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

[2026] SGHC 75

Companies Winding Up No 51 of 2022 (Summonses Nos 2972 and 3030 of 2023 and No 2280 of 2025)

In the matter of Section 125(1)(e) of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Da Shun Shipping (Pte) Ltd

Da Shun Shipping (Pte) Ltd

… *Applicant*

Summons 2972 of 2023

Between

Yit Chee Wah (liquidator of Da Shun Shipping (Pte) Ltd)

… *Applicant (Sub-case)*

And

(1) The Hongkong and Shanghai Banking Corporation Limited
(2) Societe Generale, Singapore Branch
(3) An Wei Shipping Pte Ltd (in creditors' voluntary liquidation)

… *Respondents (Sub-case)*

Summons 3030 of 2023

Between

Yit Chee Wah (liquidator of
Da Shun Shipping (Pte) Ltd)

… *Applicant (Sub-case)*

And

An Wei Shipping Pte Ltd (in
creditors' voluntary
liquidation)

… *Respondent (Sub-case)*

Summons 2280 of 2025

Between

An Wei Shipping Pte Ltd (in
creditors' voluntary
liquidation)

… *Applicant (Sub-case)*

And

(1) Da Shun Shipping (Pte) Ltd
(2) The Hongkong and Shanghai
Banking Corporation Limited
(3) Societe General, Singapore
Branch
(4) Yit Chee Wah (liquidator of
Da Shun Shipping (Pte) Ltd)

… *Respondents (Sub-case)*

JUDGMENT

[Admiralty and Shipping — Admiralty jurisdiction and arrest — Statutory liens created by admiralty *in rem* claimants — Effect of order made under s 100(2) of the Insolvency, Restructuring and Dissolution Act 2018 — Whether the order provided security to admiralty *in rem* claimants]
[Restitution — Unjust enrichment — Contribution from co-debtor]
[Restitution — Subrogation — Section 2 of the Mercantile Law Amendment Act 1856]
[Insolvency Law — Administration of insolvent estates — Conduct of legal proceedings — Whether certain creditors' claims should be decided based on affidavits or after a trial]

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Re Da Shun Shipping (Pte) Ltd

[2026] SGHC 75

General Division of the High Court — Companies Winding Up No 51 of 2022
(Summonses Nos 2972 and 3030 of 2023 and No 2280 of 2025)
S Mohan J
14 October 2025

8 April 2026 Judgment reserved.

S Mohan J:

Introduction

1 Da Shun Shipping (Pte) Ltd ("Da Shun") is a one-ship company which is part of the Hin Leong group of companies.[1] Following the collapse of Hin Leong Trading (Pte) Ltd ("Hin Leong") and the Hin Leong group from around April 2020 onwards, Da Shun entered judicial management on 10 February 2021 and went into liquidation on 29 April 2022 in these proceedings *ie*, HC/CWU 51/2022.[2] Da Shun's main asset was the vessel "Sea Latitude" ("Vessel").[3] On 9 November 2021, Da Shun's then judicial managers obtained an order of court under s 100 of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ("IRDA") authorising the Vessel to be sold as if she

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1 7th Affidavit of Yit Chee Wah filed on 25 September 2023 ("YCW-7") at para 7.

2 YCW-7 at paras 9 and 13.

3 YCW-7 at paras 3(a)(1)(a), 7 and 16.

was not subject to security ("s 100 Order").[4] In these proceedings, a number of parties contest how the sale proceeds of the Vessel should be applied.

2 This judgment deals with somewhat difficult issues relating to the law of unjust enrichment and subrogation. Additionally, I consider the extent to which my earlier decision in *Da Hui Shipping (Pte) Ltd v An Rong Shipping Pte Ltd* [2025] 4 SLR 816 ("*Da Hui (HC)*") applies to the facts of this case.

Facts

The parties

3 Mr Yit Chee Wah ("Mr Yit") is the liquidator of Da Shun. While two of the applications before me are brought in his name, Mr Yit and Da Shun can be described as mere observers in the contest presently before me.

4 An Wei Shipping Pte Ltd (in creditors' voluntary liquidation) ("An Wei") is a sister company of Da Shun. Both companies are subsidiaries of Xihe Capital (Pte) Ltd, another company in the Hin Leong group of companies.[5] Like Da Shun, An Wei was also a one-ship company – An Wei's main asset was the vessel "Sea Horizon".

5 The Hongkong and Shanghai Banking Corporation Limited ("HSBC") and Societe Generale, Singapore Branch ("SG") are banks who made admiralty *in rem* claims against the Vessel. They are referred to collectively as the "Writ Claimants".

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4 YCW-7 at para 18; HC/ORC 6303/2021 dated 9 November 2021 ("s 100 Order") (YCW-7 at Tab 15).

5 1st Affidavit of Tam Chee Chong filed on 2 November 2023 ("TCC-1") at paras 4–6.

The loan facility agreement

6 Da Shun and An Wei were joint and several borrowers under a US$33,800,000 term loan facility agreement with Bank of America, N.A., Singapore Branch ("BofA") dated 27 November 2019 ("Facility Agreement" and "Loan").[6]

7 The loan amount under the Facility Agreement was split into two tranches as follows:[7]

Tranche	Loan Amount
Tranche A	the lower of US$16,900,000 and 65% of the Fair Market Value of Vessel A ("**Tranche A Commitment**")
Tranche B	the lower of US$16,900,000 and 65% of the Fair Market Value of Vessel B ("**Tranche B Commitment**")
	Total Commitment: up to US$33,800,000

8 "Vessel A" was a reference to the "Sea Horizon" while "Vessel B" was a reference to the Vessel.[8]

9 Clause 3 of the Facility Agreement provided that the sums advanced under Tranches A and B were to be used to refinance Vessels A and B respectively:[9]

> 3.1 Purpose

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6 1st Affidavit of Ellyn Tan filed on 8 October 2021 filed in HC/OS 1023/2021 ("ET-1") at para 10; TCC-1 at para 7.

7 Clause 2.1 of the Facility Agreement dated 27 November 2019 ("Facility Agreement") (YCW-7 at p 115).

8 Schedule 3 of the Facility Agreement (YCW-7 at p 194).

9 Clause 3 of the Facility Agreement (YCW-7 at p 116).

> Each Borrower shall apply all amounts borrowed by it under the Facility towards refinancing of its Vessel as follows:
>
> (i) Tranche A shall be used for refinancing the Vessel A; and
>
> (ii) Tranche B shall be used for refinancing the Vessel B.

10 Notwithstanding that the Facility Agreement was notionally meant to fund two separate tranches to refinance An Wei's and Da Shun's respective vessels, their liability under the Facility Agreement was joint and several.[10] The Loan was secured by, amongst others, cross-collateralised mortgages over both the "Sea Horizon" and the Vessel.[11] Accordingly, BofA was at liberty to enforce its security interest against either vessel or both vessels to recover any sums owed to BofA under the Facility Agreement.

Sale of the "Sea Horizon"

11 Due to financial difficulties encountered by the Xihe Group entities (which were also part of the Hin Leong group of companies), the "Sea Horizon" (owned by An Wei) was sold subject to the terms set out in a BofA side letter dated 12 January 2021.[12] BofA ultimately received US$21,376,185.54 from the sale of the "Sea Horizon".[13] The proceeds from that sale were sufficient to pay off sums owed under Tranche A of the Facility Agreement in full.[14] Additionally, (a) a sum of US$132,604.42 was applied towards outstanding

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10 Clause 2.2 of the Facility Agreement (YCW – 7 at p 115).

11 TCC-1 at paras 7 and 10.

12 TCC-1 at para 12.

13 TCC-1 at para 13.

14 Letter from BofA to the parties to the Facility Agreement dated 24 May 2021 ("BofA's 24 May Letter") at para 12 (YCW-7 at p 261).

default interest under Tranche B; and (b) a sum of US$5,668,261.94 was applied towards the outstanding principal under Tranche B.[15]

12 Accordingly, a total sum of US$5,800,866.36 was applied by BofA from the sale of the "Sea Horizon" (*ie*, An Wei's vessel) towards the repayment of Tranche B, which concerned the "repayment of Da Shun's rateable portion of the Facility Agreement".[16] This sum will henceforth be referred to as the "Contributed Sum".

13 As of 10 February 2021, the total amount of principal and interest which remained due under the Loan stood at around US$8.4m.[17]

The statutory liens

14 On 24 April 2020, HSBC filed HC/ADM 91/2020 ("ADM 91"), which was an admiralty action *in rem* against the Vessel for a claim by HSBC relating to a cargo of approximately 134,380.142 mt of low sulphur fuel oil said to be shipped on board the Vessel under a bill of lading no. OTK19-2992 dated 20 November 2019 ("HSBC BL").[18] The originals of the HSBC BL had been delivered to HSBC by Hin Leong pursuant to inventory financing that HSBC had provided to Hin Leong; HSBC claims that it was at all material times and remains the lawful holders of the HSBC BL.[19] HSBC's claim in ADM 91 is quantified in its proof of debt at US$29,040,000.[20]

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15 TCC-1 at para 13; BofA's 24 May Letter at paras 9.3 and 9.5 (YCW-7 at p 260).

16 TCC-1 at para 17(c).

17 TCC-1 at para 18; BofA's 24 May Letter at paras 12–13 (YCW-7 at p 261).

18 1st Affidavit of Michael Choo dated 2 November 2023 ("MC-1") at paras 3.1.1 and 3.4.11.

19 MC-1 at para 3.3.2.

20 YCW-7 at pp 230–242.

15 On 1 April 2021, SG filed HC/ADM 52/2021 ("ADM 52"), which was an admiralty action *in rem* against the Vessel for a claim by SG relating to a cargo of 155,268.649 mt of low sulphur fuel oil said to be shipped on board the Vessel under a bill of lading no. OTK19-3195 dated 4 December 2019 ("SG BL").[21] Like HSBC, SG had obtained the SG BL as security for inventory financing which it had given to Hin Leong, and SG claims that it was at all material times and remains the lawful holder of the SG BL.[22] In its proof of debt, SG quantifies its claim at US$35,522,361.52.[23]

16 ADM 91 and ADM 52 are referred to collectively as the "Statutory Lien Claims".

Section 100 IRDA application and sale of the Vessel

17 Some time in 2021, the judicial managers of Da Shun formed the view that the Vessel was in an untenable position. This was because:

(a) After the sale of the "Sea Horizon", the outstanding principal and interest owed under the Loan was around US$8.7m.[24] This sum was still secured by, amongst others, BofA's mortgage over the Vessel.

(b) Additionally, the Writ Claimants had since asserted the Statutory Lien Claims over the Vessel.[25]

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21 1st Affidavit of Ng Hooi Gee dated 2 November 2023 ("NHG-1") at paras 5(a) and 50.

22 NHG-1 at paras 19–20.

23 YCW-7 at pp 243–254.

24 ET-1 at para 12.

25 ET – 1 at para 13.

(c) The Vessel continued to "incur operating expenses in an untenable fashion without reciprocal benefit to the Company".[26] These operating expenses were estimated to be approximately US$163,994.92 per month.[27]

(d) The Vessel was unable to trade due to the Statutory Lien Claims creating a risk of arrest should the Vessel enter Singapore's port limits (at the time, the Vessel had remained anchored outside Singapore port limits to reduce the risk of an arrest).[28]

18 In light of this untenable position, the judicial managers entered into discussions with HSBC and SG on the need to dispose of the Vessel free of encumbrances, including the Statutory Lien Claims, and the mechanisms by which to achieve this.[29] One mechanism to achieve this was for the judicial managers to make an application to court under s 100(2) of the IRDA, which allows the court to authorise the disposal of secured property as if it were not subject to security, if it would promote one or more of the purposes of judicial management.

19 Following these discussions, Da Shun's judicial managers, HSBC and SG entered into an agreement dated 17 June 2021 ("17 June Agreement") containing the following key features.[30] First, the judicial managers would apply to court under s 100 of the IRDA for an order allowing them to dispose of the

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26 ET-1 at para 17.

27 ET-1 at para 19.

28 ET-1 at para 21.

29 ET-1 at para 26.

30 ET-1 at para 27.

Vessel as if it were not subject to any security (the "s 100 Application").[31] While the 17 June Agreement referred to s 100(1) of the IRDA, the eventual order was (correctly, in my view) made under s 100(2).[32] Secondly, under the 17 June Agreement, the sale proceeds would be applied in the following order of priority:

(a) First, to pay the costs, fees, remuneration, commissions and/or expenses reasonably incurred by the judicial managers in the operation and preservation of the Vessel and/or properly incurred under IRDA arising out of the sale of the Vessel.[33]

(b) Second, to pay the outstanding amounts owing to BofA under the Loan.[34]

(c) Lastly, any balance proceeds were to be paid into court or an escrow account and distributed to the Writ Claimants following the determination of their respective claims under O 70 r 40 of the Rules of Court then applicable, or by any other process the court may direct, or any other means of adjudication that the parties may agree in writing.[35]

20 For their part, the Writ Claimants agreed not to object to the s 100 Application[36]. The Writ Claimants also undertook not to issue new writs or

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31 Agreement dated 17 June 2021 between Da Shun, HSBC, and SG ("17 June Agreement") at clause 4 (ET-1 at p 286).

