21 days.

(b) Secondly, the operative impact of s 314 IRDA covers only a very limited timeframe. To recapitulate, the sting of an early bankruptcy application stems from the prophylactic mechanisms described at [25] above being brought to bear on asset dispositions occurring within the *remaining* duration between the filing of the bankruptcy application and expiry of the 21-day deadline for satisfying or setting aside the SD. This is but a narrow window which stretches for *less* than 21 days. In comparison, a Mareva injunction could potentially last for a much longer span of time.

(c) Finally, I would observe that of the prophylactic mechanisms described at [25] above, perhaps the most significant would be s 328 IRDA, which renders any disposal of property effected after the bankruptcy application void *if* the court subsequently grants a

> bankruptcy order (unless the disposal is ratified by the court). As an illustration, we can take the present factual matrix where the creditor (in reliance on s 314 IRDA) filed the bankruptcy application 16 days after service of the SD, without waiting for the remaining five days of the 21-day window to elapse. Any disposition of the debtor's property *within those five days* would now be caught by s 328 IRDA, when it would not have been so caught had the creditor waited the full 21 days before filing the bankruptcy application. Any reasonable onlooker is bound to query if there was really any pressing need for the debtor to dispose of the asset concerned within those five days. If there was indeed an innocuous explanation for the serendipity of the transaction's timing, it would be open to parties to seek the court's ratification of the transaction, thereby reversing any prejudice befalling the debtor. On the other hand, if the transaction was indeed calculated to remove the asset from the reach of the bankruptcy regime, this would constitute the very mischief targeted by Parliament in introducing s 314 IRDA, in which case it becomes very difficult to see why the avoidance of the transaction (facilitated by the early filing of the bankruptcy application) could be considered a legitimate prejudice suffered by the debtor.

32 Having concluded that a "serious possibility" ought to entail a lower threshold than the "real risk" bar for Mareva injunctions, the question would then be what that threshold entails. I observe at this juncture that the phrase "serious possibility" features in legal tests from other contexts at common law – most notably, in the test for remoteness of damage arising from breach of contract (see *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd* [1949] 2 KB 528 at 539–540, affirmed in *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 ("*Robertson Quay*") at [70]; *Koufos v C Czarnikow Ltd* [1969] 1 AC 350 at 414–415, 425;

H Parsons (Livestock) Ltd v Uttley Ingham & Co Ltd [1978] 1 QB 791 ("*H Parsons*") at 805–807, 812–813). However, these authorities do not proffer a helpful definition of the shade of probability which the term "serious possibility" denotes. Rather, there have been judicial pronouncements eschewing a fixation with terminological distinctions, in preference for a commonsensical and fact-sensitive approach to assessing whether the legal standard has been met. I can do no better than to quote at length from Andrew Phang JC (as he then was) in *Tang Kin Hwa v Traditional Chinese Medicine Practitioners Board* [2005] 4 SLR(R) 604 ("*Tang Kin Hwa*") at [43]–[44] (affirmed in *Robertson Quay* at [57]):

> 43 … [O]ne ought not fall prey to fine semantical formulations and/or distinctions. One has always to view the substance and not merely the form of the terminology utilised. In an ideal world, form and substance would be integrated. However, this is not always the case. When there is an apparent dissonance between form and substance, it is imperative to focus on the substance and not be distracted unduly by the form. Such an approach in fact enables the court to bring both form and substance into better alignment with each other. … I want, at this juncture, to focus instead on the dangers of 'semantic hairsplitting'.
>
> 44 The dangers and confusion that are engendered by focusing on the form of words as opposed to their substance is nowhere better illustrated than in the search for a proper formulation in so far as the degree of probability with respect to the test for remoteness of damage in contract law is concerned. In particular, the leading House of Lords decision *Koufos v C Czarnikow Ltd* [1969] 1 AC 352 [*sic*] ('*The Heron II*') ought to be referred to. In brief, the law lords utilised a very wide variety of expressions or phrases in their respective attempts to capture what seemed to them to be a proper formulation. Lord Reid preferred the term 'not unlikely', whilst rejecting terms such as 'liable to result', 'a serious possibility' and 'a real danger' (see especially at 383 and 388). Lord Morris of Borth-y-Gest preferred the term 'likely or was liable to result' (see at 397). In a similar vein, Lord Hodson preferred the term 'liable to result' (see at 410–411), whilst Lord Pearce preferred the terms 'a serious possibility' and 'a real danger' (see at 414–415). Lord Upjohn, on the other hand, preferred the terms 'a real danger' or 'a serious possibility' (see at 425). The term 'on the cards' was, however, emphatically rejected by the House. …

