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

[2026] SGHCR 12

Originating Claim No 51 of 2025 (Summons No 1011 of 2025)

Between

Teo Han Siang

… *Claimant*

And

(1) Lim Eng Keong
(2) Ecube Auto Credit Pte Ltd

… *Defendants*

Counterclaim of 1st Defendant

Between

Lim Eng Keong

… *Claimant in Counterclaim*

And

Teo Han Siang

… *Defendant in Counterclaim*

GROUNDS OF DECISION

[Civil Procedure — Affidavits]

Version No 1: 15 Apr 2026 (19:30 hrs)

[Civil Procedure — Striking out — Abuse of process]
[Civil Procedure — Striking out — Interests of justice]

TABLE OF CONTENTS

INTRODUCTION **1**

BACKGROUND **2**

THE PARTIES AND THE PRESENT SUIT 2

Mr Teo's pleaded case *2*

Mr Lim's pleaded case *3*

PROCEDURAL HISTORY 4

The first hearing of SUM 1011 .... *5*

Mr Lim's applications for production *7*

THE PARTIES' ARGUMENTS **9**

MR LIM'S ARGUMENTS IN SUPPORT OF STRIKING OUT 10

MR TEO'S ARGUMENTS TO OPPOSE STRIKING OUT 11

ISSUES TO BE DETERMINED **12**

THE RELEVANT PRINCIPLES **12**

ABUSE OF PROCESS 13

INTERESTS OF JUSTICE 15

STATEMENTS MADE ON AFFIDAVIT 15

THE PRESENT CASE **21**

MR TEO'S FJC AFFIDAVITS 22

MR TEO'S "PHYSICAL EVIDENCE" 30

WhatsApp messages *31*

Bank account statements *37*

Version No 1: 15 Apr 2026 (19:30 hrs)

Other evidence...*38*

SIGNIFICANCE OF THE FACT THAT THE FJC PROCEEDINGS WERE SETTLED BEFORE TRIAL 40

EVALUATION OF ALL THE CIRCUMSTANCES OF THE CASE 43

CONCLUSION...45

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Teo Han Siang
v
Lim Eng Keong

[2026] SGHCR 12

General Division of the High Court — Originating Claim No 51 of 2025
(Summons No 1011 of 2025)
AR Wee Yen Jean
13 May 2025, 13 January 2026

15 April 2026

AR Wee Yen Jean:

Introduction

1 A claimant commences suit against a defendant, claiming the repayment of several sums of money that the claimant says were loans that he had extended to the defendant. To this end, the claimant relies on various communications and documents that appear to support his case. Prior to commencing the present suit, however, the claimant filed several affidavits in separate court proceedings, stating that the relevant payments were *not* loans but instead investments, and that there was no loan due and owing to him from the defendant. Should the claimant be permitted to proceed with the present suit against the defendant, or should it be struck out under O 9 r 16 of the Rules of Court 2021 ("ROC 2021")?

2 In the present case, I allowed the defendant's application to strike out the claimant's claim on the grounds that it was an abuse of the process of the

court and that it was in the interests of justice to do so. I heard arguments from the parties and delivered my decision with brief reasons at a hearing on 13 January 2026. I now set out the full grounds of my decision.

Background

The parties and the present suit

3 The claimant in this case, Mr Teo Han Siang ("Mr Teo"), filed HC/OC 51/2025 ("the Suit") on 20 January 2025 against Mr Lim Eng Keong ("Mr Lim") and Mr Lim's company, Ecube Auto Credit Pte Ltd ("Ecube"). The claim against Ecube was discontinued by consent shortly after it was filed,[1] and Mr Lim accordingly became the only defendant to the Suit.

Mr Teo's pleaded case

4 In Mr Teo's fairly brief statement of claim dated 20 January 2025 ("SOC"), he alleged that Mr Lim had requested several loans from him for the purpose of financing Mr Lim's personal investments in "apparent 'land flipping' projects in Lombok Indonesia". Specifically, Mr Teo claimed that:[2]

(a) On 3 May 2019, on Mr Lim's request, Mr Teo disbursed a loan of S$150,000 to Mr Lim ("the May 2019 Transfer").

(b) On or around 2 September 2019, again on Mr Lim's request, Mr Teo disbursed a further loan of S$100,000 to Mr Lim through Ecube's bank account ("the September 2019 Transfer").

I will refer to these sums collectively as "the Disputed S$250,000".

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[1] Notice of Discontinuance/Withdrawal dated 11 February 2025.

[2] Claimant's Statement of Claim dated 13 January 2025 and filed on 20 January 2025 ("SOC") at paras 4–6.

Version No 1: 15 Apr 2026 (19:30 hrs)

5 According to Mr Teo, he was willing to extend these loans to Mr Lim because of their relationship and previous dealings, and in return for a share of the interest that Mr Lim would earn on these investments.[3] However, as Mr Lim only repaid a sum of S$15,000 on or around 12 March 2021 ("the March 2021 Transfer") despite repeated pressing by Mr Teo, Mr Teo filed the Suit claiming repayment of the outstanding principal loan amount plus interest, amounting to a total of S$401,308.22.[4]

Mr Lim's pleaded case

6 Mr Lim's defence was that any funds that were transferred to him from Mr Teo were part of an investment that Mr Teo had agreed to take part in, and that Mr Teo was well aware that there was a risk that he would not recover his principal investment.[5]

7 Mr Lim also pleaded that, when Mr Teo was undergoing divorce proceedings in the Family Justice Courts in 2020 – these being FC/D 969/2020 ("the FJC Proceedings") – Mr Lim had filed an affidavit on Mr Teo's behalf dated 9 December 2020 ("Mr Lim's FJC Affidavit") stating that both the May 2019 Transfer and the September 2019 Transfer had been sums entrusted to him by Mr Teo, which Mr Lim was to invest on his behalf in an investment in Indonesia.[6] Mr Lim stated that he believed that Mr Teo had filed his own affidavits in the FJC Proceedings that would corroborate this, and Mr Lim's

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[3] SOC at paras 4 and 8–9.

[4] SOC at para 7 and p 6.

[5] 1st Defendant's Defence & Counterclaim dated 18 February 2025 ("Defence & Counterclaim") at paras 4(b), 5(b) and 6(c).

[6] Defence & Counterclaim at para 7(c).

Version No 1: 15 Apr 2026 (19:30 hrs)

solicitors had requested copies of those affidavits prior to filing his defence, but Mr Teo had refused to provide the same.[7]

8 In the alternative, if the May 2019 Transfer and the September 2019 Transfer were in fact loans and not investments, Mr Lim pleaded that Mr Teo was not a licensed moneylender, and his claim was accordingly unenforceable under the Moneylenders Act (Cap 188, 2010 Rev Ed).

9 Finally, Mr Lim averred that the March 2021 Transfer was not part-payment of any obligation undertaken by him, but was instead a loan provided by *him* to Mr Teo, as Mr Teo claimed that he was facing financial difficulties and needed funds to sustain his company.[8] As Mr Teo had not repaid this sum of money, Mr Lim counterclaimed against Mr Teo for the sum of S$15,000 with interest .[9]

Procedural history

10 The procedural history of this matter was somewhat protracted and complicated by the difficulties that Mr Lim encountered in obtaining copies of the affidavits that Mr Teo had filed in the FJC Proceedings. On 17 March 2025, Mr Lim's solicitors informed the court that they had requested these from Mr Teo's solicitors on several occasions since the Suit was commenced, but to no avail, and that they had also attempted unsuccessfully to obtain these from the Family Justice Courts. In the same letter, Mr Lim's solicitors asked the assistant registrar managing the Suit in the General Division of the High Court ("the RCC AR") to allow them to "inspect" the affidavits Mr Teo had filed in

[7] Defence & Counterclaim at para 7(d).

[8] Defence & Counterclaim at para 7(e).

[9] Defence & Counterclaim at paras 15–16.

Version No 1: 15 Apr 2026 (19:30 hrs)

the FJC Proceedings. That request was refused on the ground that the court was not in a position to make any direction or order in respect of cases not within its jurisdiction.[10]

11 On 14 April 2025, Mr Lim filed HC/SUM 1011/2025 ("SUM 1011"), seeking to strike out Mr Teo's SOC in its entirety on one or more of the grounds set out in O 9 r 16(1) of the ROC 2021. In support of SUM 1011, Mr Lim argued that Mr Teo's allegations in the Suit were contradicted by the evidence, relying chiefly on Mr Lim's FJC Affidavit. Mr Lim asserted that, after the FJC Proceedings had been commenced against Mr Teo, Mr Teo had approached him "for assistance to declare that the sums that he had given [Mr Lim] were in fact investments that had gone sour as his wife was seeking to make a claim against his assets". Mr Lim further asserted that, while his own FJC Affidavit was "a supporting affidavit approved by [Mr Teo]", Mr Teo had told him that "he himself had filed an affidavit denying that the sums were given to [Mr Lim] as a loan".[11]

The first hearing of SUM 1011

12 I first heard SUM 1011 on 13 May 2025. In the course of the parties' oral arguments, counsel for Mr Lim urged me to exercise the general powers of the court under O 3 r 2 of the ROC 2021 to order Mr Teo to produce the affidavits that he had filed in the FJC Proceedings, to assist in the determination of SUM 1011.