32 Section 100 Order at para 1 (YCW-7 at p 219).

33 17 June Agreement at clause 4(c)(i) (ET-1 at p 286).

34 17 June Agreement at clause 4(c)(ii) (ET-1 at p 286).

35 17 June Agreement at clauses 4(c)(iii) and 4(d) (ET-1 at pp 286–287).

36 17 June Agreement at clause 5 (ET-1 at p 287).

arrest the Vessel for a period of three months from the date of the agreement and to take reasonable steps to facilitate the sale of the Vessel.[37]

21 While BofA was not a party to this agreement, it appears from the evidence that BofA was involved in the discussions leading up to it – the record contains a side letter from BofA to Da Shun dated 15 June 2021, in which BofA agreed to fund the s 100 Application.[38] Subsequent to this agreement, BofA also played an active role in the discussions between the parties on the terms of the proposed s 100 Application.[39]

22 The s 100 Application was eventually filed on 8 October 2021 in HC/OS 1023/2021 ("OS 1023"),[40] where Da Shun's judicial managers submitted that disposing of the Vessel was likely to promote a more advantageous realisation of Da Shun's assets than on a winding up (see s 89(1)(*c*) of the IRDA).[41] However, as the Statutory Lien Claims would survive the change of ownership of the Vessel, the Vessel was rendered "practically unsaleable".[42] No party would purchase it given the immediate threat of arrest upon any transfer of ownership, as a going-concern purchaser would not have the statutory moratorium that Da Shun enjoyed.[43]

23 Accordingly, Da Shun's judicial managers submitted that selling the Vessel free of encumbrances "would realise the best value of the Vessel, and

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37 17 June Agreement, clauses 1 and 4(b) (ET-1 at pp 285–286).

38 Letter from BofA to Da Shun dated 15 June 2021 at para 2 (YCW-7 at p 311).

39 1st Affidavit of Law Foong Lin dated 15 September 2025 ("LFL-1") at para 3.2.1.

40 LFL-1 at para 3.3.1.

41 ET-1 at para 28.

42 ET-1 at paras 29 and 35.

43 ET-1 at paras 29 and 35.

[would] therefore [be] in the interests of [Da Shun] and its creditors".[44] Active enforcement proceedings by way of an arrest of the Vessel were not ideal because: (a) the arresting party would likely have to incur significant upfront costs; and (b) an arrest and sale of the Vessel might end up being a somewhat protracted process.[45] In the circumstances, all parties (*ie*, Da Shun, BofA, and the Writ Claimants) supported the s 100 Application.[46]

24 On 9 November 2021, Kannan Ramesh J (as he then was) granted the s 100 Order by consent, which by and large reflected the terms of the 17 June Agreement and the product of the subsequent negotiations between Da Shun's judicial managers, HSBC and SG.[47] As the terms of the s 100 Order are a key part of the present dispute, the relevant parts of the order are set out in full:[48]

> **UPON THE APPLICATION** of the abovenamed Applicants in this action made by way of HC/OS 1023/2021, **AND UPON READING** the affidavit of Ellyn Tan Huixian filed on 8 October 2021, **BY CONSENT**
>
> It is ordered that:
>
> 1. Pursuant to Section 100(2) of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**"), the Judicial Managers of Da Shun Shipping (Pte.) Ltd. (the "**Company**") (the "**Judicial Managers**") be authorised to dispose of the vessel "Sea Latitude" (IMO No. 9217981) (the "**Vessel**"), as if the Vessel were not subject to the following security and/or security interests and without prejudice to the security and security interests:
>
> > (a) The registered security in favour of Bank of America, N.A., Singapore Branch ("**BofA**"), as contained in the First Preferred Liberian Ship Mortgage registered in respect of the Vessel, dated 28 November 2019 (the "**Mortgage**");

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44 ET-1 at para 38.

45 ET-1 at paras 43–44.

46 ET-1 at para 46.

47 LFL - 1 at paras 3.1 – 3.2.8.

48 Section 100 Order (YCW-7 at p 219).

(b) The General Assignment relating to the Vessel executed by the Company in favour of BofA dated 28 November 2019 (the "**General Assignment**"); and

(c) The statutory liens (collectively, the "**Statutory Liens**") asserted by parties below in the form of admiralty writs *in rem*:

(i) HC/ADM 91/2020 filed by The Hongkong and Shanghai Banking Corporation Limited ("**HSBC**") on 24 April 2020 ("**ADM 91**"); and

(ii) HC/ADM 52/2021 filed by Societe Generale ("**SG**") on 1 April 2021 ("**ADM 52**").

2. The Judicial Managers be granted leave to apply any and all proceeds of sale of the Vessel received by the Company, net of:

(a) the reimbursement to BofA and/or the Company of sums reasonably incurred in connection with the operation and preservation of the Vessel for the period from 22 April 2021 to the date of the sale and delivery of the Vessel (both dates inclusive), including but not limited to, any survey costs and bunker costs so incurred;

(b) any remuneration and expenses properly and reasonably incurred by the Judicial Managers (including advisers engaged by the Judicial Managers), as referred to in Section 114(1)(c) of the IRDA, in the exercise of their duties and powers conferred under the IRDA and/or the Order of Court dated 10 February 2021 in HC/ORC 937/2021;

(c) all fees, commissions, costs, and/or expenses incurred in connection with or arising out of the sale of the Vessel, including but not limited to, the appointment and payment of fees and/or commissions of any agent, advisor, surveyor, and/or broker incurred in connection with or arising out of the sale of the Vessel;

such balance after reducing the above from the proceeds of sale being the "**net proceeds**", to be applied in the following manner:

(i) within a reasonable time upon the Company receiving any sum of monies payable to or for the account of the Company in respect of the Vessel, on such terms of a memorandum of agreement ("**MOA**") that has been or will be entered into in respect of the Vessel between the Company and the purchaser (which shall be negotiated on the basis of the template MOA annexed as "**ETH-1**" to the 1st Affidavit of Ellyn Tan Huixian filed herewith), the net proceeds shall be first applied in satisfaction of

all amounts owing to BofA secured under the Mortgage and the General Assignment; and then

(ii) in the event there remain any balance net proceeds after satisfaction of the amounts owing to BofA (the "**Balance Proceeds**"):

(A) the Judicial Managers shall pay the Balance Proceeds into Court, as security for and pending the final determination of HSBC's and SG's respective rights and liabilities in connection with HSBC's and SG's misdelivery claims against the Vessel and/or Defendants as described in the endorsements of the Writs of Summons filed in ADM 91 and ADM 52 (the "**Misdelivery Claims**);

(B) such Balance Proceeds shall be paid to HSBC and/or SG (as the case may be), in discharge of their Misdelivery Claims: (i) in accordance with any decision by the Court and/or a Registrar, where the Misdelivery Claims have been referred to the Court and/or the Registrar for determination; (ii) in accordance with an order of court or judgment directing such release; or (iii) any other means of adjudication that may be agreed in writing between Da Shun Shipping (Pte.) Ltd. (acting through the Judicial Managers), HSBC and SG; and

(C) the surplus (if any) shall be paid to the Company, or to whomsoever may be entitled to receive such surplus, as the Court may direct.

3. HSBC and SG shall:

(a) file a Notice of Discontinuance against the Vessel in respect of ADM 91 and ADM 52 within three business days of the date of this Order, with no order as to costs to be made in such writ proceedings; and

(b) refrain from issuing any further admiralty writs *in rem* against the Vessel within 4 months from the date of this Order, or as extended by agreement between the Judicial Managers, BofA, HSBC and SG.

4. If the Vessel is not disposed of prior to the expiry of the period stated in paragraph 3(b) above, HSBC and SG shall be at liberty to re-file admiralty writs *in rem* in respect of their respective Misdelivery Claims, notwithstanding the redelivery of the Vessel by the person liable *in personam* for the Misdelivery Claims. If any such admiralty writs are filed, the Misdelivery Claim(s) shall

> not be subject to any defence arising from the limitation period under Article III Rule 6 of the Hague Rules and Hague-Visby Rules and/or the redelivery of the Vessel by the person liable *in personam* for the Misdelivery Claims, insofar as the same would not have applied to ADM 91 and ADM 52 against HSBC and SG respectively.
>
> 5. If the Vessel is disposed of during the period stated in paragraph 3(b) above, HSBC and SG shall be at liberty to file any proceedings and/or applications in respect of their respective Misdelivery Claims, against the Balance Proceeds in the event that such proceedings are required for adjudication and/or determination of the Misdelivery Claims. If any such proceedings and/or applications are filed, the Misdelivery Claims shall have the same priority and rights against the Balance Proceeds as a statutory lien would have against the Vessel, and shall not be subject to any defence arising from the limitation period under Article III Rule 6 of the Hague Rules and Hague-Visby Rules and/or the redelivery of the Vessel by the person liable *in personam* for the Misdelivery Claims, insofar as the same would not have applied to ADM 91 and ADM 52 against HSBC and SG respectively.
>
> 6. The Judicial Managers' costs of and incidental to this application be deemed expenses incurred in the course of the judicial management of the Company and be paid out of the assets of the Company and/or payable under paragraph 2(b) above.
>
> 7. Save and to the extent set out in herein, BofA shall retain all of its rights under the Mortgage and General Assignment. To avoid doubt, BofA shall not be required to release the Mortgage until after the distribution of the net proceeds to it pursuant to paragraphs 2(a) and 2(i) above.
>
> 8. Liberty to apply be granted to the Judicial Managers to seek further directions in connection with the matters set out at paragraphs 2 and 3 above.
>
> [emphasis in original in bold]

25 Pursuant to the s 100 Order, the Writ Claimants filed Notices of Discontinuance in ADM 91 and ADM 52 respectively. This enabled Da Shun's judicial managers to "market the Vessel for sale free of encumbrances".[49]

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[49] YCW-7 at para 18.

26 The Vessel was sold by the judicial managers and delivered to its buyers on 4 February 2022.[50] The sale proceeds from the Vessel amounted to US$24,645,009.27.[51] BofA was repaid the monies it was owed and the Mortgage on the Vessel was discharged on 4 February 2022.[52] Following the settlement of accounts and further receipts and/or payments from the sale proceeds, the balance proceeds paid into court amounted to US$12,450,771.26.[53] While the affidavit of Mr Yit refers to a sum of US$12,452,818.82 as representing the balance proceeds,[54] the amount eventually paid into court, as indicated in Directions to Accountant-General for Payment In in HC/DRI 62/2023 (Amendment No. 1) filed on 8 November 2023, amounted to US$12,450,771.26. Nothing turns on this difference but henceforth, this sum is referred to as the "Balance Proceeds".

The competing claims and the present proceedings

27 There are, broadly, two sets of competing claimants to the Balance Proceeds that are relevant for the purposes of the applications before me:

(a) While the Writ Claimants have filed Notices of Discontinuance in respect of their Statutory Lien Claims, they continue, collectively, to assert a priority / security interest over the Balance Proceeds in accordance with paragraph 2(ii) of the s 100 Order.[55]

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50 YCW-7 at para 19; LFL-1 at para 4.2.1.

51 YCW-7 at para 21.

52 YCW-7 at paras 22–23.

53 YCW-7 at paras 24–27.

54 YCW-7 at paras 3(a)(1)(a) and 27.

55 YCW-7 at para 28.

(b) On 29 December 2022, An Wei's previous solicitors informed Mr Yit that An Wei had a claim in contribution against Da Shun and sought to assert the proprietary remedy of subrogation against the Balance Proceeds.[56]

28 Arising from these competing claims, this judgment deals with three applications:

(a) HC/SUM 2972/2023 ("SUM 2972") is an application by Mr Yit as Da Shun's liquidator. In SUM 2972, Mr Yit essentially seeks directions on the appropriate distribution of the Balance Proceeds, which have been paid into court. In particular, Mr Yit requests for a determination to be made under s 145(3) of the IRDA as to the respective rights and liabilities of HSBC's, SG's, and An Wei's respective claims against the Balance Proceeds.

(b) HC/SUM 3030/2023 ("SUM 3030") is Mr Yit's application (under s 170(2) of the IRDA) for leave to commence SUM 2972 against An Wei, and for the costs of the application to be in the cause of SUM 2972.

(c) HC/SUM 2280/2025 ("SUM 2280") is An Wei's application. An Wei seeks leave under s 133(1) of the IRDA to commence and proceed with SUM 2280. Substantively, An Wei applies for an order to be paid the sum of US$6,083,702.55 out of the Balance Proceeds in priority over all other claimants including HSBC, SG and Da Shun. This sum comprises the Contributed Sum at [12] plus 50% of various costs incurred and claimed by BofA in relation to its enforcement of the

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[56] YCW-7 at para 29.

Facility Agreement.[57] An Wei asserts that it has an entitlement to stand as a secured creditor in the place of BofA under the Mortgage, following its payment to BofA which discharged part of Da Shun's debt to BofA. Alternatively, An Wei seeks payment of the same by way of contribution, but as an unsecured creditor.

