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

[2026] SGHC 4

Originating Claim No 325 of 2023 (Registrar's Appeal No 180 of 2025)

Between

Zhang Zhencheng

… *Claimant*

And

(1) Tan Huay Lim
(2) Dasin Retail Trust Management Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Privileges — Legal professional privilege — Waiver]
[Civil Procedure — Privileges — Legal professional privilege — Joint interest privilege]
[Civil Procedure — Privileges — Legal professional privilege — Common interest privilege]

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Zhang Zhencheng
v
Tan Huay Lim and another

[2026] SGHC 4

General Division of the High Court — Originating Claim No 325 of 2023
(Registrar's Appeal No 180 of 2025)
Chua Lee Ming J
24 October 2025

7 January 2026

Chua Lee Ming J:

Introduction

1 This was an appeal by the claimant against the decision of the Assistant Registrar ("AR") dismissing his application for production of documents over which the second defendant claimed legal privilege. The questions that arose included (a) whether the second defendant could, based on the advice of its new solicitors, claim legal privilege over documents to which its former solicitors had agreed to produce (but had not yet produced), and (b) whether a person who claimed a common interest in documents, which were otherwise protected by legal privilege, was entitled to have access to such documents on the ground of the common interest.

Background

2 The claimant, Mr Zhang Zhencheng, is a minority shareholder of the second defendant, Dasin Retail Trust Management Pte Ltd. The first defendant, Mr Tan Huay Lim, is the Lead Independent Director of the second defendant. The claimant is also a non-executive director of the second defendant.

3 The second defendant is the trustee-manager of Dasin Retail Trust ("DRT"), a business trust which is listed on the mainboard of the Singapore Exchange. The claimant is also a unitholder in DRT.

4 The claimant's claim is that the first defendant has conducted the affairs of the second defendant and/or DRT and/or exercised his powers in a manner oppressive of the claimant and/or in disregard of and prejudicial to the claimant's interests. The claimant complains (among other things) against the first defendant's conduct in pushing for and supporting a memorandum of understanding ("MOU") relating to the acquisition of an interest in DRT by a third party. The claimant complains that the terms of the MOU are adverse to him, the second defendant and/or DRT.

5 On 15 November 2024, the claimant's lawyers, LVM Law Chambers LLC ("LVMLC"), asked the first defendant for "[a]ll documents and correspondence … between the 1st Defendant and any Rajah & Tann LLP ("R&T") personnel (lawyers of the 2nd Defendant) pertaining to the 2nd Defendant's affairs …" ("Requested Documents"). LVMLC sent a similar request to the second defendant's lawyers, Shook Lin & Bok LLC ("SLB").

6 On 20 December 2024, the first defendant's lawyers, NLC Law Asia LLC ("NLC"), replied to LVMLC stating that the Requested Documents were "privileged for the benefit of the 2nd Defendant".

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7 On the same day (20 December 2024), SLB informed LVMLC that the second defendant was agreeable to producing all of the Requested Documents to the extent they "pertain[ed] to the restructuring of DRT". This was a narrower scope than that stated in LVMLC's request, which was for documents pertaining to the second defendant's "affairs". SLB also stated that the second defendant's agreement was "on the basis that [the claimant had] a joint interest in [the second defendant's] privilege".

8 On 28 March 2025, SLB wrote to NLC (copied to LVMLC) confirming the second defendant's position as stated in its previous letter dated 20 December 2024 to LVMLC.

9 On 9 April 2025, NLC informed LVMLC that the first defendant was agreeable to providing the claimant with the Requested Documents, which were within his possession or control, to the extent that the second defendant had agreed to produce the same. On 19 May 2025, the second defendant appointed new lawyers, M/s Wong Partnership LLP ("WongP"), to take over conduct of the matter from SLB. At this stage, none of the Requested Documents had been produced to the claimants.

10 On 1 July 2025, the claimant filed HC/SUM 1829/2025 against the first defendant, seeking an order for the production of the Requested Documents. As of this date, the second defendant was still subject to a moratorium under s 64(1) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed). The moratorium expired on 13 July 2025.

11 On 15 July 2025, NLC sent to WongP the documents that were responsive to the Requested Documents and that were in the first defendant's

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possession and control. NLC asked WongP whether the second defendant was claiming privilege.