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10 Letter from Parwani Law LLC to the Supreme Court Registry dated 17 March 2025 at paras 6–7 and 9, and the Court's Reply dated 18 March 2025.

11 1st Affidavit of Lim Eng Keong in HC/SUM 1011/2025 dated 14 April 2025 ("Mr Lim's Supporting Affidavit") at paras 11–16.

Version No 1: 15 Apr 2026 (19:30 hrs)

13 I declined to make such an order for production. The application before me was a striking out application, and not an application for production. In my view, O 3 r 2(2) of the ROC 2021 was clear that the court's power to "do whatever [it] considers necessary on the facts of the case before it to ensure that justice is done or to prevent an abuse of … process" applied only where there was "no express provision in [the ROC 2021] or any other written law" on the matter. In the present case, the procedural framework for the production of documents had been set out in O 11 of the ROC 2021, and I did not think it would have been appropriate to allow the parties to sidestep the procedural requirements that would ordinarily apply before an order for production is made.

14 I add that, while counsel for Mr Lim did not seek to rely on the court's power to order the production of documents of its own accord under O 11 r 4 of the ROC 2021, I would have declined to make such an order under O 11 r 4 in any event. At the time of the first hearing of SUM 1011, the parties had not yet had an opportunity to fully ventilate the issue of whether and to what extent Mr Lim's affidavits in the FJC Proceedings were material to the issues in the Suit. This was not a situation where the documents to be produced had been referred to in Mr Teo's pleadings, so as to fall within the scope of the principle considered in *Interactive Digital Finance Ltd and another v Credit Suisse AG and another* [2023] 5 SLR 1735 at [30]–[33] and [35]–[37], where an application for production might not have been necessary. In this case, the making of such an order under O 11 r 4 would effectively have allowed Mr Lim to circumvent the ordinary process of obtaining an order for specific production of those affidavits simply by arguing that they were material to the determination of SUM 1011, and I did not think that would have been appropriate.

Version No 1: 15 Apr 2026 (19:30 hrs)

15 Counsel for Mr Lim suggested, in the alternative, that I could review the affidavits Mr Teo had filed in the FJC Proceedings on my own to ascertain their contents, and then hear the parties' submissions on those affidavits. However, in my view, this would have been even more inappropriate. Those affidavits had not been placed before this court by either party. Given Mr Lim's unsuccessful attempts to obtain these from the Family Justice Courts and through the RCC AR, it was not for me to inform myself of the contents of those affidavits and take them into consideration in determining SUM 1011, when they had not been properly adduced as evidence in these proceedings.

16 Having heard my directions on these matters, counsel for Mr Lim requested an adjournment of SUM 1011 to allow Mr Lim to file a formal application for the production of the affidavits that Mr Teo had filed in the FJC Proceedings. I pause here to observe that, if Mr Lim had wished to rely on those affidavits in support of his application to strike out the SOC, such an application ought to have been made before SUM 1011 was filed. Be that as it may, given the contents of Mr Lim's FJC Affidavit, I accepted that the affidavits filed by Mr Teo in the FJC Proceedings – if found to be material to the issues in the Suit – were likely to be necessary for the fair determination of SUM 1011. Matters having already unfolded as they had, I was of the view that granting the adjournment was the sensible and practical way forward in the circumstances. I therefore adjourned SUM 1011 pending the determination of Mr Lim's intended application for production.

Mr Lim's applications for production

17 On 28 May 2025, Mr Lim filed HC/SUM 1504/2025 ("SUM 1504"), seeking the production of all of Mr Teo's affidavits filed in the FJC Proceedings pursuant to O 11 r 3 of the ROC 2021.

Version No 1: 15 Apr 2026 (19:30 hrs)

18 On 22 July 2025, the assistant registrar hearing SUM 1504 ("the AR") ordered Mr Teo to produce the affidavit of assets and means that he had filed in the FJC Proceedings ("the AAM Affidavit"), redacted in its entirety except for: (a) contents (whether in the body or exhibits of the AAM Affidavit) which referred to the Disputed S$250,000, and (b) the parts that identified the maker of the AAM Affidavit and that stated that the AAM Affidavit had been affirmed or sworn by the maker and the date on which it had been affirmed or sworn. The AR ordered only the AAM Affidavit to be produced because Mr Teo had confirmed, in his affidavit in reply to SUM 1504, that this was the *only* affidavit he had filed in the FJC Proceedings which made reference to the Disputed S$250,000.[12]

19 Mr Teo produced his AAM Affidavit, dated 9 December 2020, on 5 August 2025. After reviewing the AAM Affidavit and investigating the matter further, counsel for Mr Lim discovered that there were *other* affidavits filed by Mr Teo in the FJC Proceedings that dealt with the Disputed S$250,000. In particular, Mr Teo's ex-wife – one "Lim Siow Ling" ("Mdm Lim") – informed counsel for Mr Lim that "[i]nformation related to [the] Indonesia investment" was in Mr Teo's "second and third affidavit as well". However, Mr Teo declined to produce these upon request. Consequently, on 11 September 2025, Mr Lim filed HC/SUM 2629/2025 ("SUM 2629") seeking the variation of the AR's orders in SUM 1504 to include the production of the second and third affidavits filed by Mr Teo in respect of the ancillary matters in the FJC Proceedings (collectively, "the Ancillary Matters Affidavits"). Mr Lim also filed HC/SUM 2630/2025 ("SUM 2630"), seeking an order that Mdm Lim produce the Ancillary Matters Affidavits.

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12 Reply Affidavit of Teo Han Siang for HC/SUM 1504/2025 dated 18 June 2025 ("Mr Teo's SUM 1504 Affidavit") at para 33.

Version No 1: 15 Apr 2026 (19:30 hrs)

20 On 23 October 2025, the AR ordered Mr Teo to produce the Ancillary Matters Affidavits on terms similar to those on which he had granted the production order in SUM 1504. The AR noted that it was not disputed that the Ancillary Matters Affidavits dealt with the Disputed S$250,000, and that Mr Teo's explanation for not mentioning the Ancillary Matters Affidavits in response to SUM 1504 was that he had forgotten about them. The AR therefore made an order for further production in respect of SUM 2629. The AR dismissed SUM 2630 on the basis that this application for non-party production against Mdm Lim was not necessary, given that Mr Teo's Ancillary Matters Affidavits could be obtained from Mr Teo himself.

21 Pursuant to these orders, Mr Teo produced the Ancillary Matters Affidavits dated 4 March 2022 and 19 April 2022, and these – together with the AAM Affidavit – were exhibited in a further affidavit in support of SUM 1011 that Mr Lim filed on 21 November 2025.[13] I also granted Mr Teo permission to file a further responsive affidavit in SUM 1011, which Mr Teo did on 3 December 2025,[14] and directed both parties to file further written submissions for SUM 1011 in view of these developments.

The parties' arguments

22 The scope of the parties' arguments in respect of SUM 1011 was whittled down considerably following Mr Teo's production of his AAM Affidavit and Ancillary Matters Affidavits (collectively, "Mr Teo's FJC

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13 2nd Affidavit of Lim Eng Keong in HC/SUM 1011/2025 dated 21 November 2025 ("Mr Lim's Further Affidavit").

14 2nd Affidavit of Teo Han Siang in HC/SUM 1011/2025 dated 3 December 2025 ("Mr Teo's Further Affidavit").

Version No 1: 15 Apr 2026 (19:30 hrs)

Affidavits”). By the end of the second hearing of SUM 1011 before me on 13 January 2026, the parties’ arguments could be summarised briefly as follows.

Mr Lim’s arguments in support of striking out

23 Mr Lim’s primary argument was that the Suit should be struck out as an abuse of process, and that striking out would be in the interests of justice. In this regard, Mr Lim relied on several statements in Mr Teo’s FJC Affidavits to the effect that the May 2019 Transfer and the September 2019 Transfer were *not loans*, but were instead *investments* that he had made through Mr Lim, and which had since become unrecoverable. Mr Lim submitted that the Suit was therefore “a classic case of approbation and reprobation” because it was based on a position that was diametrically opposed to the sworn evidence previously given by Mr Teo in the FJC Proceedings. This inconsistency was fundamental because it went towards the nature of the transaction and Mr Teo’s own understanding and characterisation of the payments that had been made to Mr Lim.[15]

24 Mr Lim further submitted that Mr Teo’s deliberate and persistent refusal to disclose his FJC Affidavits aggravated his abuse of process. Mr Lim highlighted that he had repeatedly requested the production of Mr Teo’s FJC Affidavits, but Mr Teo had refused to produce them despite their “obvious relevance” to the Suit, such that Mr Lim was compelled to file SUM 1504 and SUM 2629, both of which Mr Teo contested. Mr Lim argued that this was “not a mere procedural lapse”, but rather “positive conduct aimed at suppressing

[15] 1st Defendant’s further written submissions dated 2 January 2026 (“1DFWS”) at paras 18–21.