Issues to be determined

29 Three broad issues arise for my determination in these applications:

(a) whether An Wei is entitled to the proprietary remedy of subrogation ("First Issue");

(b) whether the Writ Claimants have a security, proprietary or otherwise priority interest in the Balance Proceeds ("Second Issue"); and

(c) whether the Writ Claimants have proved their respective claims ("Third Issue").

30 Before delving into the substantive issues, I deal briefly with the preliminary question of whether leave should be granted to the liquidators of Da Shun and An Wei respectively to commence/proceed with SUM 2972 and SUM 2280 respectively. Under s 170(2) of the IRDA which applies to companies in creditors' voluntary liquidation, no action or proceeding may be proceeded with or commenced against the company except with the leave of the court. Similarly, under s 133(1) of the IRDA which applies to a company wound up by the court, leave is required for any person to commence proceedings against such a company. Da Shun was wound up by the court while An Wei is

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57 TCC-1 at paras 20–22.

in creditors' voluntary liquidation. Thus, s 170(2) of the IRDA would be relevant in relation to the applications made by Mr Yit against*, inter alia*, An Wei and s 133(1) would be relevant in relation to SUM 2280 brought by An Wei against, *inter alia*, Da Shun.

31 No party opposed the grant of leave, and all parties proceeded to make substantive submissions on the merits of their respective claims. In these circumstances, I consider it appropriate to grant leave to Mr Yit and An Wei respectively so as to enable the court to determine the substantive disputes relating to the Balance Proceeds.

32 Turning to the substantive issues enumerated at [29], I make a few observations regarding how these issues interact with the respective claims of HSBC, SG and An Wei:

(a) Assuming for current purposes that An Wei has a claim against Da Shun in contribution, An Wei still has to succeed on the First Issue to prevail over the Writ Claimants in terms of priority. This is because the quantum of the claims of the Writ Claimants, if proven, far exceeds the Balance Proceeds.

(b) The Writ Claimants on the other hand must succeed on the Third Issue to have any claim at all against the Balance Proceeds. Further, the Writ Claimants will need to prevail on the Second Issue as well in order for their claims to enjoy priority over An Wei's claim.

(c) Should An Wei fail on the First Issue, and the Writ Claimants succeed only on the Third Issue but not the Second Issue, then An Wei and the Writ Claimants will only be able to recover their claims *pari passu* as unsecured creditors of Da Shun.

First Issue: Whether An Wei is entitled to the proprietary remedy of subrogation

33 To begin, none of the parties adverse to An Wei seriously disputes that An Wei has a right to claim a *contribution* from Da Shun in respect of the sums enumerated above at [28(c)]. Notwithstanding that An Wei and Da Shun were jointly and severally liable under Clause 2.1 of the Facility Agreement, it is clear that the purpose of the Facility Agreement was for each borrower to benefit from an equal (*ie*, 50%) share of the loan. This is evident from the structure of the Facility Agreement being split into two tranches of equal commitment value (see [7] above). Clause 3.1 also provided that each tranche was to be used to refinance each borrower's respective vessel (see [9] above).

34 Additionally, Clause 2.2.2 of the Facility Agreement contemplates each co-borrower possessing rights of indemnity *inter se* in respect of the sums repaid under the Loan. Clause 2.2.2 reads:[58]

> Each Borrower agrees that any rights which it may have at any time by reason of the performance of its obligations under the Finance Documents to be indemnified by the other Borrower shall be exercised in such manner and on such terms as the Lender may reasonably require. …

35 In *Da Hui (HC)*, I had summarised the law on contribution (at [32] and [35]) as follows:

> 32 It is settled law that a co-debtor or co-surety who discharges more than his fair share of a debt will have a right to claim contribution for the excess as against his other co-debtors or co-sureties. In *Chitty on Contracts* (Hugh Beale gen ed) (Sweet & Maxwell, 34th Ed, 2021) vol 1, the learned authors observed (at para 19-027) that:
>
> Joint and joint and several debtors have a restitutionary right of contribution among themselves: that is to say, if one has paid more than their share of the debt, they can recover the excess

[58] YCW – 7 at p 115.

> from the others in equal shares, subject to any agreement to the contrary. In the absence of agreement to the contrary each co-debtor is liable for an equal share of the debt or obligation. …
>
> 35 In this connection, Da Hui relied on the relevant principles distilled in *Periasamy Ramachandran v Sathish s/o Rames* [2020] SGHCR 8 (at [60]), which were derived from the decision of the Supreme Court of New South Wales (Equity Division) in *Official Trustee in Bankruptcy v Citibank Savings Ltd* (1995) 38 NSWLR 116:
>
> (a) When persons fall under a common liability as sureties, and the creditor enforces the remedies available to him in such a manner that a disproportionate burden falls on one of the sureties, that surety has an entitlement in equity to contribution by the others so that, overall, the burden is distributed fairly: at 119F.
>
> (b) The starting point for the court's determination of whether a surety is entitled to contribution from his co-sureties, and if so, how much contribution, is the application of the equitable principle 'equity is equality'. That principle assumes that the co-sureties are in positions of equality so that equality of outcome is appropriate. Since equality ordinarily produces a just outcome, the assumption of 'equal sharing should not be lightly departed from': at 119F, 120B and 125C.
>
> (c) However, as ever with equitable relief, the court is in search of the 'substance of transactions'; specifically, whether the 'true relationship' between the parties is as co-sureties with a common liability: at 119G and 120A. That relationship may be ascertained from one or more sources:
>
> > (i) First, the terms of documents or express arrangements between the parties (such as, in *Citibank*, a Deed of Supplementary Loan reflecting common liability as between the couple and the second defendants). In 'most cases', the parties' true relationship may be amply reflected in such agreements: at 119G and 120D. However, because the right to contribution arises from 'equitable doctrine and not the actual or imputed agreement of co-sureties' – meaning that the court is ultimately 'not enforcing contractual or other legal rights of the parties, but is intervening, as a court of conscience, to secure a just outcome' – the court does not, and should not, limit its consideration to such express documented agreements: at 123D–E and 120C–D.
> >
> > (ii) Second, apart from those recorded in written documents, other agreements (actual or imputed),

understandings or common intentions between the parties that they are not in an equal relationship as sureties. These may but need not amount to contract: at 120A and D–E, 122C–D and 124D–E.

(iii) Third, an intention held by a co-surety at the time of becoming a surety – irrespective of whether this intention was shared with the other co-sureties – that the parties are not in an equal relationship as sureties: at 120D–E, 122E–F and 124E.

(d) The circumstances in which the parties acted, including any representations, conventions or detriments, may make their relationship sufficiently clear without there being any particular arrangement, objective expression of intention, or actual advertence to the subject of contribution. Indeed, cases in which it is most obvious that a co-surety is not entitled to contribution from another may be cases where there is least likely to be express advertence to contribution: at 120A and D–E, and 123F–G.

(e) One circumstance in which it may be inequitable to require contribution is where the plaintiff co-surety enjoys the whole benefit of the guarantee (such as the money advanced): at 125D–127A; see also the Supreme Court of Canada's decision in *Bater and Anor v Kare* [1964] SCR 206 ('*Bater*') at 210–211; the English High Court's decision in *Day v Shaw and another* [2014] EWHC 36 (Ch) ('*Day v Shaw*') at [36]; *Courtney, Phillips & O'Donovan* at para 12-212; and *Goff & Jones* at para 20-100. This is consistent with the rationale for equity's intervention described at [54] above; namely, that contribution is founded on the assumption that co-sureties share a common interest and a common burden. When this assumption is displaced, a different conclusion must follow. As Cartwright J explained in *Bater* (citing the notes to *Lampleigh v Braithwait* in Smith's *Leading Cases*, 13th ed, vol 1 at 163), 'where two persons are under an obligation to the same performance, though by different instruments, if both share the benefit which forms the consideration, they must divide the burden; if only one gets the benefit he must bear the whole'.

(f) In the final analysis, the court's overriding aim is to 'achieve natural justice, and that task involves recognising and giving appropriate weight to the factors which bear upon whether or not the supposed contributories stand in the same position for the purpose of granting contribution as an equitable remedy': at 127D–F.

36 Applying the above statements of law to this case, and based on the provisions of the Facility Agreement referred to above (at [33]–[34]), it can in

my view be reasonably concluded that Da Shun and An Wei did not intend that their respective contributions to repaying the Loan would be disproportionate or unequal. Therefore, the presumption of "equity is equality" is not displaced on the facts of this case and as such, the rateable contribution sought by An Wei from Da Shun is justified.

37 Following from the conclusion above, the live issue that remains is whether An Wei can or ought to be subrogated to BofA's security interest, so as to allow its claim a priority over the Vessel's sale proceeds that is superior to that of the Writ Claimants'. An Wei submits that, having paid part of Da Shun's share of the mortgage debt, it is entitled to the remedy of subrogation and to step into BofA's shoes,[59] thereby ranking ahead of the Writ Claimants in the distribution of the Balance Proceeds.[60] Following *Re Downer Enterprises Ltd* [1974] 2 All ER 1074, subrogation entitles the paying party to succeed not only to the creditor's underlying claim, but also to their priority position in liquidation.

38 As a general comment before I begin my analysis proper, the remedy of subrogation is generally designed to prevent unjust enrichment. The court thus examines whether the defendant/respondent has been enriched at the claimant's/applicant's expense, and whether that enrichment is unjust (*Banque Financière de la Cité v Parc (Battersea) Ltd* [1999] 1 AC 221 ("*BFC*") at 234). Even if unjust enrichment is established, subrogation may be refused on the ground of public policy (*BFC* at 234D, *Da Hui (HC)* at [66]). As these principles operate independently of any agreement between the parties, they circumvent

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59 Written Submissions of An Wei Shipping Pte Ltd (in creditors' voluntary liquidation) dated 2 October 2025 ("AW-WS") at para 37.

60 AW-WS at para 46.

questions about whether the Facility Agreement between BofA, An Wei and Da Shun envisioned such relief. In any case, An Wei does not rely on the terms of the Facility Agreement as a basis for its claim.

39 With the general comments above in mind, two principal questions arise for my consideration under the First Issue: (a) whether a case of unjust enrichment exists to justify granting the remedy of subrogation, and this includes considering whether my decision in *Da Hui (HC)* precludes An Wei from obtaining such a remedy ("Unjust Enrichment Issue"); and (b) whether public policy weighs against the grant of subrogation in any event ("Public Policy Issue").

Analysis and decision

The Unjust Enrichment Issue

40 An Wei submits that it is entitled to subrogation on the grounds that Da Shun was unjustly enriched when An Wei paid part of Da Shun's debt to BofA.[61] An Wei's right to subrogation, it argues, arises from its partial payment of Da Shun's proportionate share of the debt as a joint and several borrower.

41 By paying part of Da Shun's debt to BofA and discharging their joint liability, An Wei claims the right to stand in BofA's shoes *vis-à-vis* Da Shun and the Vessel, thereby ranking ahead of the Writ Claimants.[62] An Wei contends that its contribution directly benefitted Da Shun's estate by increasing the funds available to creditors, and that this enrichment at An Wei's expense being unjust forms the basis of its subrogation claim.[63] In the alternative, An Wei relies on

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61 AW-WS at para 37.

62 AW-WS at paras 45–47.

63 AW-WS at paras 37–39.

s 2 of the Mercantile Law Amendment Act 1856 (2020 Rev Ed) ("MLAA"), which it submits preserves a joint and several co-debtor's rights even after it pays off its co-debtor's debt owing to the creditor.[64] On this basis, BofA's priority interest was not extinguished upon payment but is instead maintained for An Wei's benefit to prevent unjust enrichment,[65] and this would allow An Wei to step into BofA's shoes and inherit the Mortgage with its attendant priority.[66] An Wei contends that this proprietary right arises upon payment, survives liquidation, and is not defeated by the discharge or enforcement of the security.[67]

42 The Writ Claimants submit that subrogation is unavailable on several grounds. First, An Wei has no claim in unjust enrichment against Da Shun, as An Wei knowingly assumed joint and several liability for the Loan.[68] Secondly, the rationale for equitable subrogation is not engaged since the Vessel has been sold and delivered to the purchaser.[69] As stated in *Da Hui (HC)* at [60], equitable subrogation aims to cure the unconscionability of the defendant being restored to his collateral in circumstances where the claimant discharged the defendant's liability to his creditor.[70] Since the Vessel has been sold, Da Shun no longer possesses any right or interest which Da Shun cannot in good conscience keep

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64 AW-WS at paras 48 and 53–60.

65 AW-WS at paras 48 and 53–60.

66 AW-WS at paras 48–49.

67 AW-WS at paras 48–60.

68 Societe Generale, Singapore Branch's Written Submissions dated 2 October 2025 ("SG-WS") at para 75.

69 The Hong Kong and Shanghai Banking Corporation Limited's Written Submissions dated 2 October 2025 ("HSBC-WS") at para 4.1.6.