12 On 29 July 2025, the AR directed the second defendant to file an affidavit to state which, if any, of the documents sent by NLC were protected by privilege. On 8 August 2025, the second defendant filed an opposing affidavit in which it claimed privilege over 12 categories of documents. The appeal before me concerned only the documents under category 12 ("Category 12 documents").

13 The claimant made various submissions before the AR, including a submission that defendants had not shown that the Category 12 documents were cloaked by privilege. The claimant also argued that the second defendant could not resile from its previous agreement (through SLB) to produce the documents on the basis that the claimant had a joint interest privilege.

14 The AR disallowed the claimant's application for production of the Category 12 documents. The AR was of the view that following the second defendant's engagement of its new counsel, it was open to the second defendant to take a new position regarding legal privilege over the documents in the light of fresh legal advice.

The parties' positions in the appeal

15 The scope of the Requested Documents was unjustifiably broad. Before me, the claimant limited the scope of the Requested Documents to documents and correspondence between the first defendant and R&T relating to the following issues:

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(a) SGX's queries about the MOU (as set out in the Statement of Claim at paras 110–111); and

(b) communications with SGX about the financial situation of Sino-Ocean Capital Holding Limited ("Sino-Ocean"), a unitholder in DRT, and making an announcement regarding a winding-up petition against Sino-Ocean (as set out in the Statement of Claim at paras 118–126);

16 The description of the Category 12 documents was unclear. The second defendant clarified that the Category 12 documents (over which it was claiming privilege) were documents that related to any matter in which there was a conflict of interest between itself and the claimant, including matters concerning the MOU, the second defendant's restructuring of various loan facilities, winding-up proceedings against Sino-Ocean, and internalization of the trustee-manager's functions.

17 The claimant conceded that the Category 12 documents were documents that would ordinarily have been protected by legal privilege. However, the claimant submitted that the second defendant could not assert legal privilege against the claimant because:

(a) the second defendant had waived the protection of legal privilege; and

(b) the claimant had a joint interest and/or common interest in the documents.

Whether the second defendant had waived privilege

18 The claimant submitted that the second defendant had waived privilege:

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(a) through its former lawyers, SLB, and could not withdraw the waiver; and

(b) by having disclosed certain documents that might otherwise have fallen within Category 12.

19 The claimant's submissions raised two questions: (a) whether the claimant could withdraw its previous waiver communicated through SLB; and (b) whether, in any event, there was an implied waiver.

Whether the claimant could withdraw its previous waiver

20 Although SLB had confirmed that the second defendant was agreeable to producing the Requested Documents (to the extent they pertained to DRT's restructuring), no documents were in fact produced to the claimant. As stated earlier, after the second defendant appointed WongP to act for it, the second defendant changed its position and claimed privilege.

21 The claimant submitted that SLB had waived privilege on behalf of the second defendant twice. The first was on 20 December 2025, when SLB had stated that the second defendant was agreeable to producing the Requested Documents, on the express basis that the second defendant had a "joint interest" in the claimant's privilege (see [7] above). The second was on 14 May 2025, when, in replying to a query by NLC, SLB stated it would only claim privilege in respect of certain ongoing proceedings, but did not mention the Category 12 documents. The claimant submitted that the second defendant could not resile from the position that it had taken through SLB.

22 The claimant relied on *Mohammed v Ministry of Defence* [2013] EWHC 4478 (QB) at [14(i)], which stated as follows:

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> What might be called a 'true' waiver occurs if one party either expressly consents to the use of privileged material by another party or chooses to disclose the information to the other party in circumstances which imply consent to its use. Such a waiver may be either general or limited in scope.

23 The claimant also relied on Colin Liew, *Legal Professional Privilege* (Academy Publishing, 2nd ed, 2023) ("*Legal Professional Privilege*") at para 8.55, which discussed *Rahimah bte Mohd Salim v Public Prosecutor* [2016] 5 SLR 1259 in the following terms:

> Chao Hick Tin JA set a high bar for an express waiver to be found, on the basis that a "waiver" meant a "voluntary, informed and unequivocal election by a party not to claim a right or raise an objection which it is open to that party to claim or raise", and that it could not meaningfully be said that a party has voluntarily elected not to claim a right or raise an objection if he is unaware that it is open to him to make the claim or raise the objection. Chao JA accordingly approved the proposition that waiver of a right as fundamental of legal professional privilege had to be "clear and done in complete awareness of the result". On the facts, the accused merely by acknowledging the caution had not evinced a clear, informed and unequivocal election to waive her right to litigation privilege.