Version No 1: 15 Apr 2026 (19:30 hrs)

material evidence that [was] unfavourable to his current claim" in the Suit, and a "calculated attempt to manipulate the judicial process" and mislead the court.[16]

Mr Teo's arguments to oppose striking out

25 In response, Mr Teo submitted that the issue of whether the May 2019 Transfer and the September 2019 Transfer were loans or investments, and whether there were any outstanding payments due from Mr Lim, were not issues raised in the FJC Proceedings because those proceedings involved Mr Teo and Mdm Lim "feuding over ownership and identification over whether the $250,000 was an individual or matrimonial asset". According to Mr Teo, "[w]hether it had been a loan or investment, it would still have qualified as a matrimonial asset back then (if it was from mixed funds and not individual funds), and so the issue of which it really was, was not pivotal to the purpose it was being presented for, for those family proceedings". Further, as the FJC Proceedings were ultimately settled prior to trial, Mr Teo's FJC Affidavits were "never subjected to cross-examination", and the characterisation of the May 2019 Transfer and the September 2019 Transfer therefore remained "a live open issue" to be considered in the Suit.[17]

26 Instead, Mr Teo argued that the contemporaneous "physical evidence" showed that Mr Lim had consistently acted as though the May 2019 Transfer and the September 2019 Transfer were loans from Mr Teo, and not investments by Mr Teo through him. These included, in particular, WhatsApp messages between the parties dating from 3 May 2019 (the date of the May 2019 Transfer) to 4 October 2024. It was only in Mr Lim's FJC Affidavit and Mr Teo's FJC

[16] 1DFWS at paras 23–29.

[17] Claimant's further written submissions dated 2 January 2026 ("CFWS") at paras 6–7 and 8(c).

Version No 1: 15 Apr 2026 (19:30 hrs)

Affidavits that a different characterisation was adopted. Thus, Mr Teo submitted, the Suit should proceed to a full trial, "to test both the physical and testimonial evidence of both the witnesses".[18]

27 Mr Teo also denied having deliberately suppressed his FJC Affidavits. He said that he "had not downloaded the relevant documents from [his] previous solicitors and their download link expired years ago", such that he "did not have those affidavits in [his] actual possession", and – because the FJC Proceedings took place several years ago – he "could not remember every single document and statement filed".[19]

Issues to be determined

28 The scope and shape of the parties' arguments by the end of the second hearing of SUM 1011 left only one main question to be determined, which was whether Mr Teo's FJC Affidavits – and the positions he had taken therein in relation to the Disputed S$250,000 – should prevent him from now proceeding with the Suit. I answered this question in the affirmative.

29 In the remainder of these grounds, I first consider the relevant legal principles before analysing how they should be applied to a case like the present, and explaining why the Suit ought to be struck out *both* as an abuse of process and in the interests of justice.

The relevant principles

30 In support of his application to strike out Mr Teo's claim in the Suit, Mr Lim relied primarily on authorities on the doctrine of approbation and

[18] CFWS at para 8.

[19] Mr Teo's Further Affidavit at para 9.

Version No 1: 15 Apr 2026 (19:30 hrs)

reprobation, although counsel for Mr Lim clarified in his oral submissions that he was relying more broadly on the "general concept of abuse of process" and was not confining himself to this specific doctrine.[20]

31 I agreed that it was more helpful, in the present case, to start with the broader concept of abuse of process.

Abuse of process

32 I begin with the principles that are relevant in determining whether a pleading is "an abuse of process of the Court" for the purpose of O 9 r 16(1)(*b*) of the ROC 2021.

33 In *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 ("*Gabriel Peter*") at [22], the Court of Appeal explained the term "abuse of the process of the [c]ourt", in the context of the predecessor to O 9 r 16(1)(*b*) of the ROC 2021 in the Rules of Court 1996, as follows:

> The term, 'abuse of the process of the Court', … has been given a *wide interpretation* by the courts. It includes considerations of public policy and the interests of justice. This term signifies that the process of the court must be used *bona fide* and properly and must not be abused. *The court will prevent the improper use of its machinery.* It will prevent the judicial process from being used as a means of vexation and oppression in the process of litigation. *The categories of conduct* rendering a claim frivolous, vexatious or an abuse of process *are not closed and will depend on all the relevant circumstances of the case.* …
>
> [emphasis added]

[20] Certified Transcript of the hearing on 13 January 2026 ("Transcript") at p 25 lines 21–28.

Version No 1: 15 Apr 2026 (19:30 hrs)

34 For instance, it is clear that a party's adoption of inconsistent positions in the same or related proceedings may constitute an abuse of process. In *BWG v BWF* [2020] 1 SLR 1296 ("*BWG*") at [55]–[56], the Court of Appeal held that "[t]he assertion of inconsistent positions may be treated as an abuse of process in order to protect the integrity of the judicial process and to safeguard the administration of justice". The Court of Appeal also clarified that the taking of inconsistent positions was dealt with under the doctrine of abuse of process, rather than the doctrines of approbation and reprobation or waiver by election (*BWG* at [100]). However, the Court of Appeal went on to observe, after analysing the doctrines of approbation and reprobation and waiver by election, that "[w]hile it is true that a party in a litigation is normally entitled to pursue alternative and seemingly inconsistent positions, the abuse of process doctrine in whichever form is typically engaged when a party has secured a *benefit* from an earlier inconsistent position" [emphasis in original] (*BWG* at [127]).

35 Nevertheless, given that the doctrine of abuse of process is "a discretionary jurisdiction, and may involve considerations of public policy", the Court of Appeal in *BWG* also recognised that, "by reason of *policy considerations and in exceptional circumstances*, the court may decline to hold that a party is in abuse of process *despite* the party's inconsistent conduct if there is a risk of even greater injustice in barring that party from taking such an inconsistent position" [emphasis in original] (*BWG* at [58]). Thus, in *BWG* itself, the Court of Appeal held that a party should not be barred from raising an illegality defence, notwithstanding that it appeared to have displayed inconsistent conduct, as "there [was] a risk of an even greater injustice should the [other party] be free to enforce a potentially illegal contract" (*BWG* at [97]–[99] and [128]).

Version No 1: 15 Apr 2026 (19:30 hrs)

Interests of justice

36 I now turn to the principles that are relevant in determining whether it would be "in the interests of justice" to strike out a pleading under O 9 r 16(1)(*c*) of the ROC 2021.

37 This provision "gives effect to the court's inherent jurisdiction to prevent injustice", such as where the claim is plainly or obviously unsustainable: *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 at [19]. However, it is of course not limited to situations where the claim is plainly or obviously unsustainable – the court "wields an unfettered and wide power to achieve and meet the ends of justice", and "what may amount to being in the interests of justice is logically and properly an inexhaustive list" (*Singapore Civil Procedure 2026* (Cavinder Bull SC gen ed) (Sweet & Maxwell, 2026) at para 9/16/1).

Statements made on affidavit

38 How should these principles be applied to a situation like that in the present case – where a party has brought a claim premised on factual assertions that directly contradict earlier statements made by the same party, on affidavit, in proceedings before a different court? In my view, this engages a set of considerations that overlaps with, yet is distinct from, those that apply where a party has adopted inconsistent positions in litigation more generally; and such a party's claim is liable to be struck out *both* as an abuse of process under O 9 r 16(1)(*b*) and in the interests of justice under O 9 r 16(1)(*c*) of the ROC 2021, for the reasons I now explain.

39 A party may adopt inconsistent positions, whether in the same or related proceedings, in a variety of different ways. It may do so, for instance, by

Version No 1: 15 Apr 2026 (19:30 hrs)

accepting the validity of a particular state of affairs in one forum, but later choosing to dispute the same state of affairs in another forum – as where a debtor has previously admitted that it owes a debt, but subsequently disputes the same debt in an application to stay winding-up proceedings brought against it (which the Court of Appeal in *BWG* considered to be a "paradigm example of abuse": *BWG* at [55]). Another illustration may be found in *First National Bank plc v Walker* [2001] 1 FLR 505 ("*First National Bank*"), where one party (the wife) attempted to raise a defence of undue influence against the bank's claim for possession of the mortgaged matrimonial home, in order to argue that the mortgage did not bind her – even though, in her earlier application for ancillary relief in the matrimonial proceedings against her husband, she had accepted that the bank's mortgage over the property was valid and binding on both of them, and had obtained relief on that basis (see *First National Bank* at [1], [3] and [81]). The gravamen of such a party's abuse of process would seem to lie in the attempt to 'have one's cake and eat it too' by taking two incompatible positions for the purpose of achieving different ends, and in the corresponding unfairness caused by taking these inconsistent positions at the expense of one's counterparties.

40 Where the inconsistency arises from a party having *given evidence* in one set of proceedings that the true state of affairs is as he asserted, and then subsequently advancing a claim that is based on a fundamentally different – and incompatible – state of affairs, the potentially abusive character of the party's conduct does not lie *only* in the fact that he has tried to 'have his cake and eat it too'. It *also* flows from the fact that, having previously *sworn before a court that a particular version of events was the truth*, he now urges the same or another court to grant him a remedy based on a *fundamentally different* version of events. Affidavits are one of the main ways in which the courts may receive evidence, and the formal requirements to which affidavits are subject are not

Version No 1: 15 Apr 2026 (19:30 hrs)

mere formalities, but rather serve to underscore the important role they play in the court's ability to find facts and thus in the court's quest to ascertain the truth – or, at least, the particular slice of the truth that can be ascertained through the judicial process in an adversarial system, for the purposes of adjudicating on the parties' claims fairly and in accordance with the law. Affidavits must be sworn or otherwise affirmed by their deponents, and typically must contain statements to the effect that the matters deposed therein are "true" (in so far as they are within the deponent's personal knowledge) or at least "true to the best of [his] knowledge, information and belief". Once filed, affidavits are received by the court as solemn statements on oath of the truth, or at least what the deponent believes to be the truth. It is for this reason that statements on affidavit are taken seriously, and should not be made lightly.