70 HSBC-WS at para 4.1.6.

An Wei out of[71] – put simply, there is no security left to which An Wei can be subrogated to.

(1) Subrogation and unjust enrichment

43 I turn first to the elements of unjust enrichment. As a starting point, it is well-established in Singapore that unjust enrichment is recognised as an independent cause of action, distinct from contractual or tortious obligations. This doctrinal position was affirmed by the Court of Appeal in *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* [2018] 2 SLR 655 at [181]–[182], where it was clarified that the inquiry in unjust enrichment proceeds on its own doctrinal footing. The claimant must establish an enrichment of the defendant, at the claimant's expense, which was unjust, and for which there is no applicable defence (*BFC* at 227A–B). Liability typically depends not on the existence of a contract or the commission of a tort, but instead on the autonomous principles governing unjust enrichment.

44 What constitutes unjust enrichment has been explained in some detail in *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 ("*Anna Wee*"), where the Court of Appeal at [132]–[133] recognised several categories of unjust factors:

> 132 This list of "unjust factors" has been catalogued in academic treatises. *Burrows* ([108] *supra*), for example, summarised the unjust factors as follows (at p 86):
>
> As regards the cause of action of unjust enrichment, the main unjust factors can be listed as follows: ***mistake, duress, undue influence, exploitation of weakness, human incapacity, failure of consideration, ignorance, legal compulsion, necessity, illegality and public authority ultra vires exaction and payment.***
>
> 133 *Goff & Jones* summarised them as follows (at para 1-22):

[71] HSBC-WS at para 4.1.6.

> ***Lack of consent and want of authority; mistake; duress; undue influence; failure of basis; necessity; secondary liability; ultra vires receipts and payments by public bodies; legal incapacity; illegality; and money paid pursuant to a judgment that is later reversed.***
>
> [emphasis added in bold italics]

45 As to where the remedy of subrogation is situated in the realm of unjust enrichment, as noted by Lord Steyn in the House of Lords decision in *BFC*, "distinguished writers have shown that the place of subrogation on the map of the law of obligations is by and large within the now sizeable corner marked out for restitution". Prof Tang Hang Wu, in his treatise – *Principles of the Law of Restitution in Singapore* (Academy Publishing, 2019) ("*The Law of Restitution*") notes at para 10.007 that in "certain situations, an unjust enrichment claimant may keep a security interest alive by way of subrogation". Thus, the remedy of subrogation is typically sought in circumstances where the claimant is seeking that remedy to reverse the effects of an unjust enrichment.

46 Therefore, the remedy of subrogation in this context, properly understood, is inextricably linked to whether unjust enrichment, *in its legal cause of action sense*, exists. It does not suffice for a claimant to assert that the retention of the benefit is "unfair" in some abstract sense. Rather, the claimant must, as a threshold, identify a *recognised unjust factor*.

47 That the court approaches claims grounded on unjust enrichment (and any consequential remedies sought for equitable subrogation) in a principled manner which eschews any notion of a free-ranging discretion to help litigants is amply demonstrated in the UK Supreme Court's recent decision in *Lowick Rose LLP (in liquidation) v Swynson Ltd* [2018] AC 313 ("*Lowick Rose*"). The speech of Lord Sumption is particularly instructive:

> 22. … *As with any novel application of the relevant principles, it is necessary to remind oneself at the outset that the law of unjust enrichment is part of the law of obligations. It is not a matter of judicial discretion*. As Lord Reed points out in *Investment Trust Companies* (para 39) it
>
> > *"does not create a judicial licence to meet the perceived requirements of fairness on a case-by-case basis: legal rights arising from unjust enrichment should be determined by rules of law which are ascertainable and consistently applied."*
>
> English law does not have a universal theory to explain all the cases in which restitution is available. *It recognises a number of discrete factual situations in which enrichment is treated as vitiated by some unjust factor. These factual situations are not, however, random illustrations of the Court's indulgence to litigants. They have the common feature that some legal norm or some legally recognised expectation of the claimant falling short of a legal right has been disrupted or disappointed*.
>
> …
>
> 30. *The cases on the use of equitable subrogation to prevent or reverse unjust enrichment are all cases of defective transactions. They were defective in the sense that the claimant paid money on the basis of an expectation which failed*. Many of them may broadly be said to arise from a mistake on the part of the claimant. For example, he may wrongly have assumed that the benefit in question was available or enforceable or that his stipulation was valid, when it was not. However, it would be unwise to draw too close an analogy with the role of mistake in other legal contexts or to try to fit the subrogation cases into any broader category of unjust enrichment. It is in many ways *sui generis*. In the first place, except in the case of voluntary dispositions, the law does not normally attach legal consequences to a unilateral mistake unless it is known to or was induced by the other party. But it does so in the subrogation cases. This is, as I have explained, because the windfall character of the benefit conferred on the defendant means that it is not unjust to give effect to the unilateral expectation of the claimant. Secondly, where money is paid under a contract, restitution is normally available only if the contract can be and is rescinded or is otherwise at an end without performance (eg by frustration). *This is because the law of unjust enrichment is generally concerned to restore the parties to a normatively defective transfer to their pre-transfer position. Subrogation, however, does not restore the parties to their pre-transfer position. It effectively operates to specifically enforce a defeated expectation.* Thirdly, as Lord Clarke suggested in *Menelaou* (para 21), the rule may be equally capable of analysis in terms of failure of basis for the transfer. …
>
> 31. Two things, however, are clear. The first is that the role of the law of unjust enrichment in such cases is to characterise the resultant

> enrichment of the defendant as unjust, *because the absence of the stipulated benefit disrupted a relevant expectation about the transaction under which the money was paid. The second is that the role of equitable subrogation is to replicate as far as possible that element of the transaction whose absence made it defective. This is why subrogation cannot be allowed to confer a greater benefit on the claimants than he has bargained for*: see *Paul v Speirway Ltd* [1976] Ch 220, 232 (Oliver J), *Banque Financière*, at pp 236-237 (Lord Hoffmann), and *Cheltenham & Gloucester v Appleyard*, at paras 38, 41-42 (Neuberger LJ). *It can be seen that the fact that all the cases relate to defective transactions is not just an adventitious feature of the disputes that happen to have come before the courts. It is fundamental to the principle on which they were decided.*
>
> [emphasis in italics added]

48 If one were seeking to find a common thread running through the categories of cases where equitable subrogation may be justified, it can be said to be, adopting the language of *Lowick Rose* at [30], that normatively, there has been some defect in the transaction which resulted in the claimant paying money on the basis of an expectation which failed. This thread is clearly apparent from a cumulative reading of *Anna Wee* and *Lowick Rose*, though it is important to emphasise that each case addresses a different aspect of the law: *Anna Wee* was a case concerning unjust enrichment generally, while *Lowick Rose* addresses when equitable subrogation might be available to prevent or reverse an unjust enrichment.

49 Such defects in the transaction typically manifest where the claimant's transfer (or payment, as the case may be) occurs on a basis that either never existed or failed, or which was vitiated in a manner recognised by the law. The reason the remedy of equitable subrogation applies in these cases is, as explained in *Lowick Rose* at [30], that it operates to specifically enforce the defeated expectation rather than to restore the status quo ante. This distinguishes subrogation from unjust enrichment, which typically seeks to restore parties to their pre-transfer position following a normatively defective transfer.

50 What is also clear from *Anna Wee* and *Lowick Rose* is that this principled, doctrinal approach rejects abstract characterisations or general assertions of unfairness or injustice, and instead requires the claimant to specify the unjust factor it relies on to ground its claim.

51 The importance of this is also supported by academic commentary. In *The Law of Restitution* at para 10.008, Prof Tang cites *BFC* at 236 and underscores the point that recovery via the remedy of subrogation depends on proving a recognised unjust factor:

> In the end, **BFC was allowed priority over OOL**. Lord Hoffman justified the claim for priority as follows:
>
> > **'[S]ubrogation is not a right or a cause of action but an equitable remedy against a party who would otherwise be unjustly enriched. It is a means by which the court regulates the legal relationships between a plaintiff and a defendant or defendants in order to prevent unjust enrichment.** When judges say that the charge is 'kept alive' for the benefit of the plaintiff, what they mean is that his legal relations with a defendant who would otherwise be unjustly enriched are regulated *as if* the benefit of the charge had been assigned to him. **It does not by any means follow that the plaintiff must for all purposes be treated as an actual assignee of the benefit of the charge and, in particular, that he would be so treated in relation to someone who would not be unjustly enriched.**
>
> [emphasis in original in italics; emphasis added in bold and underline]

52 An Wei relies on *BFC* in support of its application, but it is clear from Lord Hoffmann's speech in *BFC* quoted above at [51] that identifying a specific and recognised unjust factor is essential. It is only where such an unjust factor exists that, absent any public policy grounds to refuse relief, any justification would even begin to exist for the claimant to be afforded a priority interest over the defendant via the remedy of subrogation. Absent such an unjust factor, the elevation of the claimant's interest above that of the defendant would lack

principled justification and would, paradoxically to the claimant's assertion that the remedy should be granted to prevent injustice to itself, result in an injustice to the defendant. The doctrine of subrogation will not be applied if its application would itself produce an unjust result (*BFC* at 241H, citing *Boodle, Hatfield & Co v British Films Ltd* 1986 PCC 176 at 182–183).

53 The need to identify an established unjust factor was reiterated by the Court of Appeal in *Anna Wee* at [134] and [136]:

> 134 *It is important to reiterate that there is no freestanding claim in unjust enrichment on the abstract basis that it is "unjust" for the defendant to retain the benefit – there must be a particular recognised unjust factor or event which gives rise to a claim.* The following observations by Prof Birks in a seminal article are, in this regard, apposite (see Peter Birks, "The English recognition of unjust enrichment" [1991] LMCLQ 473 (at 482)):
>
> 'Unjust' is the generalization of all the factors which the law recognizes as calling for restitution. Hence, *at the lower level of generality the plaintiff must put his finger on a specific ground for restitution, a circumstance recognized as rendering the defendant's enrichment 'unjust' and therefore reversible.*
>
> [emphasis in italics added]
>
> …
>
> 136 … As *Goff & Jones* have explained ([99] *supra* at para 1-23):
>
> A claimant must be able to point to *a* ***ground of recovery*** *that is established by past authority, or at least is justifiable by a process of principled analogical reasoning from past authority.* 'As yet there is in English law ***no general rule*** *giving the plaintiff a right of recovery from a defendant who has been unjustly enriched at the plaintiff's expense*', and the courts' jurisdiction to order restitution on the ground of unjust enrichment is subject 'to the binding authority of previous decisions': they ***do not have 'a discretionary power to order repayment whenever it seems … just and equitable to do so'.*** *Claims in unjust enrichment must be pleaded by bringing them 'within or close to some* ***established category or factual recovery situation****'.*
>
> [emphasis in original in italics and bold]

54 The essence of this very same point was again succinctly emphasised by the UK Supreme Court in *Commissioners for Her Majesty's Revenue and Customs v The Investment Trust Companies* [2017] UKSC 29 at [39], a decision referred to in *Lowick Rose*:

> A claim based on unjust enrichment does not create a judicial licence to meet the perceived requirements of fairness on a case-by-case basis: legal rights arising from unjust enrichment should be determined by rules of law which are ascertainable and consistently applied.

55 In *Anna Wee*, the appellant contended that her former husband had, in the course of ancillary proceedings relating to their divorce, fraudulently concealed the existence of lucrative agreements, thereby misrepresenting his true financial position. Upon discovering years later that the undisclosed assets had been settled into trusts prior to his death, the appellant commenced proceedings against her former husband's estate and the trustees alleging fraudulent misrepresentation and unjust enrichment.

56 On the facts of *Anna Wee*, it was clear to the court that the appellant had failed to point to "any specific unjust factor underlying her claim in unjust enrichment" (at [135]), and on that basis, the appellant's claim failed. The appellant's claim at its core was a simple assertion that the trust (and, by extension, the second respondent as trustee) received funds that the appellant would have been entitled to, and that it would be "unjust" for the second respondent to retain them. The court held that such an assertion had to fail as it did not "plead facts which [were] capable of bringing the case within one of the established restitutionary claims or some justifiable extension of them" (*Anna Wee* at [135], citing *Uren v First National Home Finance Ltd* [2005] EWHC 2529 (Ch) at [18]).

57 It can be seen from the cases cited above from the apex courts in England and Singapore that identification of a recognised unjust factor is an essential piece of the puzzle.

58 In the present case, similar to *Anna Wee*, An Wei has not identified any viable or recognised unjust factor in its affidavits and submissions. An Wei's position is largely articulated on the basis of mere alleged factual inequities – namely, that it is unfair for An Wei to bear Da Shun's share of the debt using the sale proceeds of An Wei's own vessel. But that concern is *already addressed* by the available *in personam* remedy of *contribution*. To obtain something more, in particular a *proprietary* and *priority* interest by way of subrogation to BofA's security, An Wei must do more and establish an unjust factor or event recognised at law. As the cases clearly explain, unjust enrichment as properly understood in its legal sense, and any remedies consequentially available, are not aimed at simply providing relief against hard bargains or adverse commercial outcomes. A mere assertion of unfairness will not suffice. Nor, in this case, does the mere fact that An Wei paid more than its rateable share of the debt due to BofA. That payment in and of itself does not result in unjust enrichment *at law*, nor does it automatically entitle An Wei to step into the shoes of BofA.