24 The passages above are uncontroversial and merely discussed the conditions on which waiver would be established. They did not address the question before me, *ie*, whether a party, having evinced an intention to waive privilege over certain documents, could change its mind before those documents were inspected or used.

25 I agreed with the AR that it was open to the second defendant to change its position and claim privilege, as long as the documents had not been disclosed or used.

26 While this specific question did not appear to have been previously dealt with by our courts, it was addressed in *Goldman v Hesper* [1988] 1 WLR 1238. That case involved a dispute over the taxation of costs. The plaintiff sought to

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inspect all the documents that the defendant was relying on in support of the taxation. The defendant initially agreed, expressly and in writing, to an inspection and to waive any privilege she had in the documents. However, upon taking advice, she decided to withdraw her waiver. The English Court of Appeal held that since no action had been taken and the documents had not been dispatched for inspection, "the defendant was perfectly entitled, on taking advice, to withdraw the waiver and her withdrawal was effective" (at 1240).

27 The principle is well expressed in *The Law of Privilege* (Bankim Thanki gen ed) (Oxford University Press, 3rd ed, 2018) ("*The Law of Privilege*") at para 5.33:

> … whether or not privilege is waived in a particular case may well depend on whether it is in practical terms too late to reverse the disclosure of privileged material, or, as Lord Millett would put it, the cat cannot go back in the bag. Thus, for example, once a document has been read out in court it will not usually be possible subsequently to claim privilege in that document (whether in those or in subsequent proceedings). *At the other end of the spectrum is the situation in which a party agrees to waive privilege in documents but, before they are inspected, withdraws that agreement. Unsurprisingly, that does not amount to a waiver and the opposing party cannot hold the owner of the privilege to his offer.* … [emphasis added]

28 Accordingly, I found that the second defendant was entitled to withdraw its previous waiver (communicated through SLB) and claim privilege over the Category 12 documents.

Whether there was an implied waiver

29 In *ARX v Comptroller of Income Tax* [2016] 5 SLR 590 ("*ARX*"), the Court of Appeal discussed implied waiver of privilege because of a step taken in litigation, for example, where references to privileged material are made in

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court documents filed before a trial or made in the course of the trial. The Court of Appeal set out the following principles:

(a) The inquiry is a complex, nuanced and textured one, and should not be reduced to a few reductive dichotomies such as fact/contents; reference/deployment; effect/contents; reference/reliance (at [62]).

(b) Implied waiver is concerned not with "fairness at large" but with a very particular sort of unfairness. The principle is that a party cannot have his cake and eat it. If a party voluntarily puts privileged material before the court, he cannot rely on the advantageous aspects of it to advance his case but claim privilege in respect of the other less advantageous aspects of the documents for fear that it might damage his case (at [64]–[65]).

(c) Waiver is not to be easily implied (at [69]).

(d) In determining whether there has been implied waiver, the court examines all the circumstances, including the following non-exhaustive list (at [69]):

(i) what has been disclosed (the materiality of the information in the context of the pending proceedings);

(ii) the circumstances under which the disclosure took place (in particular, disclosures of privileged material during trial almost invariably results in waiver);

(iii) whether it may be said (albeit only as a relevant factor as opposed to a single test) that the party had "relied" or "deployed" the advice to advance his case; and

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(iv) whether it can be said that there is a risk that an incomplete and misleading impression had been given.

(e) Ultimately, the court should ask whether, in all the circumstances of the case, fairness and consistency require disclosure, given what has already been revealed; this is a fact-sensitive exercise of judgment and the inquiry is objective and not subjective (at [69]).

30 The claimant submitted that there was implied waiver in this case because the second defendant had disclosed certain documents that might otherwise have fallen within Category 12, and therefore privilege had been waived over the rest of the documents in Category 12.