41 An illustration of the seriousness with which false statements on affidavit will be viewed by the court may be found in *Law Society of Singapore v Chung Ting Fai* [2006] 4 SLR(R) 587 ("*Chung Ting Fai*"), albeit in the context of disciplinary proceedings against a legal professional. There, the respondent advocate and solicitor represented a client in divorce proceedings. A legal assistant in the respondent's firm had prepared a draft affidavit in support of an application for an extension of time to appeal, which was to be endorsed by the client. The draft affidavit contained material inaccuracies as to the events leading up to the decision to file the appeal, and, essentially, placed the blame for the delay in filing the appeal on the client (see *Chung Ting Fai* at [23]). The client refused to endorse the draft affidavit and lodged a complaint against the respondent with the Law Society. Notwithstanding that the affidavit containing these inaccuracies remained in draft form and had not been filed, the High Court observed that "if it had been filed, the respondent's foolish action would have been consummated, and the result (albeit probably unintended) would have been *a deception of the court*" [emphasis added] (*Chung Ting Fai*

Version No 1: 15 Apr 2026 (19:30 hrs)

at [37]). Although the High Court accepted that the respondent had not acted dishonestly, but rather had drafted the affidavit in the manner that he did "out of a misplaced zealousness in order to obtain an extension of time to appeal on behalf of his client", it nevertheless ordered that the respondent be suspended from practice for one year (*Chung Ting Fai* at [35] and [49]).

42 In this sense, the need to "protect the integrity of the judicial process and to safeguard the administration of justice" (referred to in *BWG* at [56]) may be even greater where a party later seeks to take a position that is inconsistent with a position he has previously adopted *on affidavit*. Unless the party is able to offer a cogent explanation for his change of position (for instance, if he is seeking to correct an inaccuracy in his earlier account of the facts in the light of new information that he has come upon), he should expect to be held to the version of the truth that he has previously affirmed before the court, and should not be allowed to now advance a different version of the truth for the purposes of obtaining relief from the court in another set of proceedings, for that would be an improper use of the court's machinery in the sense contemplated in *Gabriel Peter* at [22] (see [33] above). A party who attempts to do this may be held to have abused the process of the court, and the court may intervene to prevent him from proceeding further based on these inconsistent versions of the "truth".

43 Apart from such claims being an abuse of process, the striking out of such claims may also be in the interests of justice more broadly. As I have noted at [37] above, the court's power to strike out a pleading in the interests of justice gives effect to its inherent jurisdiction to prevent injustice, or (viewed positively) to achieve and meet the ends of justice. A party who seeks to take inconsistent positions in this particular way effectively seeks to resile from his own sworn position before the court in earlier proceedings, and urges the court

Version No 1: 15 Apr 2026 (19:30 hrs)

in subsequent proceedings to disregard that sworn position and accept an alternative version of events as being the truth, without having explained his departure from his earlier sworn position. If those inconsistent positions cannot both be true, one or the other must involve a "deception of the court" – to borrow the language used in *Chung Ting Fai* – or, at least, an attempt to deceive or mislead the court. Allowing such a party to proceed on this basis would run counter to the interests of justice, and the integrity and coherence of the system within which justice is dispensed.

44 In these respects, the considerations that are engaged in a situation like the present case are therefore not quite the same as those that are involved where a party adopts inconsistent positions in litigation more generally. In the latter situation, given that a party to litigation is "normally entitled to pursue alternative and seemingly inconsistent positions" in advancing his case, what may push a party's conduct over the line and render it abusive is the fact that he has already "secured a *benefit* from an earlier inconsistent position" [emphasis added] (see *BWG* at [127], cited at [34] above). But where the gravamen of the party's conduct lies instead in his attempt to resile from what he previously swore to the court to be the truth, in order to advance a different claim based on an inconsistent version of events, it would not seem to be strictly necessary for him to have secured a benefit from his earlier position in order for his conduct to cross the line into being abusive. Instead, the abusiveness would seem to lie in the fact that the party's present conduct is inconsistent with his earlier *affirmation to the court*, on affidavit, that a fundamentally different version of events was true.

45 I pause here to emphasise that the analysis ultimately remains a fact-sensitive one. The court's discretion to strike out a pleading as an abuse of process – or, for that matter, in the interests of justice – must be exercised with

Version No 1: 15 Apr 2026 (19:30 hrs)

regard to all the interests involved in and all the circumstances of the case before it, as the Court of Appeal emphasised in *BWG* at [53]. It goes without saying that not *every* inconsistency, even if it arises from statements made on affidavit, will necessarily amount to an abuse of process; nor will striking out necessarily be in the interests of justice. Whether or not this is so will, of course, depend on the facts of the particular case.

46 With all this in mind, I set out some general principles that may guide the court's analysis of a situation where a party takes a position that is inconsistent with a position that he previously affirmed on affidavit. In my view, where:

> (a) the relevant statements in the earlier affidavit deal with the *same subject matter* as those in issue in the later proceedings;
>
> (b) the affidavit is made by the *same party* that now seeks to take a different position;
>
> (c) the relevant facts (*ie*, those that were asserted in the earlier statements on affidavit and those that now underlie the party's position in the later proceedings) were *within that party's knowledge* at all material times;
>
> (d) the assertions of fact in the earlier affidavit are *fundamentally inconsistent* and indeed *incompatible* with those that the party seeks to advance in the later proceedings;
>
> (e) that party does not offer *any cogent explanation* for his change of position; and

(f) it is *not an exceptional case* where, by reason of policy considerations, there is a risk of even greater injustice in barring that party from changing his position in this manner (see [35] above),

then that party's claim or defence (as the case may be) will ordinarily be liable to be struck out as an abuse of process and in the interests of justice.

47 I now turn to the facts of the present case, which were a particularly clear case of a party's attempt to take inconsistent positions being an abuse of process, and of the striking out of that party's claim being in the interests of justice.

The present case

48 In this case, the entire basis of Mr Teo's claim against Mr Lim in the Suit was that the May 2019 Transfer and the September 2019 Transfer were *loans* extended by him to Mr Lim, which had to be repaid. This characterisation of the Disputed S$250,000 was the factual foundation upon which Mr Teo's pleaded case rested. The issue of how these transfers ought to be characterised was also the central issue in dispute between the parties in the Suit, since Mr Lim's pleaded defence was that the May 2019 Transfer and the September 2019 Transfer were not loans, but instead *investments* that Mr Teo wished to make through him, and which he (Mr Lim) was not liable to return. Adjudicating the Suit would therefore have required the court to determine whether Mr Teo's or Mr Lim's version of events and characterisation of the two transfers should be believed.

49 Ordinarily, answering a question like this would have required the court to consider all the evidence offered by the claimant in support of his version of events, and all the evidence offered by the defendant in support of his own

Version No 1: 15 Apr 2026 (19:30 hrs)

competing version of events, before arriving at a decision on whether the claimant had discharged his burden of proof. Here, however, Mr Teo himself had previously given evidence in his own FJC Affidavits that *directly contradicted* the version of events he was seeking to advance in the Suit.

Mr Teo's FJC Affidavits

50 The relevant statements in each of Mr Teo's three FJC Affidavits bear setting out in full, as these were Mr Teo's own words and they speak for themselves.

51 First, in his AAM Affidavit dated 9 December 2020, Mr Teo affirmed the following:[21]

> …
>
> 46. *There is a sum of $250,000.00 invested through Lim Eng Keong in an Indonesian investment.* Unfortunately, the investment is likely to be a total loss as indications are that it is a fraud case. Please refer to the affidavit of Lim Eng Keong filed or to be filed herein. I submit the value is nil.
>
> …
>
> <u>Indonesian Investments through Lim Eng Keong</u>
>
> …
>
> 97. The sum of $250,000.00 made through Lim Eng Keong in the Indonesian investments are from my own contributions except that the Plaintiff [*ie*, Mdm Lim] contributed the total sum of $60,000.00 in March 2019 and September 2019. The Plaintiff demanded that I pay her the sum of $60,000 with interest in advance. Accordingly, I paid her the sum of $61,750.00 on 7 January 2020. As the investment is likely unrecoverable, the Plaintiff owes me the return of the sum of $61,750.00 which I paid to her on 7 January 2020. Alternatively, the sum of $50,000 due to the Plaintiff (mentioned in the preceding paragraph [*ie*, para 96 of Mr Teo's AAM Affidavit]) will be used to partly set-off the sum of $61,750.00 due to me with the balance to be paid to me.