59 The facts of this case demonstrate that no unjust factor exists and accordingly, the cases relied upon by An Wei do not assist its case. For example, in *BFC* which An Wei relies on, the claimant advanced funds on the shared assumption that it would receive effective security, but due to a defect in the transaction, that security was not obtained *ie*, in essence, there was a failure of basis. The House of Lords held that this rendered it unjust for the defendant to retain the benefit, and granted subrogation in favour of the claimant (at 234–235). Similarly, in *Menelaou v Bank of Cyprus UK Ltd* [2016] AC 176 ("*Bank*

of Cyprus"), the bank advanced money on the mutual expectation that it would receive security over property, and that expectation failed through no fault of the bank. Again, present on the facts was a failure of basis, a recognised unjust factor (at [20]–[21]). Consequently, subrogation was permitted to reverse the unjust enrichment.

60 As an aside, in *The Law of Restitution*, Prof Tang criticises the reasoning in *BFC* and opines that it ought not to be applied in Singapore (at para 10.009). The parties before me argued the matter as if *BFC* was part of Singapore law. In *Da Hui (HC)*, *BFC* was also cited to me by counsel and I discussed the case in my judgment. It was also cited with approval by the UK Supreme Court in *Lowick Rose*. Nevertheless, I do not consider it necessary to definitively come to any view on whether *BFC* is good law in Singapore. Instead, and for An Wei's benefit, I proceed on the assumption that it is applicable in Singapore but even on that assumed basis, *BFC* does not, for the reasons above, assist An Wei in any event. Reverting to my analysis, no failure of basis has been demonstrated in this case, or any other recognised unjust factor or event. My conclusion is reinforced by the evident intention of the parties (or lack thereof) – to be clear, in this context, the relevance of intention is not for the court to divine what the parties' intention was in any *contractual sense*. Rather, as Lord Hoffmann noted in *BFC* (at 234 D–E), it is because questions of intention may be "highly relevant to the question of whether or not the enrichment has been unjust".

61 On the facts, An Wei was under an existing legal obligation to repay the *entire* debt to BofA, having entered into the Facility Agreement as a joint and several borrower alongside Da Shun. There was no shared assumption, expectation or intention (nor was any evidence adduced) that An Wei would obtain, *over and above* any rights of contribution it may have had against

Da Shun, any security or proprietary benefit over the Vessel in the event the sale proceeds of its own mortgaged vessel were utilised to discharge BofA's debt. Nor was An Wei compelled to make the payment in circumstances of legal necessity that would support equitable relief. It was An Wei's commercial decision to enter into the Facility Agreement on joint and several terms and to offer its vessel as cross-collateralised security for the Loan.[72] The subsequent realisation of the debt by BofA upon An Wei and Da Shun's default under the Facility Agreement was thus entirely consistent with the risk allocation that An Wei had knowingly accepted. In short, what eventually transpired (*ie*, BofA enforcing its claim against both Da Shun and An Wei's vessels for different and unequal sums) was entirely consistent with the very bargain that An Wei entered into. There was no failure of basis, or any normative defect in the transaction or defeated expectation that An Wei could point to in aid of its case. In my judgment, since no legally recognised unjust factor or event arises on the present facts for the reasons I have given above, no question of equitable subrogation arises either. On this basis alone, the relief that An Wei seeks in prayers 2 and 3 of SUM 2280 cannot succeed and must be dismissed.

62 The conclusion I have reached above would be sufficient to dispose of An Wei's substantive application in SUM 2280. Nevertheless, I proceed to consider the other arguments raised by the parties, including whether my decision in *Da Hui (HC)* is distinguishable, and it is to that question that I now turn.

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[72] TCC – 1 at paras 7 - 10.

(2) *Da Hui (HC)* is in substance indistinguishable from this case

63 The Writ Claimants submit that An Wei's claim stands to be dismissed also by reason of my decision in *Da Hui (HC)*.

64 In *Da Hui (HC)*, I held that subrogation is unavailable when the mortgagee's security interest is spent as a result of the security itself being realised to discharge the primary debt (at [57]). Accordingly, in *Da Hui (HC)*, I denied the applicant's claim for subrogation.

65 In *Da Hui (HC)*, the co-borrowers were Da Hui Shipping (Pte) Ltd ("Da Hui") and An Rong Shipping Pte Ltd ("An Rong"), both of which were one-ship companies in the Hin Leong group. Da Hui and An Rong entered into cross-collateralisation arrangements under a US$37.2m joint loan facility agreement with BofA. The loan was secured by mortgages over three vessels. Subsequently, when both borrowers were facing financial distress, Da Hui's vessel was sold with the proceeds applied to partially satisfy the debt due to BofA. BofA recovered the remainder of the debt through admiralty actions *in rem* against An Rong's vessels. Da Hui subsequently claimed subrogation to BofA's extinguished mortgages over An Rong's vessels, competing over the residual sale proceeds against two other admiralty claimants, namely Petrochina International (Singapore) Pte Ltd ("Petrochina") and SG, who had issued admiralty *in rem* writs against An Rong's vessels. In *Da Hui (HC)*, I was required to determine whether subrogation to BofA's security interests remained available under s 2 of the MLAA in circumstances where the securities held by BofA had been fully realised.

66 In *Da Hui (HC)* at [57]–[63], I held that Da Hui could not be equitably subrogated to securities that had already been realised. BofA had already fully enforced its mortgages over An Rong's vessels by the commencement of

admiralty *in rem* proceedings and arrest of the vessels concerned, culminating in the judicial sale of those vessels. I further held that because BofA's interests as mortgagee had been exhausted or merged into its admiralty causes of action and judgments, no proprietary interest remained for Da Hui to be subrogated into. Da Hui appealed my decision and the Court of Appeal dismissed that appeal – see *Da Hui Shipping (Pte) Ltd v An Rong Shipping Pte Ltd* [2025] 1 SLR 998 ("*Da Hui (CA)*").

67 An Wei submits that *Da Hui (HC)* is distinguishable from the present case. First, An Wei argues that in *Da Hui (CA)*, the Court of Appeal dismissed the appeal on essentially procedural grounds *ie*, that Da Hui ought to have commenced proceedings before the admiralty court and not by way of an originating application. Thus, the Court of Appeal did not address whether my substantive decision on the merits was correct. An Wei's second and related submission is that in any event, in *Da Hui (HC)*, the mortgages were "spent" through judicial enforcement by BofA (namely, the arrest and judicial sale of An Rong's vessels). Conversely, in the present case, BofA did not enforce the mortgage (in the sense of arresting the Vessel in admiralty proceedings and having it judicially sold) – the Vessel was instead sold privately by the liquidator and BofA's security was "extinguished upon discharge of the debt by repayment". On this basis, An Wei contends that BofA's security was not "spent" in the same way as it was in *Da Hui (HC).* In this case, An Wei, as co-debtor, paid a portion of Da Shun's debt and thus was entitled to obtain an equitable right to the surplus by subrogation as the obstacle identified by me in *Da Hui (HC)* does not arise in this case.[73]

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[73] AW-WS at paras 28–36.

68 The Writ Claimants submit that this distinction is immaterial.[74] How the security was realised does not affect the applicability of *Da Hui (HC)* to An Wei's claim. In both *Da Hui (HC)* and the present case, BofA's security was fully enforced and therefore spent.[75] As a matter of fact, BofA received full repayment under the Facility Agreement from the sale of the Vessel and thereafter, discharged the Mortgage. The security held by BofA was thus fully spent.

69 In my view, the facts in *Da Hui (HC)* are, materially and *in substance*, similar to the present case. Thus, I am inclined to the view that just as in *Da Hui (HC)*, the security held by BofA over the Vessel was also spent in this case. In my view, the differences highlighted by An Wei between the facts of *Da Hui (HC)* and those of the present case are superficial and do not suffice to render my decision in *Da Hui (HC)* distinguishable as a matter of substance. Specifically, An Wei has failed to satisfy me why the distinction between an admiralty arrest by BofA and judicial sale of the vessels concerned in *Da Hui (HC)*, and a sale in this case of the Vessel by Da Shun's liquidators as if she was not subject to security pursuant to the terms of the s 100 Order, is a distinction of *substance* as opposed to *form*.

70 In my view, the mechanism by which the realisation of BofA's security (*ie*, the mortgaged vessel) took place in both cases is immaterial. What matters is that here, BofA's secured debt was fully satisfied by liquidating *the mortgaged vessel* and converting it into cash through a court sanctioned process. In this case, that process involved a sale of BofA's security sanctioned by an order of court (*ie*, the s 100 Order), granted on the application of Da Shun's then

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74 HSBC-WS at paras 4.1.2–4.1.4; SG - WS at paras 69–71.

75 HSBC-WS at para 4.1.4.

judicial managers as officers of the court. The s 100 Order expressly preserved BofA's rights and priority to the sale proceeds of the Vessel *qua* mortgagee. BofA in turn accepted and agreed to the terms of the s 100 Order which allocated the Balance Proceeds to other parties only after BofA was repaid in full. Clearly, the *quid pro quo* was that BofA would forbear from *actively enforcing* its rights against the asset that represented its security – that forbearance was key to the s 100 Order being successfully implemented. But that does not mean that the s 100 Order, a critical plank of the mechanism to sell the Vessel free from encumbrances, was not *itself* a means by which BofA was at the very least *indirectly or passively* enforcing its rights as mortgagee of the Vessel. It is noteworthy that in its side letter dated 15 June 2021 (see [21] above), BofA agreed to fund the s 100 Application "with a view to preserving *and enforcing our rights* under the Finance Documents *(including the Mortgage) and our security interest in the Vessel*…" (emphasis added in italics).[76] Further, the s 100 Order itself (at paragraph 7 – see above at [24]) made clear that BofA was not obliged to discharge the Mortgage until all sums due to it had been paid from the proceeds of sale of the Vessel. BofA participated in the distribution of the sale proceeds as envisaged by terms of the s 100 Order and recovered the amounts due to it under the Facility Agreement from the Vessel's sale proceeds, also in accordance with the terms of the s 100 Order. On completion of the sale of the Vessel, the liquidator confirmed that the Mortgage was discharged by BofA on 4 February 2022.[77] For all intents and purposes, BofA's enforcement rights *against the Vessel* were, on the completion of the sale pursuant to the s 100 Order, transferred to *the Vessel's sale proceeds*.

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76 YCW – 7 at p 312 (para 2.2).

77 YCW-7 at para 23.

71 In my judgment, the terms of the s 100 Order and the mechanics that were built into it as detailed above represented in substance *a* form of enforcement which balanced the rights of secured creditors like BofA and parties like HSBC and SG who had encumbered the Vessel with statutory liens, whilst allowing the liquidators of Da Shun to sell the Vessel without the Vessel being arrested by any of those parties. Thus, while BofA may not have *actively* enforced the Mortgage by arresting the Vessel itself, it would be artificial and blinkered to conclude that the sale of the Vessel by Da Shun's liquidators pursuant to the s 100 Order was a *pure private sale* that involved *no enforcement* whatsoever by BofA of its rights as the mortgagee. In my view, it would be more accurate to characterise it as a court sanctioned sale by Da Shun's then judicial managers involving the *indirect or passive* enforcement by BofA of its rights under the Mortgage.

72 Therefore, in my view, upon the completion of the sale of the Vessel pursuant to the s 100 Order and the distribution of the sale proceeds to BofA, BofA's security *was* spent and extinguished (as was also the case in *Da Hui (HC)*). Accordingly, and as I held in *Da Hui (HC)*, the remedy of subrogation cannot operate to revive a security that has been spent and thereby extinguished. Thus, if necessary for my decision, this would afford a further reason for me to dismiss An Wei's substantive application. Furthermore, given my analysis and conclusion above, it is not necessary for me to reach a landing on the merits of An Wei's first argument (at [67]) on whether or not the Court of Appeal in *Da Hui (CA)* affirmed my substantive decision in *Da Hui (HC)*. Even if there was no such affirmation, it does not assist An Wei.