> [T]he semantical complexity as well as at least possible confusion in *The Heron II* itself prompted Lord Denning MR, in the English Court of Appeal decision of *H Parsons (Livestock) Ltd v Uttley Ingham & Co Ltd* [1978] QB 791 to state (at 802) that 'I cannot swim in this sea of semantic exercises'. At this juncture, one can see the dangers of 'semantic hairsplitting' for what they (unfortunately) are.

33 Similarly, in *H Parsons*, Scarman LJ did not propound a precisely defined standard of probability when seeking to explain the meaning of the term "serious possibility" but instead commended a fluid approach that applies commonsense reasoning to the factual matrix (*H Parsons* at 807):

> The second problem – what is meant by a 'serious possibility' – is, in my judgment, ultimately a question of fact. I shall return to it, therefore, after analysing the facts, since I believe it requires of the judge no more – and no less – than the application of common sense in the particular circumstances of the case.

34 While the admonitions set out above were issued against a different backdrop (*ie*, defining the probability threshold for remoteness of damage), I find them to be no less salutary in guiding my assessment of where the "serious possibility" threshold should lie in the present context. Having heeded Phang JC's caution in *Tang Kin Hwa* against "fall[ing] prey to fine semantical formulations and/or distinctions", I do not propose to offer any synonyms to illustrate how that threshold might otherwise be construed – the term "serious possibility" is plain enough, and I would tackle it at face value. I am also not minded to suggest any test hinging on numerical probabilities – such an approach would likely be more easily stated than applied.

35 Nevertheless, there are still some parameters which may serve to helpfully *circumscribe* the meaning of the term "serious possibility". In *Les Ambassadeurs Club Ltd v Yu* [2021] EWCA Civ 1310 ("*Les Ambassadeurs*"), the English Court of Appeal examined what constituted a "real risk" of

dissipation in the context of a post-judgment freezing order. The court held that the risk cannot be "theoretical, fanciful or insignificant" (at [36]). I would think that this threshold should also apply to the "serious possibility" threshold under s 314 IRDA. Furthermore, the court in *Les Ambassadeurs* held that the applicant need not show that the risk of dissipation was "more likely than not" (at [27]). *A fortiori*, such a high bar should not be applied to s 314 IRDA which (for the reasons set out at [31] above) should be subjected to a lower threshold. In short, an applicant making an expedited bankruptcy application needs to show more than a theoretical, fanciful or insignificant possibility of diminishment, but need not go as far as showing that this risk was more likely than not.

36 Beyond this, it may also be useful to consider the factual scenarios in which the "serious possibility" threshold might be crossed. I agree with the Respondent that a "serious possibility" of diminishment exists if the debtor has in fact embarked on steps to dissipate a substantial proportion of his assets. By way of comparison, this indicator is also highly material in assessing if the "real risk" threshold for granting a Mareva injunction has been crossed. Hence, if a debtor tries to sell an asset of significant value (relative to the value of the rest of the debtor's assets) after an SD has been served on him and there is no reasonable explanation for the hasty disposal, a "serious possibility" of diminishment may be found to exist. This situation is analogous to the facts in *China Medical Technologies, Inc (in liquidation) and another v Wu Xiaodong and another* [2018] SGHC 178 at [81]–[83]. In that case, a "real risk" of dissipation (under the test for Mareva injunctions) was established when the second defendant put her real property (including her residential home) up for sale after legal proceedings had been commenced against her.

37 I also take the view that the test of whether there is a "serious possibility" of diminishment is an *objective* one. This is also the approach for the "real risk"

test applicable to Mareva injunctions (see *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 at [17]). The court should thus not be concerned with the motives of the debtor in disposing of his property but should instead look at the *effect* of the threatened disposition. One needs to ask whether, from the facts that were known or (under the circumstances) could reasonably have been known by the creditor, a "serious possibility" of diminishment could be discerned.