31 The claimant relied on the fact that the second defendant had disclosed the following documents:

(a) WhatsApp conversation between the first defendant and R&T, apparently relating to a letter of demand in respect of a financial consultancy agreement.[1]

(b) WhatsApp conversation between the first defendant and R&T, relating to the announcement of the first defendant's filing of its defence and counterclaim.[2]

(c) WhatsApp conversation between the first defendant and R&T regarding letters from certain banks to the second defendant.[3]

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1 Claimant's Bundle of Documents ("CBOD"), at pp 45–46.

2 CBOD, at p 47.

3 CBOD, at p 48.

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(d) Email from the chairman of the second defendant's Audit & Risk Committee to R&T on responding to SGX's queries in connection with an application for a further extension of time for the announcement of results.[4]

(e) WhatsApp conversation and an email between the first defendant and R&T concerning the release of two letters on SGXNet, the drafting of an announcement and responses to SGX queries.[5]

(f) Email between the first defendant and R&T concerning review of a draft memorandum of understanding.[6]

32 Before me, the claimant accepted that the documents in [33(a)]–[33(b)] and [33(f)] above had nothing to do with the issues that the Requested Documents related to. The second defendant's disclosure of these documents therefore could not give rise to any implied waiver of the Category 12 documents.

33 The documents in [33(c)]–[33(d)] above did not appear to have anything to do with the issues that the Requested Documents related to and the claimant was not able to show otherwise. It followed that the disclosure of these documents also could not amount to an implied waiver of the Category 12 documents.

34 It was unclear what the documents in [33(e)] above related to. According to the claimant, these documents related to the drafting of announcements

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4 CBOD, at p 58.

5 CBOD, at pp 50–52 and 59.

6 CBOD, at p 287.

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regarding the second defendant's restructuring of its loan facilities, the MOU, the first defendant's filing of its defence and counterclaim and the letters from the lenders. However, as stated earlier, the claimant had limited the Requested Documents to documents relating to SGX's queries about the MOU, and communications with SGX about the financial situation of Sino-Ocean and making an announcement regarding a winding-up petition against Sino-Ocean (see [17] above).[7]

35 Waiver is not to be easily implied (*ARX* at [69]). In my view, there was no sufficient link between the documents in [33(d)] above and the Requested Documents such as to amount to an implied waiver of the Category 12 documents. The disclosed documents had nothing to do with Sino-Ocean. To the extent that the disclosed documents had any link to the MOU, it was unclear whether or how they related to SGX's queries about the MOU.

36 Accordingly, I found that there had been no implied waiver of privilege over the Category 12 documents or any part thereof.

Joint and common interest privilege

37 Joint privilege can arise where there is:

(a) a joint retainer, *ie*, where two or more parties jointly retain the same lawyer; or

(b) joint interest, *ie*, where, even though the parties have not jointly retained a lawyer, they have a joint interest in the subject matter of the communication at the time that it comes into existence.

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7 NE, 24 October 2025, at 1:35–2:4.

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See *The Law of Privilege* at para 6.01; *CIFG Special Assets Capital I Ltd v Polimet Pte Ltd* [2016] 1 SLR 1382 ("*CIFG*") at [74].

38 The claimant accepted that there was no joint retainer in the present case. The claimant submitted that the second defendant could not assert privilege against him with respect to the Category 12 documents because he had a joint interest and/or a common interest in the Requested Documents.

39 The term "joint interest" has sometimes been treated as synonymous with "common interest" and both terms are often conflated and confused: *Legal Professional Privilege* at paras 6.4; *Phipson on Evidence* (Hodge M Malek gen ed) (Sweet & Maxwell, 20th Ed, 2022) at para 24.10 However, they are conceptually different and should not be conflated. In my view, the terminology used in *The Law of Privilege* – "joint privilege" (which arises where there is "joint retainer" or "joint interest") and "common interest privilege" – serve a useful purpose in distinguishing between the different concepts.