73 I make two final points here relating to *Da Hui (HC)*.

74 The first concerns the Writ Claimants' submission that An Wei, having previously confirmed to the court that it would be bound and abide by the outcome in *Da Hui (HC)*, cannot now resile from that position.[78] This follows from a confirmation given by the previous solicitors of An Wei during a Case Conference on 21 December 2023 and recorded by the Assistant Registrar who conducted the case conference, that An Wei agreed to be bound by *Da Hui (HC)* and any appeal therefrom on the basis that the legal issues to be determined in *Da Hui (HC)* and this case were similar.[79] I reproduce the exchanges between the Assistant Registrar and the then counsel for An Wei:[80]

> Wong: Would like to hold this hearing in abeyance till the appeal in HC/OA 418/2023 is completed. Judgment issued on 16 November by Mohan J in OA 418 which has direct impact on An Wei as Judge had addressed the same issues arising in these two SUMs. In the reply affidavits in these SUMs, banks have adopted Mohan J's decision in OA 418 as against An Wei. AD 58/2023 – application for permission to appeal against Mohan J's decision in OA 418 on 1 December. Pending decision before the AD. If permission is granted, appeal will be filed.
>
> Ct: *So is An Wei taking position that it will bound by the decision on OA 418 and any appeal?*
>
> Wong: *Yes, as the legal issue is the same.*
>
> [emphasis added in italics]

75 For good order, the reference to HC/OA 418/2023 in the extract above is to my decision in *Da Hui (HC)*. While I do not find it necessary to reach a definitive determination of this point, for completeness, if it were necessary for me to decide this question, I would have been inclined to conclude that An Wei

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78 SG-WS at paras 65 and 68.

79 3rd Affidavit of Ng Hooi Gee dated 10 September 2025 ("NHG-3") at para 9; TCC-2 at para 10.

80 Notes of Evidence of Pre-Trial Conference on 21 December 2023 at p 2 ln 30 to p 3 ln 11 (Supplemental Bundle of Documents for Hearing of HC/SUM 2972/2023, HC/SUM 3030/2023 and HC/SUM 2280/2025 dated 2 October 2025 at pp 6–7).

should be held to its unequivocal confirmation given to the court and ought not to be allowed to resile from that position – see, for example, *Poh Huat Heng Corp Pte Ltd v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 ("*Poh Huat Heng Corp*") at [18]–[19], which although involving admissions by counsel on questions of *fact*, stated generally that a party might be precluded from reopening an issue they previously consented or agreed to before an Assistant Registrar, provided that the relevant statement constituted an admission. A factor that I have placed weight on is that I have in fact found *Da Hui (HC)* to be materially indistinguishable to the present case, which was also the view taken by An Wei's counsel at the time of the case conference. Had An Wei adhered to its confirmation, considerable time, costs and judicial resources would have been saved.

76 The second point relates to An Wei's submission that, by virtue of the principle in *Ex parte James; In re Condon* (1874) LR 9 Ch App 609, court officers including liquidators must not act in a manner that, even if lawful, falls below the standards of fairness expected of court officers. An Wei submits that the liquidator of Da Shun would be in breach of this principle if it is allowed to retain the benefit of An Wei's payment that partially discharged Da Shun's debt to BofA. An Wei contends that in these circumstances, any honest person would consider it fair to recognise An Wei's subrogated security rights.[81]

77 In my view, there is no basis to contend that Da Shun's liquidators acted in a manner that attracts the principle (assuming it applies) such that they should be held to account, whether as constructive trustees or on any other basis. The then judicial managers applied for the s 100 Order and acted in accordance with its terms. After Da Shun went into liquidation, Mr Yit as Da Shun's liquidator

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[81] AW-WS at paras 42–44.

applied to the court for determination of the rights and interests of the three claimants (*ie*, HSBC, SG and An Wei) against the Balance Proceeds. Far from acting in a manner prejudicial to the interests of creditors, the liquidators of Da Shun discharged their duties as expected of them. Accordingly, I have no hesitation rejecting the submission advanced by An Wei.

(3) Section 2 of the MLAA does not assist An Wei

78 An Wei relies in the alternative on s 2 of the MLAA. An Wei submits that, in order to prevent unjust enrichment, equity may "keep the security alive" for the benefit of the party who discharged the debt, and this is envisioned by s 2 of the MLAA.[82] Accordingly, repayment of the debt does not necessarily extinguish BofA's security interest. Instead, s 2 may operate so as to treat the benefit of the mortgage as having been assigned to the paying party, effectively by way of subrogation (*BFC* at 236, *Boscawen v Bajwa* [1996] 1 WLR 328 ("*Boscawen*") at 334 and 342, *Bofinger v Kingsway Group Ltd* [2010] 3 LRC 75 ("*Bofinger*") at [48]–[50]). An Wei also cited the cases of *Bank of Cyprus* and *Leon v Kensington Mortgage Co Ltd* [2023] EWHC 121 (Ch) ("*Leon*") in support of its case.

79 As I observed in *Da Hui (HC)* at [46], s 2 does no more than codify the existing common law principles of subrogation:

> 46 Section 5 of the English MLAA – and therefore, s 2 of the MLAA – essentially codified the common law rules on subrogation to extinguished security interests: *The Law of Restitution* at p 148. As Deputy Master Dray observed in *Leon v Kensington Mortgage Co Ltd* [2023] EWHC 121 (Ch) ("*Leon*") (at [69]–[70]), the legislators considered it necessary to enact s 5 of the English MLAA "to overcome what was considered to be the logical problem that, on payment by the surety, the principal debtor's debt was discharged and the creditor's rights thereby

[82] AW-WS at paras 48 and 53–54.

> extinguished", **although this problem was arguably more apparent than real given the courts' ready use of the legal fiction** referred to at [43] above. Overall, however, **this provision confers nothing more or less than what has long been available at common law.**
>
> [emphasis added in bold]

80 Codifying provisions like s 2 of the MLAA do not have the effect of, and should not be construed as, *enlarging* rights beyond those available under the common law (*Bank of England v Vagliano Bros* [1891] AC 107 at 144), and my reference here to the common law includes equity. Section 2 of the MLAA does not recalibrate the existing law or do away with any of the prerequisites for the remedy of subrogation under the common law. In particular, s 2 does not abrogate the equitable foundation of subrogation or dispense with the requirement of proving an unjust factor.

81 I note that even in An Wei's written submissions, An Wei relies on case authorities on unjust enrichment to substantiate its case for relief under s 2 of the MLAA, and in fact contends that there is unjust enrichment in this case that justifies An Wei being granted relief *under s 2*. Thus, An Wei itself is cognisant that s 2 of the MLAA does not operate in isolation without regard to the relevant principles of common law that underpin it.

82 I turn next to some of the authorities cited by An Wei in support of its claim for the remedy of subrogation. In my view, none of the authorities carry An Wei's case any further. I have already discussed *BFC* and *Bank of Cyprus* (above at [59]). The next case I consider is *Boscawen*.

83 In *Boscawen*, the Abbey National Building Society ("Abbey National") advanced mortgage funds to purchasers on the understanding that it would obtain a first legal charge over the property once an existing mortgage held by

the Halifax Building Society ("Halifax") was discharged. The funds were transferred through the purchaser's solicitors to the vendor's solicitors before the completion of the purchase, but the transaction later collapsed, meaning that the Abbey National never received the expected security. However, part of the funds had already been used to discharge the Halifax mortgage on the property. When the vendor's judgment creditors sought possession based on their charging order, Abbey National claimed that it should be subrogated to Halifax's former mortgage rights. The court agreed and held that, because the loan was advanced on the basis that Abbey National would obtain a first charge, and that basis failed when the transaction collapsed, the society was entitled to subrogation and therefore to a charge over the property in priority to the judgment creditors. There, again, a recognised unjust factor was discernible on the facts – namely, a failure of basis. As Millett LJ observed (at 335), subrogation "arises from the conduct of the parties on *well settled* principles and in *defined circumstances* …" [emphasis added in italics]. I have emphasised the phrases "*well settled"* and "*defined circumstances"*. They underscore the point I have made earlier that the law regarding subrogation is a structured doctrine operating within established parameters under the umbrella of the law of unjust enrichment, as opposed to a discretionary response to perceived unfairness. In *Boscawen*, the court did not treat subrogation as being *automatically* triggered simply on account of some payment being made by one party to settle a debt due to a third party. Instead, it sought to reverse an unjust enrichment grounded on a recognised unjust factor.

84 The next case is *Bofinger*. In *Bofinger*, guarantors had sold their own properties and used the proceeds to reduce a company's debt to the first mortgagee. Subsequently, when the first mortgagee exercised its power of sale over the company's mortgaged properties, surplus proceeds remained after satisfying the company's remaining debt. The guarantors sought to vindicate

their position after these surplus sale proceeds were paid to the second mortgagee rather than to them. A close reading of the judgment in *Bofinger* would reveal that the court's essential reasoning was based on fiduciary duty and constructive trust principles. The court in *Bofinger* held that the creditor became a constructive trustee of the surplus for the surety, and imposed personal liability on the creditor requiring it to account to the surety as a defaulting fiduciary (*Bofinger* at [50]). *Bofinger* was thus not a case about subrogation or s 2 of the MLAA, nor did it purport to expand the doctrine of subrogation beyond its established confines.

85 Finally, in *Leon*, the claimant and F Ltd, a company he controlled, had entered into a joint and several loan agreement with Kensington Mortgage Company Ltd. The loan agreement was secured initially by a mortgage and later by a lease held by F Ltd as substituted security. F Ltd was the mortgagor, while the claimant was a co-mortgagor but had no proprietary interest in the lease. F Ltd was dissolved in 2009, and the lease passed to the Crown *bona vacantia* and was subsequently disclaimed, following which the court ordered the lease to vest in the mortgagee. The claimant sought to invoke the UK equivalent of s 2 of the MLAA, arguing that upon the payment of the debt he should be subrogated to the mortgagee's security under the UK equivalent of s 2. No enforcement of security arose in the relevant sense, and the case turned on its own particular facts. To the extent that observations were made about subrogation, they did not displace the basic requirement that equity intervenes in the form of subrogation only upon a recognised unjust factor being shown.

86 It can be seen, from a review of the cases cited by An Wei in support of its claim under s 2 of the MLAA, that none of them (where relevant) involved the remedy of subrogation being granted without a recognised unjust factor arising on the facts. This reinforces my conclusion that s 2 of the MLAA cannot

be construed simply by referring to the literal words of the section. Since it is a codifying provision, it must be construed in the light of the common law principles applicable to the remedy of subrogation which in turn, at the risk of repeating myself, requires the claimant/applicant to prove a recognised unjust factor or event in order for the provision to come to the aid of that party. Thus, for the reasons I have already articulated above (at [61]) in relation to An Wei's claim based on equitable subrogation, its alternative claim on the basis of s 2 of the MLAA also fails.

87 Before I leave the First Issue, I address a factual point that arises from An Wei' submissions. An Wei argues, in reliance on *Bofinger*, that BofA was, whether as some form of fiduciary or as constructive trustee, obliged to account for the Balance Proceeds that *BofA "released" to Da Shun* and which were eventually paid into court.[83] In my view, this contention is factually incorrect. It is plain from the record that, in carrying out the terms of the s 100 Order, the sale proceeds were paid by the Vessel's buyer *to Da Shun as the seller*. Upon completion of the sale and delivery of the Vessel to the buyer on 4 February 2022, Da Shun's judicial managers then paid BofA a sum of US$10,704,938.26 in satisfaction of BofA's remaining claim under the Facility Agreement.[84] As noted above, BofA discharged the Mortgage on the Vessel on the same day the sale of the Vessel was completed *ie*, on 4 February 2022. The Balance Proceeds were eventually paid into court by Da Shun's liquidators sometime between September and November 2023. Thus, the factual premise upon which An Wei's submissions are grounded (*ie*, that BofA was a fiduciary of the Balance Proceeds and subject to a constructive trust) is incorrect and contradicted by the evidence. BofA were *never* in possession of the Balance

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83 AW-WS at paras 33–35 and 57–59.

84 YCW-7 at paras 21–24.

Proceeds, nor did they release or pay any of the proceeds over to Da Shun's liquidators. The evidence shows that it was Da Shun (through its judicial managers and subsequently, liquidators) who were at all times in possession of the proceeds from the sale of the Vessel. As such, I fail to see how BofA could be under any obligation to account for the balance or surplus sale proceeds of the Vessel when they were never in possession of those proceeds in the first place.

The Public Policy Issue

88 I turn now to the Public Policy Issue. The Writ Claimants submit that the remedy of subrogation should in any event be refused on public policy grounds, as An Wei's belated assertion of proprietary rights seeks to gain priority over other creditors, would improperly enlarge an extinguished mortgage beyond what BofA itself could claim, and would cause irreversible prejudice to the Writ Claimants, contrary to the principles governing fair distribution in liquidation.[85]

89 Subrogation may be denied where public policy considerations outweigh the claimant's interests (*Da Hui (HC)* at [66], citing *BFC* at 234) – by claimant, I mean the party making the claim for the remedy of subrogation. In *Da Hui (HC)*, I found that the claimant was attempting, at a late stage, to gain priority over other lower ranking *in rem* creditors (such as Petrochina and SG) in seeking recovery from the residual sale proceeds of the An Rong vessels (at [66]). Allowing subrogation in that context would have interfered with the equitable distribution of an insolvent debtor's assets, a matter of significant public policy. Permitting Da Hui to benefit from BofA's spent mortgages would

[85] SG-WS at paras 77–79.

have been unfair, and subrogation was accordingly also refused on grounds of public policy.

