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

[2025] SGHC 92

Suit No 716 of 2021
(Registrar's Appeal No 76 of 2025)

Between

The Resolution and Collection Corporation
(formerly known as Housing Loan Administration Corporation)
… *Plaintiff*

And

(1) Tsuneji Kawabe
(2) Kawabe Bussan Co Ltd
(3) Yoshiko Kawabe
(4) Michiyo Kawabe
(5) Natamon Protpakorn
(6) D-well Pte Ltd
(7) Cloud Bliss Limited
… *Defendants*

JUDGMENT

[Civil Procedure — Discovery of documents — Specific discovery]

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The Resolution and Collection Corp
v
Tsuneji Kawabe and others

[2025] SGHC 92

General Division of the High Court — Suit No 716 of 2021 (Registrar's Appeal No 76 of 2025)
Choo Han Teck J
6 May 2025

16 May 2025 Judgment reserved.

Choo Han Teck J:

1 This is an appeal against certain orders of the Assistant Registrar ("AR") for discovery of documents in HC/SUM 3735/2024 ("SUM 3735"). The appellants are the fourth, sixth and seventh defendants ("Specified Defendants") in HC/S 716/2021. The respondent is the plaintiff in HC/S 716/2021. The facts of this suit have been set out in several of my previous judgments: see *The Resolution and Collection Corp v Tsuneji Kawabe and others* [2023] SGHC 100; *The Resolution and Collection Corp v Tsuneji Kawabe and others* [2024] SGHC 63; *The Resolution and Collection Corp v Tsuneji Kawabe and others* [2024] SGHC 259. Briefly, the plaintiff is a Japanese-incorporated company which obtained judgments from the Japanese courts (the "Japanese Judgments") against the first defendant and his company, the second defendant. Following the death of the first defendant, the plaintiff seeks to enforce the Japanese Judgments against the third defendant (the first defendant's widow) and the

Version No 2: 16 May 2025 (21:55 hrs)

fourth defendant (the first and third defendants' daughter). The sixth and seventh defendants are companies owned by the fourth defendant. The plaintiff's case is that the first defendant fraudulently misappropriated assets from the second defendant and other companies to various recipients including the other defendants in this suit. The plaintiff alleges that the Specified Defendants hold assets (against which the plaintiff is entitled to enforce the Japanese Judgments) on trust for the first and second defendants. On this basis, the plaintiff contends that the Specified Defendants are liable for unjust enrichment and/or knowing receipt.

2 On 7 July 2023, the plaintiff sought discovery of 18 categories of documents in SUM 2022/2023 ("SUM 2022") for two purposes: first, to trace assets that have allegedly been siphoned out of the second defendant and other companies to the Specified Defendants; and second, to seek an explanation of how the Specified Defendants came to be in possession of substantial assets. The AR allowed discovery of 15 out of the 18 categories and the Specified Defendants appealed against the decision. In *The Resolution and Collection Corp v Tsuneji Kawabe and others* [2024] SGHC 63, I partially allowed the appeal, ordering the Specified Defendants to produce documents subject to certain restrictions under Categories 1 and 2; Categories 4, 5 and 6; Categories 7 and 8; as well as Category 17 (the "Required Documents"). I also granted liberty to the plaintiff to apply for the disclosure of other categories of documents if the Required Documents demonstrated that those other documents were relevant or necessary to trace where the assets went.

3 Subsequently, the Specified Defendants produced heavily redacted copies of the Required Documents. The plaintiff filed SUM 2400/2024 ("SUM 2400") on 22 August 2024 for the unredacted copies of the Required Documents and further categories of documents. In *The Resolution and*

Version No 2: 16 May 2025 (21:55 hrs)

Collection Corp v Tsuneji Kawabe and others [2024] SGHC 259, I ordered production of the unredacted copies of the Required Documents but directed that applications for further discovery should be heard by an AR in the first instance. The plaintiff thus filed SUM 3735 on 24 December 2024 for discovery of the same documents sought in SUM 2400. The AR ordered the discovery of Categories 1 to 4, 6, 8, 9 and 12 on amended terms. Although he disallowed discovery under Category 14 as originally phrased by the plaintiff, he separated the requested documents under Category 14 into two categories (*ie*, Category 14 and Category 15) and allowed discovery of both on amended terms. The Specified Defendants now appeal against the AR's orders for the disclosure of Categories 8, 9 and 12 on the AR's amended terms.

4 Counsel for the Specified Defendants, Mr Shem Khoo, submits that since the fourth defendant has disclosed her source of funds, the discovery orders need to be further circumscribed accordingly. Furthermore, Categories 8, 9 and 12 are too widely formulated to satisfy the tests for relevance and necessity. He also says that the Specified Defendants should be allowed to redact documents where they are irrelevant and privileged, and the plaintiff should not be allowed to inspect such redacted information. The core of Mr Khoo's argument is that the plaintiff's two pleaded causes of action of knowing receipt and unjust enrichment, are predicated on the Specified Defendants' receipt of assets. The plaintiff must therefore prove that the Specified Defendants received assets traceable to the first and second defendants over which a trust can be declared. The fourth defendant has disclosed in her affidavit that the substantial assets of the sixth defendant were loans from the fifth defendant to the fourth defendant (which the fourth defendant transferred to the sixth defendant from 2016 to 2019 and in 2021) and that the two deposits in her personal bank accounts totalling $300,000 were

Version No 2: 16 May 2025 (21:55 hrs)

loans from Lim Khong Shee, the director of the sixth defendant. Mr Khoo says that, therefore, the remaining questions to be answered at trial are whether these loans are traceable to the first and second defendants, and the fourth defendant's state of knowledge. Any discovery orders must accordingly be limited. Counsel submits that the outflows of funds from the Specified Defendants are not relevant nor necessary for the determination of the claim. He argues that granting discovery of such documents is "akin to granting the plaintiff a tracing order or an order to account", which are remedies that should be available only if and after the plaintiff successfully proves its claim.