38 It would be apparent from the analysis that in my attempt to determine where the boundaries of the term "serious possibility" might lie, the parameters which I have highlighted in the immediately preceding paragraphs all apply equally to the "real risk" test used in Mareva injunctions. This might prompt the question of whether the "serious possibility" threshold should indeed be pegged any differently from that employed for the "real risk" test adopted in Mareva injunctions. I would venture so far as to say that any factual matrix which satisfies the threshold for granting a Mareva injunction would justify an expedited application under s 314 IRDA. However, I maintain the view (for the reasons cited at [31] above) that there is merit to pegging the "serious possibility" threshold at a lower level. As to the question of what circumstances might fall within the penumbra where a "serious possibility" of diminishment can be discerned which nevertheless fall short of the "real risk" bar, that may well be a question to be determined against the backdrop of actual facts that have arisen. It is not fruitful for me at this point to hypothesise, *in vacuo*, as to where the boundaries of that penumbra may lie.

39 In any event, *even* if the higher threshold of a "real risk" was employed, it would have been crossed on the facts of this case. To explain, I will first recapitulate the relevant milestones in the chronology of events.

(a) The SD was served on 2 April 2024.[32]

(b) On 16 April 2024, *ie*, ***14 days*** after the SD was served, ESW's lawyers sent the Demand Letter to the Respondent,[33] requiring the removal of the caveat and threatening legal action if that was not done. Significantly, the Demand Letter informed the Respondent that completion would take place on 19 April 2024 – a date which would have been less than three days from the date of the Demand Letter and ***17 days*** after service of the SD. The relevant paragraphs of the Demand Letter are extracted below:

> 3. Your client would be aware that High Court Bankruptcy No. 1362 of 2023 against [the Appellant] had been dismissed during the first instance on or around 6 February 2024, and the appeal of the matter (as appealed by your client) had also been dismissed on or around 1 April 2024.
>
> 4. Accordingly, the Caveat lodged against the Property is baseless and/or without merit. In this regard, your client is hereby put on notice that the ***sale of the Property is scheduled for completion on 19 April 2024***.
>
> 5. In light of the above, **TAKE NOTICE** that our client hereby demands that your client promptly remove/withdraw the Caveat on such date no later than 4pm on Wednesday, 17 April 2024.
>
> 6. In the event that completion of the sale of the Property is delayed, or frustrated, arising out of and/or in relation to the Caveat, our client shall have no choice but to take the necessary steps to look to your client for any damages and losses incurred by our client.
>
> [emphasis in bold and underline in original; emphasis added in bold italics]

(c) The Respondent was concerned that the Purchaser was indeed

[32] Ong Tiong Sin's 2nd affidavit dated 27 June 2024 at para 12.

[33] Exhibited in Ong Tiong Sin's 2nd affidavit dated 27 June 2024 at p 77.

going to transfer the balance of the purchase price to ESW on 19 April 2024, which the Demand Letter had stated to be the completion date. The Respondent therefore filed the Second Bankruptcy Application on 18 April 2024.

(d) After the Second Bankruptcy Application was filed, ESW's lawyers sent a letter to the Respondent's lawyers,[34] reiterating that the Respondent should remove the caveat but nevertheless proposed that any net proceeds from the sale of the Apartment be paid into court pending a determination of how those proceeds should be treated.[35]

40 The Appellant argued that when the Second Bankruptcy Application was filed on 18 April 2024, there was no serious possibility of diminishment of his assets because the Respondent had already lodged a caveat on the register, and the registration of the transfer of title to the Purchaser could not proceed so long as the caveat remained.[36] I do not agree with this.

41 Under s 120 of the Land Titles Act 1993 (2020 Rev Ed) ("LTA"), the lodgment of a caveat carries the following protective effect:

(a) If a dealing prohibited by the caveat is lodged on the register, the caveator will be notified of that dealing.

(b) Thereafter, registration of that dealing is placed on hold for a period of 30 days, affording the caveator a window of opportunity to secure a court order extending the operation of the caveat and thereby

[34] Exhibited in Ong Tiong Sin's 2nd affidavit dated 27 June 2024 at p 86.

[35] There is no evidence that this letter from ESW's lawyers had been prompted by the Respondent's filing of the Second Bankruptcy Application.

[36] Defendant's Written Submissions for HC/B 1359/2024 dated 9 July 2024 at para 38.

block the registration of the dealing.

If the caveator fails to take such action, the caveat lapses at the end of the 30-day period: see s 121(1)(*a*) LTA.