40 As stated earlier, "joint interest" refers to the situation where, even though the parties have not jointly retained a lawyer, they have a joint interest in the subject matter of the communication at the time that it came into existence (see [39(b)] above). As explained in *The Law of Privilege* (at paras 6.07– 6.08):

> … The defining characteristic of this aspect of joint privilege is that the joint interest must exist at the time that the communication comes into existence. … in other words, the documents must have come into being for the furtherance of the joint purpose or interest. …
>
> If a joint interest exists … neither party can assert privilege as against the other in respect of communications coming into existence at the time the joint interest subsisted; hence, each party to the relationship can obtain disclosure of the other's (otherwise privileged) documents so far as they concern the joint purpose or interest. However, both parties are entitled to maintain privilege as against the rest of the world. …

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41 In contrast, as explained in *The Law of Privilege* at paras 6.20–6.21:

> … common interest privilege arises where one person (party A) voluntarily discloses a document which is privileged in its hands to another party (party B) who has a common interest in the subject matter of the communication or in litigation in connection with which the document was brought into being. In such circumstances, provided disclosure is given in recognition that the parties share a common interest, the document will also be privileged in the hands of party B. … Although the point has not been considered extensively, the better view is that in order for the privilege to be invoked the common interest must arise at the time of disclosure by Party A to party B; unlike with joint interest privilege, it is not necessary for it to arise at the time the document was created. If the position were otherwise, the application of the common interest privilege doctrine would be severely curtailed.
>
> … common interest privilege … does not give party B the right to obtain disclosure of otherwise privileged documents from party A … The effect of common interest privilege is that, notwithstanding that he is not obliged to do so, in circumstances where party A voluntarily discloses an otherwise privileged document to party B, privilege will not be lost provided that a common interest exists between them at the time of disclosure. The document will be privileged in the hands of party A and party B and each or both may assert privilege and resist disclosure.

See, also, *Motorola Solutions Credit Co LLC v Kemal Uzan* [2015] SGHC 228 (partially reported in [2015] 5 SLR 752) ("*Motorola*") at [16] and [22].

42 In *R (on the application of Ford) v Financial Services Authority* [2012] 1 All ER 1238 ("*Ford*"), Burnett J set out the following test (at [40]):

> … an individual claiming joint privilege with others in a communication with a lawyer, when there is no joint retainer, will need to establish the following facts by evidence. (i) That he communicated with the lawyer for the purpose of seeking advice in an individual capacity. (ii) That he made clear to the lawyer that he was seeking legal advice in an individual capacity, rather than only as a representative of a corporate body. (iii) That those with whom the joint privilege was claimed knew or ought to have appreciated the legal position. (iv) That the lawyer knew or ought to have appreciated that he was communicating

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> with the individual in that individual capacity. (v) That the communication with the lawyer was confidential.

43 However, it has been suggested that the criteria set out in *Ford* should be treated with some caution and are unlikely to prove to be of universal application; whether a joint interest is capable of arising should depend on the capacity in which the individual director receives the privileged information: *The Law of Privilege* at para 6.12. Further, it is unclear why the criteria in *Ford* would not equally have given rise to an implied retainer: *Legal Professional Privilege* at para 6.41.

Whether the claimant was entitled to the Category 12 documents on the ground of joint interest

44 The question here was whether a joint interest existed; if it did, the claimant would be entitled to the Category 12 documents by virtue of the joint interest.

45 The claimant submitted that, as both a shareholder and director of the second defendant, he had a joint interest with the second defendant. The claimant relied on *CIFG Special Assets Capital I Ltd v Polimet Pte Ltd* [2016] 1 SLR 1382 (*"CIFG*") at [75], which referred to the following as examples of relationships where joint interest might arise:

(a) a trustee and beneficiary;

(b) a parent company and its wholly-owned subsidiary;

(c) a company and its shareholders;

(d) a company and its director; and

(e) partners.

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46 However, it was clear that *CIFG* merely referred to the above relationships as examples where joint interest *might* arise. *CIFG* did not decide that a joint interest exists between a company and its shareholders/directors in every case based solely on that relationship. The fundamental question remained whether the parties had a joint interest in the subject matter of the privileged communications at the time of its creation: *Legal Professional Privilege* at para 6.26.

47 The principles in relation to joint interest lack the clarity of the principles relating to joint retainer, with the result that it is difficult to know what is or is not a joint interest: *Legal Professional Privilege* at para 6.20, citing *Love v Fawcett* [2011] EWHC 1686 (Ch) at [14]. The cases have not been particularly helpful in providing clarity; ultimately, the question whether there was a joint interest depends on the facts and a joint interest should not be regarded as arising casually or accidentally: *Legal Professional Privilege* at paras 6.21–6.24.