21 Mr Lim's Further Affidavit, Exhibit LEK-2 at pp 6–8.

Version No 1: 15 Apr 2026 (19:30 hrs)

> …
>
> [emphasis added]

52 Second, in his second Ancillary Matters Affidavit dated 4 March 2022 ("Mr Teo's Second Ancillary Matters Affidavit"), Mr Teo affirmed the following:[22]

> …
>
> 74. At the end of the day, all that I owe the Plaintiff [*ie*, Mdm Lim] in respect of CSO is the sum of $50,000 which I had borrowed from her. This was the position I had stated [at] paragraph 96 [of Mr Teo's AAM Affidavit] and I stand by it. …
>
> …

<u>Investment through Lim Eng Keong</u>

No	Date	Investment	Paid By	Nature of Investment through Lim Eng Keong	
1		$190,000.00	Han Siang	$100,000 dated 6/3/2019 $90,000 dated 4/9/2019	
2		$60,000.00	Plaintiff	$50,000.00 dated 9/3/2019 investment with interest return of 3% per month $10,000.00 dated 4/9/2019 investment with 10% interest return	
	Total	$250,000.00			

53 The third of Mr Teo's FJC Affidavits is crucial. In his third Ancillary Matters Affidavit dated 19 April 2022 ("Mr Teo's Third Ancillary Matters Affidavit"), Mr Teo referred to his earlier answers to Mdm Lim's request for interrogatories regarding a withdrawal of S$100,000 from his bank account on 4 September 2019. In those earlier answers, Mr Teo had stated that Mr Lim had on that particular occasion asked him to transfer the monies to Ecube's bank account (instead of directly to Mr Lim's bank account), and suggested –

[22] Mr Lim's Further Affidavit, Exhibit LEK-2 at pp 13 and 18.

Version No 1: 15 Apr 2026 (19:30 hrs)

referring to "[his] response to S/N 4 (11) of [Mdm Lim's] request for interrogatories" – that this sum had been transferred to Mr Lim as a short-term loan. In his Third Ancillary Matters Affidavit, Mr Teo sought to correct those earlier answers, in the following terms:[23]

> …
>
> 18. My reference to my response under S/N 4 (11) of the Plaintiff's [*ie*, Mdm Lim's] request for interrogatories in respect of the said withdrawal of $100,000 on 4 September 2019 is incorrect, and for that, I apologize for the inadvertent error on my part. The transfer of $100,000 on 4 September 2019 to Lim Eng Keong's company was **not** a short-term loan, ***but instead, was the $100,000 that formed part of the $250,000 investment that I made through Lim Eng Keong for the purposes of the Indonesian land-flipping investment***. For the avoidance of doubt, there is **no** loan to Lim Eng Keong due and owing to me at all.
>
> 19. In this regard, I refer to paragraph 2 LEK-1 [*ie*, Mr Lim's FJC Affidavit] where Lim Eng Keong states '*In March 2019, Teo Han Siang entrusted a sum of $150,000.00 to me which sum I was to invest on his behalf in an investment in Indonesia'*. This is supported by the withdrawal of $150,000 on 6 March 2019 from the director's loan account from RCS, and I had set this out in my response to the Plaintiff's request from interrogatory under S/N 10(1) … I also refer to paragraph 63 PAM-2 [*ie*, the Plaintiff's second ancillary matters affidavit] where the Plaintiff herself states '*Sometime in March 2019, the Defendant entrusted a sum of S$150,000 to Mr Lim Eng Keong … to invest on the parties' behalf in an investment in Indonesia ('1st Indonesian investment')'*.
>
> 20. I also refer to paragraph 3 LEK-1 where Lim Eng Keong states '*In September 2019, Teo Han Siang entrusted a further a* [sic] *sum of $100,000.00 to me which I was to invest on his behalf in a further investment in Indonesia through the said Anisha Putri.'* This is in fact the sum of $100,000 I had transferred to Lim Eng Keong's company on 4 September 2019. I also refer to paragraph 63 PAM-2 where the Plaintiff herself states '*The Defendant further entrusted a sum of S$100,000 towards the Indonesian investment sometime in September 2019 ('2nd Indonesian investment')'*.
>
> 21. The Plaintiff herself has not identified any other withdrawal of $100,000.00 from my bank accounts in

23 Mr Lim's Further Affidavit, Exhibit LEK-2 at pp 21–22.

Version No 1: 15 Apr 2026 (19:30 hrs)

> September 2019 save for the said withdrawal of $100,000.00 on 4 September 2019 which I had ***inadvertently mischaracterized as a loan to Lim Eng Keong*** when in fact, ***it was the further investment I had made in respect of the Indonesian land-flipping investment***. It is devious for the Plaintiff to try to capitalize on my inadvertent error and try to falsely allege that there is an *additional* sum of $100,000 due and owing to me by Lim Eng Keong when in fact, there is none.
>
> …
>
> [emphasis in original in italics and bold underline; emphasis added in bold italics]

54 It should also be noted that Mr Teo's Second Ancillary Matters Affidavit described Mr Lim's FJC Affidavit as having been filed "for and on [his] behalf …, relating to an unrecoverable investment [Mr Teo] had made through [Mr Lim]".[24] The relevant portions of Mr Lim's FJC Affidavit, which was affirmed on 8 December 2020 and dated 9 December 2020, stated as follows:[25]

> …
>
> 2. In March 2019, Teo Han Siang entrusted a sum of $150,000.00 to me which sum I was to invest on his behalf in an investment in Indonesia. The investment in Indonesia was through one Anisha Putri …. The investment is supposed to give an interest return of 3% per month.
>
> 3. In September 2019, Teo Han Siang entrusted a further a [*sic*] sum of $100,000.00 to me which I was to invest on his behalf in a further investment in Indonesia through the said Anisha Putri. The investment is supposed to give an interest return of 10% per completion of project.
>
> …
>
> 5. Unfortunately, it has transpired that the investments are a fraud or embezzlement of money perpetrated against the investors and I (including Teo Han Siang).
>
> …
>
> 7. I fear that the investments are most likely not recoverable.

---

24 Mr Lim's Further Affidavit, Exhibit LEK-2 at p 12 (at para 3(iii)).

25 Mr Lim's Supporting Affidavit at pp 18–20.

…

55 I noted that there was a discrepancy between the various FJC Affidavits on the one hand and Mr Teo's SOC on the other hand, in terms of *when* the first sum of S$150,000 was said to have been transferred from Mr Teo to Mr Lim. The FJC Affidavits referred to the first transfer of S$150,000 having been made in *March* 2019, whereas the SOC referred to that transfer having been made on 3 *May* 2019 (see [4] above). Nevertheless, counsel for Mr Teo specifically confirmed at the hearing before me that it was not disputed that the sums referred to in Mr Teo's FJC Affidavits were the *same two sums* that Mr Teo was claiming in the Suit (*ie*, the May 2019 Transfer and the September 2019 Transfer, and the Disputed S$250,000).[26] Indeed, this had to be so in order for the disclosed portions of Mr Teo's FJC Affidavits to have fallen within the scope of the AR's production orders in SUM 1504 and SUM 2629 (see [18] and [20] above). I therefore proceeded on this basis, and accordingly was satisfied that the requirement outlined at [46(a)] above had been met. There was also no question that the requirements at [46(b)] and [46(c)] above were satisfied, given that Mr Teo's FJC Affidavits had been made by him, and the characterisation of the relevant transactions was well within his knowledge both at the time of making his FJC Affidavits and at the time of commencing the Suit.

56 What clearly emerged from Mr Teo's FJC Affidavits was that his own position in the FJC Proceedings was *diametrically opposed* to the position he sought to take in the Suit. Mr Teo's repeatedly sworn evidence in the FJC Proceedings was that the Disputed S$250,000 had been *invested through Mr Lim*, in an investment in Indonesia that was unlikely to be recovered. This was Mr Teo's consistent position across all three of his FJC Affidavits, which

[26] Transcript at p 10 lines 1–7.

Version No 1: 15 Apr 2026 (19:30 hrs)

were made over a period of nearly one and a half years (from 9 December 2020 to 19 April 2022). Indeed, in his Third Ancillary Matters Affidavit, Mr Teo took pains to emphasise that the September 2019 Transfer was *not* a loan; stated unequivocally that there was "**no** loan to Lim Eng Keong due and owing to [Mr Teo] at all" [emphasis in original]; and went so far as to say that it had been "devious" of Mdm Lim to "try to capitalize on [his] inadvertent error" in "inadvertently mischaracteriz[ing]" the September 2019 Transfer as a loan to Mr Lim (when in fact it was "the further investment [Mr Teo] had made in respect of the Indonesian land-flipping investment"), and for Mdm Lim to "try to falsely allege that there [was] an additional sum of $100,000 due and owing to [him] by Lim Eng Keong when in fact, there [was] none" [emphasis in original omitted]. The requirement I outlined at [46(d)] above was therefore plainly satisfied – the assertions of fact in Mr Teo's FJC Affidavits were fundamentally inconsistent and incompatible with those he sought to advance in the Suit.