42 Notwithstanding the existence of the caveat, I accept the Respondent's contention that registration of the title transfer was not the primary concern here. Rather, what alarmed the Respondent was the prospect of the Purchaser transferring the balance purchase moneys to ESW on 19 April 2024 – this being the completion date expressly stipulated in the Demand Letter. If that transfer of funds were allowed to proceed, the debt owed by the Appellant to ESW would be extinguished by the balance purchase moneys, thereby removing those moneys from the reach of creditors. During the hearing before me, the Respondent stressed that completion of the sale (by way of transfer of the balance purchase moneys to ESW) could proceed on 19 April 2024, *even* if title transfer could only be registered later (pending removal of the Respondent's caveat). The Appellant did not dispute this. The Respondent explained that this was a real risk which necessitated the filing of the Second Bankruptcy Application on 18 April 2024 (*ie*, one day before the completion date stipulated in the Demand Letter) so that any such moneys inuring to ESW's benefit could be clawed back under s 328 IRDA, should the Appellant be made a bankrupt. On these facts, I agree that the Respondent could reasonably apprehend a "serious possibility" that the purchase moneys flowing from the disposition of the Apartment would be removed from creditors' reach.

43 The presence of the caveat would have done little to assuage the Respondent's concerns at the time, especially given that the Respondent was unable to demonstrate that it had any caveatable interest in the Apartment as at the point of filing the Second Bankruptcy Application. I pause to observe that

there appears to be some divergent views in our case law as to whether a party's *contractual* right to the proceeds from the sale of a piece of land gives that party a caveatable interest in that land: see *Primepulse Consultancy Pte Ltd v Chan Pau Tee and another and another matter* [2025] SGHC 35 at [63]–[65] and *Ho Seek Yueng Novel and another v J & V Development Pte Ltd* [2006] 2 SLR(R) 742 at [39], *cf Kok Zhen Yen and another v Beth Candice Wu* [2024] 3 SLR 730 at [37]–[38] and *Salbiah bte Adnan v Micro Credit Pte Ltd* [2015] 1 SLR 601 at [41]. However that divergence may be resolved, the facts of the present case are still one step removed, in that the Respondent did not even have a contractual right to the sale proceeds. Rather, the caveat couched the Respondent's interest in the sale proceeds as stemming from the pendency of the First Bankruptcy Application – the caveat declared that if the First Bankruptcy Application was granted, the Apartment would be conveyed to the Official Assignee and the Respondent would thereby have a share in the Apartment by virtue of its capacity "as a *creditor*" [emphasis added].[37] The alleged caveatable interest, which bore no transactional nexus to the Apartment, thus did not appear to have been grounded on any legally recognised foundation. In any event, even if the pendency of the First Bankruptcy Application gave the Respondent a caveatable interest, any such interest would indubitably have been extinguished once RA 36 was dismissed on 1 April 2024 (see [10] above) – the dismissal having decisively brought the proceedings under the First Bankruptcy Application to a close. It thus came as no surprise that, at the hearing of the appeal before me, *both* parties concurred that the Respondent had no legal basis for its caveat to remain on the register (at least as at the point of filing the Second Bankruptcy Application on 18 April 2024). This meant that the Respondent *had* to remove the caveat, or face the legal consequences threatened by the Demand Letter.

[37] Caveat lodged by the Respondent on 26 December 2023, exhibited in Ong Tiong Sin's 2nd affidavit dated 27 June 2024 at pp 71, para 2.

44 The inherently contradictory nature of the Appellant's position was marked by the fact that in one breath, he maintained that there was no legal basis for the Respondent's caveat to remain on the register,[38] but in the other, he insisted that the caveat provided sufficient comfort against dissipation, thereby negating any concerns of a "serious possibility" of such dissipation.

45 The Appellant further argued that the sale could not be completed in the face of the caveat because special condition 1 of the OTP mandated that "[t]he title to the Apartment shall be properly deduced and free from encumbrances".[39] This special condition, argued the Appellant, made it obvious that the sale could not be completed so long as the Respondent's caveat remained on the register, thus refuting any suggestion that there was a "serious possibility" that the sale would be completed and the balance purchase moneys spirited to ESW.[40] I reject this submission. It is undisputed that the Respondent *never* had sight of the OTP, up to the very point of filing the Second Bankruptcy Application. Even the Appellant claimed not to have a copy of the OTP (notwithstanding that the Apartment was *his* property, which was being sold pursuant to a power of attorney that *he* granted to ESW). While I had opined at [37] above that the test of "serious possibility" is an objective one, I would qualify that the factual matrix against which that objective assessment is carried out must surely be based on factors reasonably within the applicant's knowledge. This was the view taken by AR Koonar below,[41] and I agree with him.