48 The relationships referred to in *CIFG* merely reflect relationships which have been held to give rise to a joint interest. There is no general rule that joint privilege arises merely by virtue of such relationships. However, an analysis of joint interest in these relationships (see *Legal Professional Privilege* at paras 6.27–6.46) show that for a joint interest to arise, there must be some compelling reason that justifies allowing the party claiming the joint interest access to privileged material despite the lack of an express or implied joint retainer. For example, beneficiaries of a trust have been allowed access to legal opinion obtained by trustees, paid for by the trust estate, to guide the trustees in the due administration of the trust, but not to legal opinions obtained by the trustees as to their defence in a claim by the beneficiaries against them: *Legal Professional Privilege* at paras 6.27–6.31; see, also, *Lufti Salim bin Talib v British and Malayan Trustees Ltd* [2024] 5 SLR 86 at [44].

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Claimant as shareholder of second defendant

49 English law has recognised a general rule that no privilege can be asserted by the company against the shareholders subject to the exception where the advice taken by the company is in relation to actual, threatened or contemplated litigation ("Shareholder Rule"): *Sharp v Blank* [2015] EWHC 2681 (Ch) at [12]. This rule is said to be an extension of the joint interest principles applicable to trustees and beneficiaries by analogy: *Legal Professional Privilege* at para 6.32.

50 However, the second defendant relied on the UK Privy Council's recent decision on an appeal from Bermuda in *Jardine Strategic Ltd v Oasis Investments II Master Fund Ltd* [2025] 3 WLR 615 (*"Jardine*"). In that case, the Privy Council decided that the Shareholder Rule did not form part of the law of Bermuda and ought not to continue to be recognised in England and Wales either (at [80]). The Privy Council reasoned as follows:

> (a) The original justification for the Shareholder Rule was that shareholders had a proprietary interest in a company's assets; however, this basis was wholly inconsistent with the proper analysis of a registered company as a legal person separate from its members, such that the members have no proprietary interest in the funds of the company used to pay for the advice (at [80]).
>
> (b) It could not be said that there was always a community of interest between every company and its shareholders, either as a class or individually, so as to justify an automatic status-based denial of legal privilege between every company and all its shareholders (at [81]).

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(c) It was also a serious oversimplification to say that for so long as a company is solvent, its interests are frequently aligned with those of its shareholders and what is good for the company's business is usually good for shareholder value (at [85]–[86]).Shareholders are simply not a homogeneous block with a single shared interest which may coincide with, or diverge from, the interests of the company (at [86]). The directors of a large modern sophisticated company have to find their way to a reliable perception of their company's best interests while paying appropriate attention to the interests of their many different classes of stakeholders when making decisions about the management and direction of the company's business; many of these decisions will need, or at least benefit from, candid, confidential, legal advice (at [88]).

(d) The relationship between a company and its shareholders is essentially contractual; it is strange that an exception to legal privilege can be mounted on the basis of a special relationship (company and shareholder) when the express contractual terms of that relationship point in the opposite direction (at [90]).

51 The Privy Council also rejected a narrower, more nuanced approach proposed by Kawaley JA in the Court of Appeal, that would regard the existence of a shareholder-company relationship as only a threshold to entry upon the question of whether the shareholder can demonstrate a sufficient joint interest in the obtaining and receiving of advice, on the particular facts of the case (at [92]). This was because in order for privilege to deliver its intended objective of encouraging candour, there must be reasonable certainty as to whether communications would be privileged, at the point when directors decide whether to seek legal advice (at [93], [96]).

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52 The decision in *Jardine* has aligned English law more closely with the position in Canadian law, which had rejected the traditional English position on the basis that (a) the doctrine that shareholders had a property interest in legal opinions obtained by a corporation was inconsistent with the separate legal personality of a corporation, and (b) a shareholder's right to access privileged communications of a corporation would impede both a corporation and its solicitors' ability to express and discuss legal opinions freely and openly: *Ziegler Estate v Green Acres (Pine Lake) Ltd* [2008] AJ No 1081 ("*Ziegler*") at [43]–[47].