57 After Mr Teo's FJC Affidavits were placed before me, Mr Teo was given an opportunity to provide an explanation of his earlier sworn statements and his subsequent departure from them, and to adduce any further evidence that he might have wished to rely on in this connection. As I mentioned at [21] above, I granted Mr Teo permission to file a further responsive affidavit in SUM 1011 and he did so. But the purported explanation that Mr Teo offered in his further responsive affidavit raised far more questions than it supplied answers. In that affidavit, Mr Teo stated that:[27]

> …
>
> 12. I initially explained there was a sum of $250,000 I gave to [Mr Lim] which was then invested in Indonesia. Thereafter [Mr Lim] then similarly confirmed in his affidavit that the

[27] Mr Teo's Further Affidavit at para 12.

Version No 1: 15 Apr 2026 (19:30 hrs)

> monies were used for investment, *but claimed it was 'on my behalf' which is not so*. I do not know why he said so then and as *it was not material to me or to the Family Court at that point in time as to the specific terminology whether it was a loan or investment*, any arguing over whether it was a loan or investment with my ex-wife [*ie*, Mdm Lim] (which is how the additional affidavits occurred) incurred more time and timecosts than it was worth and so *for convenience, it was treated as an investment as [Mr Lim] said as he had already committed to this position*. [Mr Lim] had drafted his affidavit with my previous solicitor, as he was the investor and so he had all the factual details and *I let him draft and affirm his affidavit without my express checking as to its contents as I trusted him to reproduce the details correctly*. I only made the logistical arrangements for him to meet my then lawyer to so draft.
>
> …
>
> [emphasis added]

58 I found this explanation puzzling and plainly at odds with Mr Teo's own words in his FJC Affidavits. It was clear from Mr Teo's FJC Affidavits that his own position in the FJC Proceedings was that the Disputed S$250,000 was an investment that *he* had made *through* Mr Lim. Contrary to Mr Teo's suggestion that it was "not material" at the time whether this sum ought to be characterised as a loan or an investment, it was also clear from Mr Teo's Third Ancillary Matters Affidavit that this was a point of some importance to Mr Teo during the FJC Proceedings themselves, given that he had expressly clarified and emphasised that the September 2019 Transfer was *not* to be characterised as a loan, but instead as a "further investment". Mr Teo's suggestion that he had been content to treat the sum as an investment "for convenience" because Mr Lim "had already committed to this position" was also curious, and indeed, troubling. It was curious because Mr Teo's AAM Affidavit was filed *on the same day* as Mr Lim's FJC Affidavit (*ie*, 9 December 2020), and it was presumably in Mr Lim's FJC Affidavit that Mr Lim had "committed to [the] position" that the relevant sums had been entrusted to him for investment on Mr Teo's behalf. And, in so far as this explanation suggested that Mr Teo *chose*

Version No 1: 15 Apr 2026 (19:30 hrs)

to *repeatedly* affirm, in his own affidavits, a version of events and a characterisation of the relevant transactions *that he knew was inaccurate* simply "for convenience", this demonstrated a disregard for the truth and a clear lack of understanding of the significance and seriousness of affidavit evidence.

59 Mr Teo also made several other arguments which sought to downplay the significance of this inconsistency. I found these entirely unpersuasive.

(a) First, Mr Teo submitted that his FJC Affidavits were "never subjected to cross-examination" because the FJC Proceedings were settled between the parties without a trial, and therefore the characterisation of the transfers remained a "live open issue" to be considered in the Suit.[28] But this missed the point. Mr Teo – as the party who had made his FJC Affidavits – simply could not rely on the fact that he was not cross-examined on those affidavits to challenge the veracity of *his own statements*.

(b) Next, Mr Teo submitted that Mr Lim's "allegations" about what Mr Teo had said in his FJC Affidavits were "but a one-sided opportunistic view [Mr Lim was] adopting".[29] But it plainly did not assist Mr Teo to label his FJC Affidavits "one-sided" when the person whose side of the story they presented was Mr Teo himself.

(c) Mr Teo further submitted that the statements in his FJC Affidavits were made "[t]o avoid that [Mr Lim] get into any form of trouble in the divorce proceedings for possible inaccurate characterisation when at that time he was making a statement then for

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[28] CFWS at para 7.

[29] CFWS at para 8.

Version No 1: 15 Apr 2026 (19:30 hrs)

[Mr Teo], the issue of the true nature of the loan/investment was not dealt with in the best way possible".[30] This did not assist Mr Teo for the same reasons as those explained at [58] above.

60 For these reasons, I did not think Mr Teo had offered any cogent explanation for the inconsistent positions taken in his FJC Affidavits and in the present Suit. There was no suggestion that Mr Teo was labouring under any sort of misapprehension as to the true state of affairs at the time he filed his FJC Affidavits. On the contrary, Mr Teo's purported explanation revealed that he was cognisant that he was adopting a particular characterisation of the transfers in his FJC Affidavits that was not accurate, and yet he chose to do so either because he did not think that it would matter (at best), or because this would enable him to obtain his desired outcomes in the FJC Proceedings (at worst). The requirement that I outlined at [46(e)] above was accordingly satisfied.

61 I then considered whether the present case was the sort of exceptional case contemplated by [46(f)] above. In this connection, I first considered the "physical evidence" relied on by Mr Teo.

Mr Teo's "physical evidence"

62 Mr Teo pointed to various pieces of evidence that he said supported his position that the May 2019 Transfer and the September 2019 Transfer were loans. At the second hearing of SUM 1011, counsel for Mr Teo confirmed that the full list of the "physical evidence" he wished to rely on was set out in the table of exhibits annexed to his affidavit in reply to SUM 1504.[31]

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30 CFWS at para 8(c).

31 Transcript at p 13 line 12 to p 14 line 23; Mr Teo's SUM 1504 Affidavit at p 18.

Version No 1: 15 Apr 2026 (19:30 hrs)

WhatsApp messages

63 First and foremost, Mr Teo relied on his contemporaneous WhatsApp conversations with Mr Lim. I set out the relevant extracts below.

(a) On 3 May 2019, the parties exchanged the following messages before Mr Teo transferred the sum of S$150,000 to Mr Lim (*ie*, the May 2019 Transfer):[32]

[Mr Lim]:	Bro.. *Need a loan.* 2 weeks. 5% interest
	Able to do?
	Return. By 18. Latest by 20 incase weekend
[Mr Teo]:	My $150,000 mature on 30 Apr 2019 already utilised?
[Mr Lim]:	Coming out Monday
…	
[Mr Teo]:	Also capital guarantee?
[Mr Lim]:	U mean *this loan*?
[Mr Teo]:	Yup
[Mr Lim]:	Ya. My name
	Confirm plus chop
	Guarantee
…	
[Mr Lim]:	Sorry ah. So last min
	But good return.
	Bro ard how much u going to tf?
[Mr Teo]:	Whether $150,000 can transfer back to me on Monday?
[Mr Lim]:	U need it back?

[32] 1st Affidavit of Teo Han Siang in HC/SUM 1011/2025 dated 28 April 2025 ("Mr Teo's Reply Affidavit") at pp 8–12.

Version No 1: 15 Apr 2026 (19:30 hrs)

	Cos I got commit to other projects after our discussion.
[Mr Teo]:	Swap this $150,000 back to the company.
…	
[Mr Lim]:	Of. So if able to do this tf in Monday. Today able to tf 150k?
[Mr Teo]:	I have funds available $150,000, but this funds is for company working capital
	Yes
…	
	Thus I need this $150,000 back to company account on Monday.
[Mr Lim]:	Bro if by tue can?
…	
[Mr Teo]:	Tuesday okay
…	
[Mr Lim]:	Deal. Then after this we revert to 3%
	Correct?
[Mr Teo]:	Okay. Convert to 3% deal
…	

[emphasis added]

(b) From 2 to 4 September 2019, the parties exchanged the following messages before Mr Teo transferred a sum of S$100,000 to Mr Lim on 4 September 2019 (*ie*, the September 2019 Transfer):[33]

<u>2 September 2019</u>

[Mr Lim]:	Bro
	Short term loan - 10% 4 weeks
	See if u want to do

[33] Mr Teo's Reply Affidavit at pp 13–14.

Version No 1: 15 Apr 2026 (19:30 hrs)

> 3 September 2019
>
> [Mr Teo]: 100k okay?
>
> When you need the funds?
>
> [Mr Lim]: When can u tf?
>
> [Mr Teo]: Today or tomorrow
>
> …
>
> [Mr Teo]: Send me bank details
>
> …
>
> [Mr Lim]: Probably send to my Co acc
>
> …
>
> 4 September 2019
>
> [Mr Lim]: Bro can u tf to my Co acc
>
> …
>
> Ecube auto credit Pte ltd
>
> [Mr Teo]: The funds of $100,000 has been transferred
>
> …
>
> [Mr Lim]: Will return ard 1st week oct
>
> [emphasis added]

(c) Subsequently, from 12 November 2019 to 4 October 2024, Mr Teo asked Mr Lim on several occasions when he would receive his funds:[34]

> 12 November 2019
>
> [Mr Teo]: When the funds of $100,000 be back?
>
> [Mr Lim]: i chasing everyday
>
> should be btw 20-25 nov
>
> sorry for the dealy

34 Mr Teo's Reply Affidavit at pp 15–23.

Version No 1: 15 Apr 2026 (19:30 hrs)

delay

…

<u>30 December 2019</u>

…

[Mr Teo]: No status of land deal? When will the refund to be made?