46 The Appellant argued that after receiving the Demand Letter on

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[38] Letter from the Appellant's solicitors to the Respondent's solicitors dated 19 April 2024, exhibited in Ong Tiong Sin's affidavit dated 27 June 2024 at p 91.

[39] Exhibited in Sin David's affidavit dated 16 May 2024 at pp 101–102.

[40] Defendant's Written Submissions for HC/RA 211/2024 dated 16 December 2024 at para 38.

[41] Transcript of the hearing of HC/B 1359/2024 on 12 November 2024 at pp 15–16, para 4(a).

16 April 2024, the Respondent *could* have attempted to ask ESW's lawyers for a copy of the OTP. He maintained that there was nothing to suggest that ESW's lawyers would have refused such a request. *If* the Respondent had done that and *if* ESW's lawyers had given the Respondent a copy of the OTP, the Respondent would have seen (upon perusing the OTP) that the Purchaser was very unlikely to proceed with the sale so long as the caveat remained, given special condition 1 of the OTP. It was patent to me that the Appellant had, in making this submission, unabashedly helped himself to a generous serving of hindsight. One must look at the circumstances facing the applicant at the time when he filed the expedited bankruptcy application, when adjudging if the clamours about how he could have done this or should have done that are in any way reasonable or realistic. In this case, the Respondent was informed through the Demand Letter that completion was going to take place on 19 April 2024. Quite apart from the fact that there was less than 72 hours to react, the Respondent was also staring down an ultimatum by ESW's lawyers to remove the caveat within 24 hours or be held responsible in damages. In empowering ESW to sell the Apartment in the first place, it was the Appellant who had brought about that state of affairs. It did not strike me as reasonable for him to now demand that the Respondent should, within those tight timeframes, go on a quest for documents in the *hope* of finding something there that would assuage its fears of asset diminishment. In any case, given that the Apartment was the Appellant's property and was being sold at his behest, *he* could have taken the trouble to get the sale documents and pass the same to the Respondent (following the issue of the Demand Letter). He never bothered to do that.

47 The Appellant reasoned that the very fact that ESW's lawyers sent the Demand Letter on 16 April 2024, requiring removal of the caveat, showed that

completion could not proceed unless the caveat was removed.[42] If ESW and the Purchaser were minded to proceed with completion regardless of the caveat, reasoned the Appellant, the Demand Letter would have been redundant. For me to deal with that submission, there is a need to first unpack what the Appellant meant by the term "completion". I agree with the Appellant to the extent that the sending of the Demand Letter was consistent with the fact that *the transfer of title could not be registered* ***immediately*** unless the caveat was removed. This did not, however, mean that transfer of the balance purchase moneys by the Purchaser to ESW (this being the asset disposition lying at the heart of the Respondent's fears) could not proceed while the caveat remained on the register. On the facts, it was not unreasonable for the Respondent to apprehend that the Purchaser was someone with no qualms about completing the sale, by paying the balance purchase moneys to ESW, and thereafter biding his time while steps were taken to remove the Respondent's caveat (*eg*, by way of proceedings under s 127(1) LTA). The Purchaser had exercised his option on 8 February 2024[43] and lodged his caveat on the register on 9 February 2024.[44] By then, he *knew* that the Respondent had a caveat on the register.[45] Yet the Purchaser did not see fit to take any steps to procure the removal of the Respondent's caveat. It was only on 16 April 2024, *ie*, barely three days prior to the 19 April 2024 completion date, that ESW's lawyers sent the Respondent the Demand Letter asking the Respondent to remove its caveat. That the Purchaser might not have been particularly bothered by the caveat was unsurprising – *all* parties agreed that once RA 36 was dismissed, there was

[42] Defendant's Written Submissions for HC/RA 211/2024 dated 16 December 2024 at para 40(e).

[43] Sin David's affidavit dated 16 May 2024 at para 24.

[44] Exhibited in Ong Tiong Sin's affidavit dated 15 May 2024 at p 33.