5 Tracing as a remedy is not the same as tracing as an evidentiary tool to establish a cause of action. The former is an equitable remedy ordered after establishing liability, while the latter serves an "evidentiary function" in establishing liability: see *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [114]. The present discovery application concerns tracing as an evidentiary tool – to determine whether the assets currently held by the Specified Defendants originally belonged to the first or second defendant. In this context, drawing a distinction between outflows and inflows of funds is artificial. The fact that this is an evidentiary tracing exercise does not render outflows irrelevant or unnecessary. Money may be channelled through intermediaries before reaching the pockets of the final recipient. The plaintiff must establish its cause of action against each defendant, and restricting discovery to inflows may not be sufficient to show where the substantial assets held in each of the Specified Defendants came from.

6 Under Categories 8 and 9, the plaintiff wanted discovery of the incorporation documents, minutes of board meetings, board resolutions and all communications relating to the incorporation, assets and management of the

Version No 2: 16 May 2025 (21:55 hrs)

sixth and seventh defendants. These communications included those with the first, third and fifth defendants. The AR granted Categories 8 and 9 subject to amended terms by restricting the scope of the "communications" to specified parties (such as communications between the defendants, Lim Khong Shee and related entities) and imposing a time limit from 2001 to 2023.

7 The fourth defendant beneficially owns the sixth and seventh defendants which hold substantial assets. Their operational history is therefore directly relevant and necessary for the trial court's determination of the pleaded issues. The plaintiff's expert has indicated that these additional documents are required to analyse the source of assets held by the Specified Defendants. I accept that even with the Required Documents, there are questions regarding the source of the Specified Defendants' assets that may only be resolved through examination of these corporate documents and communications. The corporate structure and management decisions of the sixth and seventh defendants may shed light on whether they were used as vehicles for asset dissipation. The categories are sufficiently precise as they are already limited by reference to communications relating to "incorporation, assets and management". This should naturally exclude irrelevant *de minimis* transactions while capturing materials relevant to the disputed issues.

8 Under Category 12, the plaintiff sought discovery of contracts and documents related to real properties purchased by the Specified Defendants and any right of mortgage(s) related to such properties. This was the same category that I initially dismissed as being too wide and unsustainable in *The Resolution and Collection Corp v Tsuneji Kawabe and others* [2024] SGHC 63 at [7]. The AR has now granted Category 12 but imposed a timeframe of 2001 to 2023. I see no reason to disturb his orders. The sixth defendant's annual report shows income in 2019 and 2020 from "property, plant and equipment" and

Version No 2: 16 May 2025 (21:55 hrs)

"investment properties". Moreover, the sixth defendant's principal activities changed from "real-estate activities with own or leased property NEC and other investment holding companies" (FY2016 to FY2019) to "investment in properties and financial assets" (FY2020 onwards). In any event, based on the evidence of the plaintiff's expert and the fourth defendant, the business activities of the sixth defendant are not substantial and the seventh defendant is a holding company. The documents should thus not be particularly voluminous. These requested documents directly relate to the source and transfer of funds for property purchases and are therefore relevant to tracing the Specified Defendants' substantial assets. Although my initial order in *The Resolution and Collection Corp v Tsuneji Kawabe and others* [2024] SGHC 63 was made with the intention to address the Specified Defendants' privacy and volume concerns, the Required Documents have raised additional questions requiring resolution. The documents under Categories 8, 9 and 12 relate to matters that would be relevant for cross-examination, and I am of the view that the AR has imposed appropriate limitations as to scope and time to reduce the volume of documents required.

9 The Specified Defendants wish to redact the following in Categories 8 and 9: (a) written communications between individuals insofar as they do not fall within the subject matter ordered by the court and (b) parts of documents and communications insofar as they may be privileged. I am not persuaded to allow such broad redaction rights. The earlier production of the Required Documents has demonstrated the potential difficulties with redaction rights. Although my original order contained no provision permitting redactions, the Specified Defendants nonetheless produced heavily redacted documents that obscured potentially relevant information. This necessitated further applications to court, resulting in my order in *The Resolution and Collection Corp v Tsuneji*

Version No 2: 16 May 2025 (21:55 hrs)

Kawabe and others [2024] SGHC 259 for unredacted copies to be produced. Granting an express right of redaction to the Specified Defendants at this juncture would likely lead to further litigation and unnecessary delay. Finally, the Specified Defendants contend that the costs should have been reserved to the trial judge. The AR had ordered costs of $16,000 plus disbursements of $40,000 to be paid by the Specified Defendants to the plaintiff for SUM 3735. The Specified Defendants say that it is entirely possible that the plaintiff will not succeed at trial and thus it is unjust for them to bear the costs and disbursements for discovery orders that may eventually "bear no fruit". I accept their reason and therefore permit the appeal on costs.

10 For the reasons above, I allow the appeal only to the extent of varying the costs order. Costs are reserved to the trial judge.

- Sgd -
Choo Han Teck
Judge of the High Court

Lim Ying Sin Daniel and Lakshmanan s/o Anbarazan (Joyce A. Tan & Partners LLC) for the plaintiff;
Khoo Ching Shin Shem, Teo Jia Hui Veronica and Edward Nicholas Ong Yu Xiang (Focus Law Asia LLC) for the fourth, sixth and seventh defendants.

Version No 2: 16 May 2025 (21:55 hrs)