I may need the funds of $100,000 be back by 15 Jan. Possible to arrange?

[Mr Lim]: Latest update

Back by 22jan

Can wait a while?

If back will return in full

…

[Mr Lim]: I pushing every day

Sorry for the unexpected delay

<u>21 January 2020</u>

[Mr Teo]: Bri, the funds of $100,000 will get it tomorrow?

[Mr Lim]: Estimate is on 23/24

Worst case is next week

I also pushing

[*Photograph of the following messages dated 17 January 2020, addressed to one "anisha": "So 21/22 confirm?", followed by "How we going to receive funds?"*]

…

[Mr Lim]: I will let u know once i receive

<u>12 February 2020</u>

[Mr Teo]: Check the funds status

…

Version No 1: 15 Apr 2026 (19:30 hrs)

4 February 2021

[Mr Teo]:	Bro, need your help. I need the funds of at least $100,000 (interest plus capital) by 20 Feb for emergency used. 😭
[Mr Lim]:	Bro. Interest now a bit difficult
	I can clear principle. But need installment
	Next month i can provide 15-20k first
[Mr Teo]:	Clear principal first.
[Mr Lim]:	Then after june a few k every month
…	
[Mr Teo]:	At least $75k by 20 Feb
[Mr Lim]:	Seriously i dont think i can provide so much
	Max 20k for a start
[Mr Teo]:	Let me know your repayment plan.
	I need to consolidate the funds.
[Mr Lim]:	For interest i think i dont have capacity to continue. I can only work on capital which i have guarentee u

12 March 2021

[Mr Lim]:	bro
[Mr Teo]:	Yes
[Mr Lim]:	i can only manage 15k for u today

4 October 2024

[Mr Teo]:	Please return my call
[Mr Lim]:	Bro, as explained, I have no means to return u anything now. I can only start after I finish paying the other two investors. Pls do not include this amount into any of the investment or purchase u have for now.
	As for the investment, it's still pending police investigation as I have just went to make another statement 2 weeks ago.

Version No 1: 15 Apr 2026 (19:30 hrs)

	…
	Tq for your kind understanding.
[Mr Teo]:	We should have some written agreement to arrange for instalment effect from next year
[Mr Lim]:	OK
	starting June 2025
	Guarantee 1k a month
	When I can do more, I will do more
	This is the inky condition I willing to sign
	If this is what u want, I will accommodate

64 Based on these WhatsApp messages, Mr Teo argued that he had "ample evidence to support his claim, because the messages showed that "it was always [Mr Lim] who asked [him] for a 'loan' … and set an interest rate for [him] to consider", and Mr Lim had "even described these as 'Short term loan' …, with an interest rate of 5% … for the first outstanding loan in his proposal, and 10% … for the second outstanding loan for [him] to consider".[35]

65 However, I did not think the WhatsApp messages took Mr Teo very far. While Mr Lim had indeed used the language of a "loan" in his messages to Mr Teo on 3 May 2019 and 2 September 2019, I accepted the submission made by counsel for Mr Lim that these were colloquial exchanges between the parties that were not determinative. The messages, read as a whole, left the precise nature of the parties' arrangements and of these specific transactions quite unclear. More importantly, Mr Teo had already provided his *own* narrative and account of these transactions in his FJC Affidavits. Notably, the first of the FJC Affidavits – Mr Teo's AAM Affidavit dated 9 December 2020 – was also affirmed *after* Mr Teo had already asked Mr Lim several times when he would

[35] Mr Teo's Reply Affidavit at para 5.

Version No 1: 15 Apr 2026 (19:30 hrs)

receive his funds (on 12 November 2019, 30 December 2019, 21 January 2020 and 12 February 2020). Indeed, even after Mr Teo had asked Mr Lim for his "repayment plan" on 4 February 2021 and Mr Lim had told Mr Teo that he could "only manage 15k" for him on 12 March 2021, Mr Teo filed *two further affidavits* – his Second Ancillary Matters Affidavit affirmed on 4 March 2022 and his Third Ancillary Matters Affidavit affirmed on 19 April 2022 – reiterating that the relevant sums amounting to S$250,000 were investments that he had made through Mr Lim, and that there was "**no** loan to [Mr Lim] due and owing to [him, Mr Teo] at all" [emphasis in original] (see [53] above). In my view, Mr Teo could not rely on the apparent import of the WhatsApp messages to assist him when he had already provided his own sworn account – and thus his own *direct evidence* – of what transpired between the parties at the time those messages were being exchanged.

Bank account statements

66 In addition to the WhatsApp messages, Mr Teo sought to rely on one of his bank statements for March 2021. That bank statement showed that a sum of S$15,000 had been deposited on 12 March 2021 by Mr Lim, and that this sum had been labelled "Allen Loan Repayment".[36] It was not disputed that "Allen" referred to Mr Lim. Mr Teo argued that this was evidence of Mr Lim "confirm[ing] the nature of the repayment" and that the stated payment purpose "totally dovetail[ed] with the transaction, as both parties always understood it – a loan from [him] to [Mr Lim]".[37]

67 However, this also did not assist Mr Teo. As explained at [65] above, Mr Teo had already provided his own account of the relevant transactions in his

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[36] Mr Teo's SUM 1504 Affidavit at pp 36–37.

[37] Mr Teo's SUM 1504 Affidavit at para 17.

Version No 1: 15 Apr 2026 (19:30 hrs)

FJC Affidavits, two of which were filed after this March 2021 Transfer was made. In addition, while this bank statement suggested that the March 2021 Transfer was the repayment of money owed by Mr Lim to Mr Teo – and not, as Mr Lim counterclaimed, a separate loan that he had extended to Mr Teo (see [9] above) – the bank statement said nothing about the May 2019 Transfer or the September 2019 Transfer, which were the subject of Mr Teo's claim in the Suit.

Other evidence

68 The other pieces of "physical evidence" relied on by Mr Teo offered him even less assistance. These were, in brief:

(a) "Letters of Agreement" between one "Anisha Putri" and Mr Lim – dated 28 May 2019, 17 June 2019, 27 June 2019, 9 July 2019, 1 August 2019, 8 August 2019, 1 September 2019 and 20 October 2019 – setting out the terms of their agreement regarding an investment involving the purchase and sale of land in Indonesia.[38] Mr Teo argued that none of these agreements showed that he had been involved in Mr Lim's investments in Indonesia.[39]

(b) One WhatsApp message from Mr Teo to Mr Lim dated 8 December 2020, informing him of an upcoming appointment with a lawyer, which Mr Teo would also be attending.[40] 8 December 2020 was the day on which Mr Lim's FJC Affidavit was affirmed, and also the day before Mr Teo's AAM Affidavit was affirmed. Mr Teo argued that there

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38 Mr Teo's SUM 1504 Affidavit at pp 39–46; Mr Lim's Supporting Affidavit at pp 9–16.

39 Mr Teo's SUM 1504 Affidavit at paras 20–24.

40 Mr Teo's SUM 1504 Affidavit at p 47; Mr Lim's Supporting Affidavit at p 17.

Version No 1: 15 Apr 2026 (19:30 hrs)

was nothing here indicating that the transaction between him and Mr Lim was an investment.[41]

(c) A "Power of Attorney" dated 4 March 2020, made by Mr Lim, which empowered a named Indonesian lawyer to "accompany and/or represent" Mr Lim's interests "in connection with the problem of alleged fraud / embezzlement of money amounting to [S$3,554,000] … allegedly made by Anisha Putri".[42] Mr Teo argued that this again did not appear to show that his transaction between him and Mr Lim was an investment instead of a loan.[43]

(d) A police report filed by Mr Lim on 22 May 2020, reporting Anisha Putri and one "Patricia" for fraud, and alleging that S$2,650,000 had been stolen.[44] Mr Teo argued that, based on the details set out in this police report, the typical timeframe of Mr Lim's investment arrangements (which was said to be two to three months) "completely [did] not match the friendly loans [Mr Lim] requested from [him]".[45]

69 Mr Teo contended that these documents showed "the true story", that Mr Lim had made personal investments on his own behalf and had taken loans from Mr Teo to "bridge his cash flow issues".[46] He also argued that none of these documents suggested that he was a party to any correspondence or

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41 Mr Teo's SUM 1504 Affidavit at para 25.

42 Mr Teo's SUM 1504 Affidavit at pp 48–49; Mr Lim's Supporting Affidavit at pp 22–23.

43 Mr Teo's SUM 1504 Affidavit at para 26.

44 Mr Teo's SUM 1504 Affidavit at pp 50–53; Mr Lim's Supporting Affidavit at pp 24–27.

45 Mr Teo's SUM 1504 Affidavit at para 27.

46 Mr Teo's SUM 1504 Affidavit at para 28.

Version No 1: 15 Apr 2026 (19:30 hrs)

agreements relating to the investment in Indonesia.[47] But none of these documents offered any positive support for Mr Teo's case that the May 2019 Transfer and the September 2019 Transfer were *loans* from him to Mr Lim.