[45] Claimant's Written Submissions for HC/B 1359/2024 dated 9 July 2024 at para 94.

clearly no basis for the Respondent's caveat to remain on the register (see [43] above). In short, the Respondent would ultimately *have* to capitulate if pressed to remove the caveat.

48 After having considered the evidence in the round, I agree with the Respondent that there was a "serious possibility" of the Appellant's property being diminished, as at the point when the Respondent filed the Second Bankruptcy Application. From the perspective of a reasonable creditor standing in the Respondent's shoes, neither the Respondent's caveat nor special condition 1 of the OTP would have served to negate that possibility. The early filing was thus justified under s 314 IRDA. The Appellant's contention that the Second Bankruptcy Application should have been dismissed for want of compliance with s 311(1)(*c*) IRDA is thus without merit.

Whether the debt was incurred in Singapore

49 The Appellant's alternative submission was that the Second Bankruptcy Application was invalidly made because:

(a) the debt was incurred outside Singapore; and

(b) the Respondent failed to comply with limb (*d*) of s 311(1) IRDA (extracted at [18] above).[46]

This ground of appeal can be disposed of summarily. The debt *was* incurred in Singapore, meaning that limb (*d*) of s 311(1) IRDA does not come into play.

50 In *Rafat Ali Rizvi v Ing Bank NV Hong Kong Branch* [2011] SGHC 114, the High Court had occasion to consider s 61(1)(*d*) BA, which was later

[46] Defendant's Written Submissions for HC/RA 211/2024 dated 16 December 2024 at paras 43–49.

re-enacted as s 311(1)(*d*) IRDA. Kan Ting Chiu J held (at [12]) that, with respect to credit facilities, the place where the debt is incurred is the location of the bank account receiving the credited moneys. Reverting to the present case, as explained at [4] above, the Appellant's debt to the Respondent arose from the Guarantee, which was meant to secure OFIII's obligations under a facility agreement extended by the Respondent.[47] The Respondent adduced evidence of a utilisation request in relation to the facility agreement, signed by the Appellant on OFIII's behalf,[48] stating the details of the bank account into which the Respondent should credit the loan moneys extended to OFIII. This document clearly showed that the loan moneys were to be credited into a bank account held with a bank in Singapore. The Appellant had neither challenged this document, nor adduced any other evidence to show that the loan moneys were disbursed to any account outside of Singapore. Consequently, based on the evidence, the debt was *not* incurred outside of Singapore. The Appellant's argument that s 311(1)(*d*) IRDA has not been complied with should thus be rejected.

Appeal against the costs ordered below

51 In the proceedings below, AR Koonar awarded costs of $12,000 to the Respondent for the hearing of the Second Bankruptcy Application before himself. The Appellant appealed against the costs order, contending that costs should have been fixed at $1,200 instead.

52 The Supreme Court Practice Directions ("PDs") contain a general

[47] Ong Tiong Boon's 2nd affidavit dated 20 December 2024 at para 7, exhibited in Ong Tiong Boon's 1st affidavit dated 20 December 2024 at p 15.

[48] Exhibited in Ong Tiong Boon's 2nd affidavit dated 20 December at pp 10–11; Ong Tiong Boon's 1st affidavit dated 20 December 2024 at pp 21–22.

direction that solicitors should have regard to Appendix G of the PDs, when submitting on party-to-party costs. Specifically, para 138(1) of the PDs provides:

> Solicitors making submissions on party-and-party costs (whether at assessment hearings or otherwise) or preparing their costs schedules pursuant to paragraph 137 of these Practice Directions should have regard to the costs guidelines set out in Appendix G of these Practice Directions …

The Appellant nevertheless argued that the starting point for the assessment of costs for the hearing of the Second Bankruptcy Application was not Appendix G of the PDs.[49] He pointed out that para 130 of the PDs explicitly disapplies the bulk of Part 15 of the PDs (which *includes* para 138) in the case of assessments governed by the PIR. Para 130 of the PDs reads:

> … [T]he directions contained in this Part, save for paragraph 135 [*ie*, assessments involving the Official Assignee, the Official Receiver, the Public Trustee or the Director of Legal Aid], do *not* apply to assessments governed by … the [PIR].
>
> [emphasis added]

53 The Appellant submitted that the hearing of the Second Bankruptcy Application was an assessment "governed by" the PIR. In particular, the Appellant cited, r 149 PIR, which states:

> Subject to the provisions of this Part, the costs specified in the second column of the Second Schedule are allowed in respect of the matter specified opposite in the first column of that Schedule unless the Court otherwise orders.