53 While this issue did not appear to have squarely addressed in the Singapore courts, it has been suggested that the traditional English position should not be followed for reasons similar to those articulated in *Jardine* and *Ziegler*: Kiu Yan Yu, "Disclosure of the Company's Privileged Documents to Shareholders as an Application of Joint Interest Privilege" (2020) 32 SAcLJ 36 at paras 74–78, 105.

54 I agreed with *Jardine* and *Ziegler* and found that the claimant could not claim a joint interest solely by virtue of his status as a shareholder.

Claimant as a director of the second defendant

55 The claimant claimed to have a joint interest because he was one of the directors of the second defendant from whom R&T could take instructions or communicate with, as a director he was authorized to receive communications from R&T, and he had signed off on the letter of engagement with R&T.[8]

[8] CWS at para 51; NE, 24 October 2025, at 5:27–29.

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56 I disagreed with the claimant. I agreed with the second defendant that the mere fact that a director was involved in seeking or receiving legal advice did not give rise to a joint interest. As pointed out in *Legal Professional Privilege* (at paras 6.36–6.37):

> It is not uncommon for a company to seek or receive advice through its directors. That should not in itself be sufficient for the company and its directors to establish a joint interest in the advice, since a company can only act through human beings.
>
> Thus, while there is some authority that a company and its directors may share a joint interest in privileged communications, these tend to be cases where the director was personally advised by the lawyer acting for the company. It is therefore arguable that these are cases where there was an implied retainer between the lawyer and the director, and consequently it may be that these are not truly cases of joint interest but of joint retainer.

57 Further, as stated in *Law of Privilege* (at para 6.12):

> … A joint interest is unlikely to arise where the lawyer is retained by the company and the director has no personal interest in the matter, as opposed to the interest which he would have had as a director (or shareholder) of the company. Hence, a joint interest between a company and its directors should not lightly be inferred since to do so as a matter of course would risk subverting the separate legal personality of the company and its logically distinct interests.

58 In the present case, the letter of engagement was addressed to the second defendant and it was clear that R&T was advising the second defendant only. The claimant signed the letter of engagement in his designation as director, "[f]or and on behalf of [the second defendant]". Clearly, this did not mean that he had a personal interest in the matter.

59 For these reasons, I found that the claimant did not have a joint interest with the second defendant on the basis of his position as a director.

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Whether the claimant was entitled to the Category 12 documents on the ground of common interest

60 Two questions arose in respect of common interest:

(a) first, whether a common interest existed between the claimant and the second defendant; and

(b) second, whether the claimant would be entitled to the privileged documents sought from the second defendant by virtue of the common interest, if one existed.

Whether a common interest existed

61 The claimant submitted that as a director of the second defendant, he had a common interest in the advice given by R&T on the restructuring of DRT's loan facilities.

62 I disagreed. The claimant was not suing in his capacity as a director of the second defendant. His claim for minority oppression was brought in his capacity as a shareholder of the second defendant. Clearly, he had no common interest with the second defendant in the advice given by R&T on the restructuring of the loan facilities. In addition, the claimant's and the second defendant's interests were adverse to each other's; their interests could not be common: *Legal Professional Privilege* at para 6.85.

Whether claimant was entitled to the privileged documents if a common interest existed

63 In any event, in my view, the existence of a common interest would merely have permitted the second defendant (to whom the privilege belonged) to share privileged material with persons having a common interest, without losing the privilege against the rest of the world (see [43] above). It would not

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have provided the claimant with a freestanding entitlement to access the documents over which the second defendant claimed privilege.

64 Accordingly, even if the claimant had a common interest with the second defendant in the privileged communications, that would not have entitled him to those privileged communications.

Conclusion

65 For the foregoing reasons, I dismissed the claimant's appeal.

Chua Lee Ming
Judge of the High Court

Ooi Huey Hien and Ng Li Yang Jervis (LVM Law Chambers LLC) for the claimant;
Ng Lip Chih (NLC Law Asia LLC) for the first defendant;
Suraj Lingaraj Bagalkoti and Shawn Ang De Xian (WongPartnership LLP) for the second defendant.

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