90 In my view, in the present case, permitting An Wei to be subrogated would likewise disrupt the orderly priority of claims and undermine the equitable distribution of Da Shun's assets. From the available evidence, by January 2021, An Wei would have been aware that the proceeds from the sale of its own vessel (the "Sea Horizon") had been applied towards the repayment of part of Tranche B (*ie*, Da Shun's "portion").[86] By May 2021, An Wei was also aware that BofA and the Writ Claimants were contemplating the disposal of the Vessel by way of a s 100 Order. It is not disputed that An Wei was represented at a meeting of Da Shun's creditors on 11 May 2021 where a s 100 IRDA application was referenced and discussed.[87]

91 Thus, if not in early 2021, then at least by May 2021, An Wei could and ought to have objected to the terms of the s 100 Order then contemplated or at least asserted its interest, had it considered that it possessed a proprietary interest ranking in priority to the Writ Claimants. It did not do so. Even when An Wei lodged its proof of debt with Da Shun's liquidators as late as October 2022, An Wei failed to assert any security interest, instead indicating "Nil" in the box titled "Security Held".[88] An Wei asserted a proprietary / priority interest for the first time only on 29 December 2022 when its former solicitors raised the claim in a letter to Da Shun's liquidators.[89]

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86 YCW-7 at p 260 (at para 8); TCC-1 at para 13.

87 ET-1 at pp 262–267.

88 YCW - 7 at pp 255–256Agreed Bundle of Documents (Vol 1 of 8) dated 1 October 2025 ("1ABOD") at pp 265–266.

89 YCW - 7 at pp 263–264.

92 This significant delay (of almost two years), when viewed together with the fact that granting An Wei the right of subrogation would now permit An Wei to leapfrog the Writ Claimants in terms of priority, gives rise to a real concern of unfairness and the undermining of the public interest in maintaining predictability in insolvency priorities, particularly when overlaid with the complexity of admiralty claims encumbering an insolvent company's ship. As in *Da Hui (HC)*, to allow subrogation in these circumstances would, in my view, place An Wei's private interest above broader considerations of fairness and legal certainty, and I see no justification to do so in this case. Thus, if necessary, I would also refuse An Wei's application for subrogation on public policy grounds.

93 For the foregoing reasons, on the Subrogation Issue, I find against An Wei and dismiss the application in so far as it seeks the remedy of subrogation, as prayed for by An Wei in prayers 2 and 3 of SUM 2280. The remaining questions are (i) whether the Writ Claimants have superior priority claims, or whether they, like An Wei, should also rank only as unsecured creditors; and (ii) lastly, whether the Writ Claimants have any valid claims at all.

Second Issue: Whether the Writ Claimants have a security, proprietary or otherwise priority interest in the Balance Proceeds

94 The Writ Claimants rely on the s 100 Order to support their asserted security interest. This consent order was endorsed by the judicial managers of Da Shun, BofA, and the Writ Claimants.[90]

[90] LFL-1 at pp 186–193.

95 The Writ Claimants contend that this court should give effect to the agreement of the parties as reflected in the s 100 Order. The order expressly contemplated the Writ Claimants giving up their rights to arrest the Vessel, in reliance on the promise or agreement by Da Shun to ringfence the Balance Proceeds, after payment of the higher priority claims, to secure the Writ Claimants' claims pending their adjudication and determination. However, An Wei submits that the Writ Claimants should not be permitted to assert any claims against the Balance Proceeds as they are not secured creditors nor hold any security interest. An Wei relies heavily on the Court of Appeal's decision in *Natixis, Singapore Branch v Seshadri Rajagopalan* [2025] 1 SLR 1020 ("*Natixis (CA)*") (affirming my decision in *Natixis, Singapore Branch v Seshadri Rajagopalan* [2025] 4 SLR 1031).[91] As held in *Natixis (CA)*, an admiralty claimant only becomes a holder of security in its true sense upon the arrest of the relevant vessel by that claimant, and not by the mere issuance of an admiralty *in rem* writ against the vessel concerned (at [72]–[77]). Similarly, An Wei submits that as the Writ Claimants did not arrest the Vessel, the Writ Claimants hold no security or security interest in the Balance Proceeds and therefore have no priority entitlement under s 100(2) of the IRDA.[92] Finally, on the whole, An Wei argues that the words of the s 100 Order cannot confer on the Writ Claimants security or any security interest (whatever the import of that phrase might be) where none existed. The s 100 Order does not create security as it is merely a procedural tool to allow a sale of property free of encumbrances, and only preserves existing security, which HSBC and SG lack.[93]

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91 TCC-2 at paras 15–18.

92 TCC-2 at paras 15–18.

93 AW-WS at paras 23–24.

Analysis and decision

96 First, it is not seriously disputed that this court is to interpret the s 100 Order in the same manner as a contract. The Singapore courts have consistently recognised that consent orders reached after negotiations may be treated as binding agreements, provided the elements of contract formation are present (*Hoban Steven Maurice Dixon v Scanlon Graeme John* [2007] 2 SLR(R) 770 at [39], citing *David Freud Ltd v Vickbar Ltd* [2006] EWCA Civ 1622; *Blomberg, Johan Daniel v Khan Zhi Yan* [2024] 3 SLR 1079 at [40]).

97 The parties do not dispute that the s 100 Order was a consent order reflecting an agreement reached by the interested parties in OS 1023, following negotiations on the terms of the said order. The court should therefore construe it using principles of contractual interpretation, which are well settled. In *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029, the Court of Appeal held that the purpose of contractual interpretation is to give effect to the intentions of the parties as objectively ascertained (at [125]). As the text of the agreement is the first port of call, the court starts with the plain language of the agreement (*Lucky Realty Co Pte Ltd v HSBC Trustee (Singapore) Ltd* [2016] 1 SLR 1069 at [2]) – here, that would translate to the terms of the s 100 Order. The exercise is an objective one, and contextual evidence may be considered where the relevant contextual points are clear, obvious and known to both parties (*Zurich Insurance* at [125], [128] and [129]). The court reads and interprets the words used in light of the background knowledge available to the parties at the time. The question is what a reasonable person would have understood the terms to mean in those circumstances.

98 Applying these principles, in my view, the s 100 Order did intend to accord HSBC and SG security over the Balance Proceeds. The relevant part of the s 100 Order at paragraph 2(ii) reads:[94]

> … in the event there remain any balance net proceeds after satisfaction of the amounts owing to BofA (the "**Balance Proceeds**"):
>
> (A) the Judicial Managers shall pay the Balance Proceeds into Court, ***as security for*** *and pending the final determination of HSBC's and SG's respective rights and liabilities in connection with HSBC's and SG's misdelivery claims against the Vessel and/or Defendants as described in the endorsements of the Writs of Summons filed in ADM 91 and ADM 52* (the "**Misdelivery Claims**");
>
> (B) *such Balance Proceeds shall be paid to HSBC and/or SG (as the case may be), in discharge of their Misdelivery Claims: (i) in accordance with any decision by the Court and/or a Registrar, where the Misdelivery Claims have been referred to the Court and/or the Registrar for determination; (ii) in accordance with an order of court or judgment directing such release; or (iii) any other means of adjudication that may be agreed in writing between Da Shun Shipping (Pte.) Ltd. (acting through the Judicial Managers), HSBC and SG*; and
>
> (C) the surplus (if any) shall be paid to the Company, or to whomsoever may be entitled to receive such surplus, as the Court may direct…
>
> [emphasis added in bold and italics]

99 In my view, the plain language of the s 100 Order is clear and admits of no ambiguity. Once the costs and expenses relating to the sale, operation, and preservation of the Vessel are deducted, the remaining sale proceeds must first be used to satisfy the amounts owed to BofA as the first ranking claim in terms of priority. Any balance proceeds remaining thereafter must be paid into Court *as security* for the claims of the Writ Claimants pending the determination of those claims. If and when the Writ Claimants establish their misdelivery claims after the same have been adjudicated upon in accordance with any of the

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94 YCW - 7 at p 220.

processes enumerated in paragraph 2(ii)(B) of the s 100 Order, they would be entitled to payment from the Balance Proceeds retained in court as security for those claims. Thus, on the plain terms of the s 100 Order, Da Shun (through its judicial managers) *agreed* to provide security to the Writ Claimants for their claims and that agreement to provide security was carried through by the payment of the Balance Proceeds into court as the agreed form of security. Viewed from that perspective, the questions that arise are whether the following considerations would adversely affect the court's ability to give effect to that agreement, namely: (a) the decision in *Natixis (CA)*; and (b) the fact that An Wei was not party to the making of the s 100 Order.

100 The first issue is whether *Natixis (CA)*, which held that an admiralty writ *in rem* does not in and of itself create a security interest, but only a right to obtain security perfected by the arrest of the ship concerned, provides a basis to defeat the interest the Writ Claimants say they have over the Balance Proceeds by way of security or a security interest. An Wei submits that here, the Writ Claimants do not possess any security or security interest, as neither of the Writ Claimants arrested the Vessel and thus, only held "unexecuted admiralty writs" against the Vessel.[95] The fact that the s 100 Order states in its preamble that the sale of the Vessel was ordered "subject to the following security and/or security interests and without prejudice to the security and security interests" could not elevate the position of the Writ Claimants when they had no security in the first place. The s 100 Order merely recorded what the Writ Claimants (mistakenly) thought they had in terms of security or a security interest. Conversely, the Writ Claimants submit that the only reason there was no arrest is due to their forbearance in exercising their right of arrest upon agreeing to the terms of the

95 TCC-2 at para 16.

s 100 Order.[96] They further submit that the factual matrix of the present case is distinguishable from that in *Natixis (CA)*.[97]

101 HSBC submits that An Wei's reliance on *Natixis (CA)* is misplaced because HSBC's entitlement to the Balance Proceeds does not depend on it being a security holder under s 100(2) of the IRDA, but rather on the terms of the s 100 Order.[98] The s 100 Order was entered into by consent and is unaffected by *Natixis (CA)*.[99] Secondly, the s 100 Order confers clear benefits on all parties. HSBC and SG agreed to withdraw their respective *in rem* actions and not pursue arrests of the Vessel, enabling the judicial managers to sell the Vessel at a higher price and hold the Balance Proceeds to secure the misdelivery claims.[100] Consistent with the principle of sanctity of contract, the court ought to uphold the s 100 Order and reject An Wei's challenge to it.[101]

102 SG makes similar arguments. First, its entitlement to the Balance Proceeds comes directly from the s 100 Order.[102] Once BofA is paid, any remaining proceeds are to go to the Writ Claimants if the Statutory Lien Claims are established.[103] Secondly, An Wei's reliance on *Natixis (CA)* is misplaced.[104] The s 100 Order does not depend on SG holding a security interest or arresting

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96 SG-WS at paras 35 and 37.

97 SG-WS at para 35.

98 HSBC-WS at para 3.3.2.

99 HSBC-WS at para 3.3.2.

100 HSBC-WS at para 3.3.8.

101 HSBC-WS at para 3.3.8.

102 SG-WS at para 15.

103 SG-WS at paras 17–22.

104 SG-WS at para 24.

the Vessel.[105] Lastly, even if security were required, it should suffice that SG had an equitable interest in the form of its *in rem* writ and intention to arrest.[106] SG gave up the right to arrest only in reliance on the s 100 Order.[107]

103 In my view, the present case does not turn on deciding whether there is any "security" or "security interest" that the issuance of an *in rem* writ may or may not confer on the admiralty claimant, or grappling with the precise import of those words, but on the terms and structure of the s 100 Order itself – accordingly, there is no need to consider if *Natixis (CA)* affects the analysis as the facts in both cases are markedly different. There is a distinction between the Writ Claimants' interest as derived from: (a) the statutory liens over the Vessel which they held as Writ Claimants; and (b) the s 100 Order entered into by consent amongst the parties. As I have taken pains to emphasise, it is the latter that is in issue here.

104 The s 100 Order was the product of a negotiated agreement supported by good consideration and no one (including An Wei) has contended otherwise. On the part of the Writ Claimants, their agreement was, *inter alia*, to give up their right to arrest the Vessel as security for the Statutory Lien Claims while the Vessel was being sold. In return, Da Shun (through its judicial managers) *agreed* to make available to the Writ Claimants the Balance Proceeds *as security* for their underlying claims. That agreement to provide security was followed through and *completed* by the payment by Da Shun's liquidators of the Balance Proceeds into court "as security" for the claims of HSBC and SG. Applying orthodox principles of contractual interpretation to the terms of the s 100 Order

105 SG-WS at para 26.

106 SG-WS at paras 32–36.

107 SG-WS at paras 37–38.

as representing an agreement between, *inter alia*, Da Shun and the Writ Claimants, such an agreement (*ie*, to provide security in lieu of an arrest of a ship) is enforceable and should be given effect to.

105 It is also on this basis that *Natixis (CA)* can, in my view, be distinguished. In *Natixis (CA)* at [77], the court explained that commencing an admiralty action *in rem* does not, by itself, confer a security interest that is recognised in insolvency. At most, it merely establishes an entitlement to seek security through the arrest of the vessel. Because the banks in that case did not in fact arrest the vessel in question, no security interest that could be acknowledged under insolvency law ever came into existence.