The Second Schedule to the PIR in turn prescribes (at row 1) the tariff for costs to be awarded when a bankruptcy order is made pursuant to a creditor's bankruptcy application:

[49] Defendant's Written Submissions for HC/RA 211/2024 dated 16 December 2024 at paras 50–57.

Description	*Costs to be allowed*
Where a bankruptcy order is made on a creditor's bankruptcy application, costs allowed to the creditor-applicant	$1,200 plus disbursements

54 The Appellant thus argued that AR Koonar should have fixed costs at $1,200, in accordance with row 1 of the Second Schedule of the PIR, rather than take guidance from Appendix G of the PDs.[50]

55 I agree with the Appellant that the assessment of costs at the hearing of a bankruptcy application *is* governed by the PIR. Specifically, Part 11 of the PIR contains various rules which are expressed to apply to proceedings under Part 3 or Parts 13 to 22 of the IRDA – this would include Part 16 of the IRDA, which governs bankruptcy applications. Accordingly, in light of para 130 of the PDs, Appendix G of the PDs would not be the first port-of-call in the determination of the appropriate costs award for bankruptcy applications, to the extent that the quantum of costs is expressly governed by tariffs prescribed by the PIR.

56 However, this does not mean that solicitors (and the court) must disregard Appendix G of the PDs in bankruptcy-related matters, even where the PIR does not expressly prescribe any tariff on the costs to be awarded. As seen in the extract at [53] above, the Second Schedule to the PIR prescribes costs of $1,200 (plus disbursements) "[w]here a bankruptcy order *has been made* on a creditor's bankruptcy application" [emphasis added]. Based on its clear wording, that tariff was not applicable to the hearing before AR Koonar, since no bankruptcy order was made by him at that hearing.

[50] Defendant's Written Submissions for HC/RA 211/2024 dated 16 December 2024 at para 56.

57 The Appellant argued that whilst no bankruptcy order was made, AR Koonar's decision – which was to refuse the Appellant's request for the dismissal of the bankruptcy application and merely grant the Appellant's application for a stay pending the disposal of OSB 69 – was *tantamount* to making a bankruptcy order. The Appellant argued that:[51]

> the effect of AR Koonar's decision and orders at the Hearing is such that if the Defendant is not successful in OSB 69, the Claimant is at liberty to request that a bankruptcy order be made against the Defendant.

It is difficult to understand the Appellant's argument. It is true that a bankruptcy order could *potentially* be made down the road, given that the Second Bankruptcy Application was merely stayed pending the disposal of OSB 69 and not dismissed. However, that simply means that if a hearing is held at some point in future and if a bankruptcy order is granted at that hearing, the tariff in row 1 of the Second Schedule to the PIR would come into play *then*. That did not change the fact that that no bankruptcy order was made at the hearing before AR Koonar, and that the PIR tariff consequently did not apply.

58 Accordingly, AR Koonar was at liberty to take guidance from Appendix G of the PDs. In particular, Appendix G of the PDs prescribes a costs range of $12,000–$35,000 for originating applications involving insolvency and restructuring. Considering the level of complexity of the issues argued before AR Koonar, the costs award of $12,000 was reasonable. The Appellant himself appeared to have accepted the reasonableness of this quantum, as he submitted that if I *allow* his appeal, costs should follow the ranges in Appendix G of the PDs and be fixed at $12,000 in his favour.[52] I saw no reason for the Appellant

[51] Defendant's Written Submissions for HC/RA 211/2024 dated 16 December 2024 at para 51.

[52] Defendant's Written Submissions for HC/RA 211/2024 dated 16 December 2024 at para 60.

to apply one standard to himself and a different standard to the Respondent.

Conclusion

59 For these reasons, I dismiss the appeal. I will now hear parties on the costs of the appeal.

Christopher Tan
Judicial Commissioner

Palmer Michael Anthony, Joel Raj Moosa and Megan Elizabeth Ong Sze Min (Quahe Woo & Palmer LLC) for the claimant;
Tiong Teck Wee and Lee Zi Zheng (WongPartnership LLP) for the defendant.