70 I therefore concluded that none of the "physical evidence" relied on by Mr Teo assisted him in the present case.

Significance of the fact that the FJC Proceedings were settled before trial

71 I next considered the submission made by counsel for Mr Teo that, because the FJC Proceedings were settled privately and never proceeded to trial, Mr Teo received no actual benefit – in the form of a judgment in his favour – from the position he took in his FJC Affidavits. On this basis, counsel for Mr Teo submitted that the doctrine of approbation and reprobation was not engaged, and consequently there was no abuse of process. I did not accept this submission.

72 It should first be noted that an "actual benefit" is indeed required before *the doctrine of approbation and reprobation*, in its strict sense, will apply. This is because "[t]he foundation of the doctrine of approbation and reprobation is that the person against whom it is applied has accepted a benefit from the matter he reprobates", and this recognises that a person "who accepts a benefit under an instrument must adopt it in its entirety giving full effect to its provisions and, if necessary, renouncing any other rights which are inconsistent with it" (see *BWG* at [102], citing *Evans v Bartlam* [1937] AC 473 and Piers Feltham, Daniel Hochberg & Tom Leech, *Spencer Bower: Estoppel by Representation* (LexisNexis UK, 4th Ed, 2004) at para XIII.1.10). Such a benefit, for the purposes of triggering the doctrine of approbation and reprobation, may be a

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47 Mr Teo's Further Affidavit at para 3(d).

Version No 1: 15 Apr 2026 (19:30 hrs)

judgment or arbitral award rendered to the successful party (see *BWG* at [112] and [118]–[119]).

73 But it was less clear whether a party had to have derived an "actual benefit" from his earlier inconsistent position before his conduct could amount to an *abuse of process* more broadly. In particular, in cases where that earlier inconsistent position was taken by that party *on affidavit*, that party's receipt of an "actual benefit" would not seem to be a prerequisite for his conduct to amount to an abuse of process, for the reasons I have explained at [44] above. In this connection, I bore in mind that the requirement that the party must have obtained a "benefit" from his earlier inconsistent position was mentioned by the Court of Appeal in *BWG* not in the course of its main analysis on abuse of process (at [52]–[58] of *BWG*), but instead only after dealing with the doctrines of approbation and reprobation and of waiver by election, which the Court of Appeal wished to address because the parties had made extensive submissions on those doctrines (see *BWG* at [100]–[127]).

74 In any event, I disagreed with the submission made by Mr Teo's counsel that no actual benefit was received by Mr Teo simply because the FJC Proceedings were settled before trial. Mr Teo had chosen to affirm three affidavits in the FJC Proceedings stating, in no uncertain terms, that the Disputed S$250,000 had been invested through Mr Lim, and not loaned to Mr Lim. Counsel for Mr Lim suggested that Mr Teo might have taken this position so that those monies would not have to be added to the pool of matrimonial assets that were to be divided between Mr Teo and Mdm Lim.[48] This suggestion gained some credence from the fact that Mr Teo himself affirmed, in his affidavit in reply to SUM 1504, that he had needed Mr Lim to

[48] Transcript at p 23 lines 27–31.

Version No 1: 15 Apr 2026 (19:30 hrs)

"vouch" that he could not return the Disputed S$250,000 to Mr Teo so that Mr Teo "could account to the Family Court where [his] monies (being assets) had gone *for purposes of considering the computation of possible matrimonial assets*" [emphasis added].[49] But I put this to one side because I did not wish to speculate about Mr Teo's motives. What can safely be said is that a party swears an affidavit to try to persuade the court or the opposing party that the facts that are formally and solemnly asserted therein are true. The purpose of doing so is to secure a forensic advantage – whether in terms of obtaining a favourable judicial determination or by strengthening one's hand in out-of-court negotiations. In this case, for reasons best known to himself, Mr Teo wished to persuade the court in the FJC Proceedings and Mdm Lim that the Disputed S$250,000 had been invested by him through Mr Lim, and that no loans were due and owing to him from Mr Lim. The fact that the FJC Proceedings did not culminate in a judicial determination of the parties' rights and liabilities, or of how the May 2019 Transfer and the September 2019 Transfer should be characterised, did not mean that Mr Teo derived no benefit from the affidavits that he affirmed in aid of his position in those proceedings. A settlement is itself an outcome, and the positions that a party stakes out on affidavit can and do shape the terms of a settlement and how it is reached. The absence of a judicial pronouncement therefore did not mean that Mr Teo obtained no advantage from the position he adopted on oath.

75 To put the point another way, the fact that the FJC Proceedings happened to have been settled without any judicial determination did not un-swear what Mr Teo had sworn. He gave sworn evidence to the court in his FJC Affidavits, and the fact that those proceedings were resolved privately meant only that the court never had to rule on that evidence in the FJC Proceedings; it did not mean

49 Mr Teo's SUM 1504 Affidavit at para 32.

Version No 1: 15 Apr 2026 (19:30 hrs)

that evidence ceased to exist. Having given the evidence that he did, Mr Teo could not now pretend that it had never been given.

Evaluation of all the circumstances of the case

76 In the end, the obstacle that Mr Teo was unable to overcome was the inescapable fact that he himself had given evidence that the relevant transfers were investments that he had made through Mr Lim, and that there were no loans due and owing from Mr Lim to him. Having taken this position on oath as to what transpired between himself and Mr Lim, Mr Teo could not now be permitted to advance a different narrative in *this* court for the purposes of claiming the same sum of monies (the Disputed S$250,000) from Mr Lim, on a factual basis that was fundamentally inconsistent and incompatible with what he had previously affirmed to be the truth. Mr Teo showed no reason why he should not be held to the consequences of his decision to give the evidence that he gave in the FJC Proceedings.

77 There was also no reason to find that this was an exceptional case where, by reason of policy considerations, there was a risk of even greater injustice in baring Mr Teo from proceeding with the Suit. Mr Teo did not point me to any such policy considerations. Indeed, in my view, the policy considerations that I have outlined at [40]–[44] above weighed in favour of holding Mr Teo to the statements he had made on affidavit.

78 This was all the more so because Mr Teo's conduct in withholding his FJC Affidavits was persistently evasive. Even after Mr Lim sought the production of *all* of Mr Teo's affidavits filed in the FJC Proceedings in SUM 1504, Mr Teo insisted that the only relevant affidavit was the AAM Affidavit; and even after the Ancillary Matters Affidavits were specifically highlighted to and requested from Mr Teo's counsel, these were not

Version No 1: 15 Apr 2026 (19:30 hrs)

forthcoming. Even after SUM 2629 was filed to compel Mr Teo to produce the Ancillary Matters Affidavits, Mr Teo chose to oppose that application. I accepted Mr Lim's submission that this conduct further aggravated Mr Teo's abuse of process.

79 I mention one final point for completeness. Midway through the second hearing of SUM 1011, counsel for Mr Teo suggested that he was "prepared to consider" applying to amend the SOC if the court considered that the facts showed that the May 2019 Transfer and the September 2019 Transfer were investments rather than loans, and therefore Mr Teo's claim should not be struck out.[50] When I questioned counsel further on this, he clarified that Mr Teo's primary position remained that the evidence supported his claim that these transfers were indeed loans, but "if for any reason that [was] considered to be somehow defective", he was "prepared to cure it with an amendment".[51] However, counsel for Mr Teo did not have any specific proposed amendments that he wished for me to consider, and he ultimately confirmed that I should proceed to decide SUM 1011 based on the pleadings as they stood.[52] I did so. In my view, the suggestion that Mr Teo could make such a last-minute and half-baked attempt to amend his pleadings, in order to prevent his SOC from being struck out, was untenable. Apart from the fact that Mr Teo offered no proposed amendments that the court could even begin to consider as an alternative to striking out, it was wholly unclear whether or how any such amendments would have been able to "cure" Mr Teo's SOC, given that they would have *completely changed* the factual and legal basis of Mr Teo's claim in the Suit.

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50 Transcript at p 11 lines 5–10.

51 Transcript at p 26 lines 21–23.

52 Transcript at p 27 lines 18–32.

Conclusion

80 For these reasons, I allowed SUM 1011 and struck out Mr Teo's claim in the Suit on the grounds that it was an abuse of process and striking out was in the interests of justice.

81 In these circumstances, it was not disputed that both the costs of the striking out application in SUM 1011 and the costs of the Suit itself should be paid by Mr Teo to Mr Lim. I agreed with counsel for Mr Lim that costs should be ordered against Mr Teo on an indemnity basis. After hearing both parties' submissions on costs, I fixed the costs of SUM 1011 at S$15,000 and the costs of the Suit at S$10,000. Both figures were inclusive of disbursements. I considered these amounts to be fair and reasonable in all the circumstances of this case, taking into account the applicable costs guidelines in Appendix G to the Supreme Court Practice Directions 2021, as well as how the matter had unfolded and (in respect of the costs of the Suit) the fact that the proceedings were still at an early stage when Mr Teo's claim was struck out.

Wee Yen Jean
Assistant Registrar

Lim Ming Yi (1forAll Law LLC) for the claimant;
Vijai Dharamdas Parwani (Parwani Law LLC) for the defendant.

Version No 1: 15 Apr 2026 (19:30 hrs)