106 In the present case, the Writ Claimants likewise did not arrest the Vessel. Following *Natixis (CA)*, strictly speaking, this would not render them "holders of security" as that phrase is used and understood to mean in s 100(2) of the IRDA.

107 But the analysis does not end there. Unlike in *Natixis (CA)*, the Writ Claimants here actively planned to arrest the Vessel in Singapore. But for their entering into the 17 June Agreement, thereafter agreeing to the s 100 Order and its terms, and discontinuing ADM 91 and ADM 52 respectively (as contemplated by the s 100 Order), the Writ Claimants would likely have proceeded with an arrest if the Vessel entered Singapore's port limits. Even Da Shun's then judicial managers acknowledged that, without the agreement of the Writ Claimants to the terms of the s 100 Order, the judicial managers would not be able to market the Vessel as the Writ Claimants could arrest the vessel in Singapore at any time even assuming the Vessel was privately sold without their cooperation – it is well settled that under Singapore law, the Statutory Lien

Claims would survive any such private sale (see *The Monica S* [1967] 2 Lloyd's Rep 113).

108 Importantly, the Writ Claimants withdrew their *in rem* writs and refrained from arresting the Vessel while the sale was being conducted and completed. This forbearance directly contributed to a more advantageous realisation of the Vessel's sale price.[108] But even more importantly, and as I mentioned above at [104], Da Shun as the owners of the Vessel agreed in return to provide security to the Writ Claimants, and in fact did so by the payment into court of the Balance Proceeds.

109 It is well known that apart from arresting a vessel to obtain security, an admiralty claimant can also obtain security *by agreement* with the shipowner and without having to effect an arrest of the ship concerned. It is not uncommon for shipowners to volunteer security to *prevent* the arrest of their vessel. As noted in John A Kimbell KC, *Admiralty Jurisdiction and Practice* (Taylor & Francis, 6th Ed, 2025) at para 4.31:

> In practice, the mere threat of an arrest will often provoke the owners of the property threatened with arrest into providing voluntary security, for example, by way of a bank or insurance company guarantee, or a P&I Club letter of undertaking.

110 Security provided to a claimant without, or in lieu of, the vessel in question being arrested is *equally* security as when the vessel itself is arrested. Thus, the terms of the s 100 Order, properly construed, constituted an agreement (sanctioned by the court) between, *inter alia*, Da Shun as the owners of the Vessel and the Writ Claimants. Under this agreement, Da Shun agreed to

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108 YCW-7 at para 17.

furnish security to the Writ Claimants upon the completion of the sale of the Vessel in return for the Writ Claimants withdrawing their *in rem* writs and forbearing from arresting the Vessel. That agreement was completed when the Writ Claimants withdrew their *in rem* writs and the Balance Proceeds were eventually paid into court, as envisaged by paragraphs 2 and 3 of the s 100 Order.

111 In my view, it is sufficiently clear from the terms and structure of the s 100 Order that what the parties were *in essence* seeking to achieve, at least as between Da Shun as the Vessel owners, and BofA and the Writ Claimants, was to replicate as far as possible a scenario where the Vessel *had in fact* been arrested, judicially sold and where the sale proceeds were either paid to, or ringfenced as security, *vis-à-vis* parties with liens or encumbrances against the Vessel, such as BofA, HSBC and SG. My view is buttressed by the fact that the Balance Proceeds represented only partial security as far as the claims of HSBC and SG were concerned. Collectively, the claims of HSBC and SG amounted to approximately US$64m (excluding interest and costs) – in contrast, the Balance Proceeds (of around US$12.45m) represents approximately 19.5% of the combined claims of the Writ Claimants. Even assuming the Vessel had been arrested and judicially sold, the claims of HSBC and SG would, in the typical admiralty order of priorities, have ranked after various higher priority claims had first been paid from the sale proceeds, including the claim of BofA as mortgagee of the Vessel. In that scenario as well, HSBC and SG would only have obtained partial security for their claims. Thus, from the terms of the s 100 Order, its structure and how its terms were carried into effect, it is reasonably clear to me that the s 100 Order was seeking to achieve an outcome that would, as far as possible and as closely as possible, replicate a process that was akin to an admiralty arrest and judicial sale of the Vessel.

112 In all these circumstances, to hold that the Balance Proceeds do represent security for the claims of the Writ Claimants collectively and should be paid to HSBC and SG in priority to the claims of An Wei and any other unsecured creditors would be consistent with, and give effect to, the plain words of the agreement of the relevant parties as reflected in the s 100 Order. To be clear, it is also part of the parties' bargain that the security in the form of the Balance Proceeds would only be available to be *paid* to HSBC and SG if they are *first* able to successfully prove their underlying claims, which is an issue I consider later in this judgment under the Third Issue. But for now, the Balance Proceeds are, and do stand as, security for their claims.

113 For the reasons above, I am of the view that *Natixis (CA)* is distinguishable and does not undermine or affect the interests of the Writ Claimants to the Balance Proceeds as security for their claims pursuant to the terms of the s 100 Order.

114 In light of my analysis above, I do not consider it material that An Wei was not a party to the s 100 Order. An agreement to provide security to an admiralty claimant is an arrangement between the shipowner and the admiralty claimant. In any event, I have found (above at [90]–[91]) that An Wei's representatives were aware (from as early as May 2021) of the discussions surrounding the obtaining of the s 100 Order and had the opportunity to object to the terms of the s 100 Order or take early steps to protect their position.

Third Issue: Whether the Writ Claimants have proved their claim

115 The final issue for my consideration is whether HSBC and SG have proven their respective claims. As indicated above at [28(a)], in SUM 2972, the liquidators seek a determination from the court of the rights and liabilities of three claims against the Balance Proceeds, namely the claim by HSBC under

the HSBC BL, the claim by SG under the SG BL and An Wei's claim. While I have concluded that the Writ Claimants do have security over the Balance Proceeds, they must still each prove their respective underlying claims in order to recover or be paid from the Balance Proceeds. It would be no different even if the Writ Claimants had arrested the Vessel and thereby obtained security.

116 The Writ Claimants each submit that they are the lawful holder of their respective BLs.[109] The BLs being valid documents of title entitle them to the delivery of the cargo described in their BLs. However, the carrier delivered the cargoes concerned without the presentation of the original BLs, thereby causing the Writ Claimants loss and entitling them to damages for breach of contract, negligence, and/or conversion.[110]

117 On the other hand, An Wei challenges the very validity of the BLs on which the Writ Claimants base their claims. Specifically, An Wei notes that there is a serious issue of whether the bills of lading which HSBC and SG purportedly hold and rely on are fabricated and fraudulent, as asserted by the liquidators of Hin Leong in separate proceedings before the court in HC/S 805/2020 ("S 805").[111] In those proceedings, the liquidators of Hin Leong alleged that the HSBC BL and SG BL were, among various other bills of lading, fabricated, that the cargo onboard the Vessel did not belong to Hin Leong as Hin Leong did not possess the requisite authority to pledge the cargo, and the bills were neither signed by the Master of the Vessel nor prepared in the usual course of business.[112]

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109 HSBC-WS at para 3.1.3. SG-WS at paras 42–44.

110 HSBC-WS at paras 3.1.4 and 3.1.15. SG-WS at paras 45–46.

111 AW-WS at paras 61–62.

112 TCC-1 at pp 179–192 (para 45(a)(iii) of Statement of Claim (Amendment No. 2) in S 805).

118 If indeed the HSBC BL and SG BL are proven to be fabricated (and accordingly, void and of no legal effect), the Writ Claimants would have no claim at all and thus, no right to any part of the Balance Proceeds. The result would then be that the Writ Claimants would no longer be considered creditors of Da Shun – be it secured or unsecured.[113]

Analysis and decision

119 Putting aside the substantive arguments regarding the claims by HSBC and SG, an important anterior question is whether it is appropriate for the court to determine the claims of HSBC and SG purely on the basis of the affidavits that have been filed by them in support of their claims and the submissions made by HSBC, SG and An Wei, or whether it is necessary or appropriate for those claims to be heard and determined after a trial.

120 Both HSBC and SG argue that An Wei makes nothing more than bare assertions that the BLs are fabricated and were issued fraudulently.[114] They contend that there is sufficient evidence by way of affidavits and documents that demonstrate that the BLs were issued by persons authorised to do so.[115] In the course of the oral hearing, I raised with counsel for HSBC and SG the fact that similar allegations and issues had also been raised in relation to a number of other bills of lading in a series of interpleader proceedings that are presently before me, namely, HC/OS 489/2020, HC/OS 549/2020, HC/OS 593/2020, HC/OS 616/2020 and HC/OS 631/2020 (collectively, the "Interpleader Proceedings"). In the Interpleader Proceedings, HSBC and SG are also among the various parties who have asserted title to various oil commodities and are

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113 AW-WS at para 63.

114 HSBC-WS at paras 3.1.8 and 3.1.10. AW-WS at para 48.

115 HSBC-WS at para 3.1.4. AW-WS at paras 46 and 53–54.

represented, in part, by the same counsel that appeared before me in this case. One of the issues in the Interpleader Proceedings is whether a number of other bills of lading in the hands of various banks (*including* HSBC and SG) purportedly issued for cargoes onboard other vessels and, which were issued in *similar* circumstances to the HSBC BL and SG BL, were fabricated/forged and are accordingly nullities. Notably, the Interpleader Proceedings proceeded to a full trial, where, *inter alia*, evidence was adduced from various witnesses employed at the material time by Hin Leong and Ocean Tanker (Pte) Ltd regarding the preparation and issuance of the various bills of lading that are in question in the Interpleader Proceedings. While the parties in the Interpleader Proceedings are not identical to those before me in this case, I cannot ignore the fact that the *issue* surrounding the validity of the HSBC BL and SG BL upon which HSBC and SG ground their claims in this case bears numerous similarities to the very same issue I am presently considering in the Interpleader Proceedings in relation to various other bills of lading.

121 In addition, given the allegations that have been raised regarding the HSBC BL and SG BL, I will have to consider and decide if those bills were fabricated, including whether the signatures on the bills were forgeries. These questions go towards the very heart of determining if the HSBC BL and SG BL are nullities with no legal effect whatsoever. I do not consider that such an issue can be decided simply on the basis of the affidavits filed by HSBC and SG and the submissions made by HSBC, SG and An Wei. In this regard, I have derived valuable assistance from the recent decision of the Appellate Division of the High Court in *Yit Chee Wah v Fulcrum Distressed Partners Ltd* [2026] 1 SLR 1 ("*Fulcrum Distressed Partners*") on the approach to be taken in determining if a proof of debt ought to be decided summarily. Ang Cheng Hock JCA, delivering the judgment of the court, noted at [6] that the proof of debt regime:

> … is designed for the relevant adjudicator (*eg*, a PTIB) to decide straightforward claims efficiently, such as where the written and/or documentary evidence clearly establish liability. In claims which involve complex disputes of fact, and where examination of witnesses is necessary to resolve the disputes, the adjudicator can reject the claim and explain that the claim is not amenable to be determined summarily. Alternatively, the adjudicator can seek directions from the court as to how the claim should be determined. Often, in such cases, the court may direct that there be a trial of the claim or at least some limited cross-examination of witnesses to resolve the material disputes of fact.

122 While *Fulcrum Distressed Partners* involved a proof of debt submitted in personal bankruptcy proceedings, the court's observations above are, in my view, equally apposite in the context of a proof of debt submitted in corporate insolvency proceedings. In *Fulcrum Distressed Partners*, allegations were made that the bankrupt had breached her duty to act honestly and in good faith in the interests of a company. The court noted that those were "serious accusations" and that the available evidence did not appear sufficient to establish such dishonesty and lack of good faith. The court concluded that the claim should proceed to a trial, and given the nature of the claims asserted against the bankrupt, noted (at [138]) that "at the least, pleadings should be filed to define the issues in dispute, discovery ought to be given, and the necessary individuals ought to be ordered to attend court to give oral evidence and be cross-examined".

123 In my view, the contention that the HSBC BL and SG BL rely upon may be fabricated, as asserted by the liquidators of Hin Leong in S 805, is undoubtedly a serious one and potentially strikes at the very core of those documents. As I mentioned above at [120], other bills of lading issued in similar circumstances are the subject of similar allegations and scrutiny in the Interpleader Proceedings, which proceeded to trial with discovery and cross-examination of the relevant witnesses.

124 While I had initially contemplated that ordering a case management stay of the determination of HSBC and SG's claims pending my decision in the Interpleader Proceedings might be appropriate, I have come to the view that as a first step, it is more appropriate that these claims proceed to a trial so that, *inter alia*, evidence may be properly recorded by calling the relevant witnesses concerning the preparation and issuance of the HSBC BL and SG BL, and subjecting them to cross-examination.

125 I am satisfied that I have the power to direct a trial of HSBC and SG's claims as submitted via their respective proofs of debt. Sections 6 and 10 of IRDA provide as follows:

> **General powers of Court under this Act**
>
> **6.**—(1) Subject to this Act, the Court, when exercising its jurisdiction under this Act, has full power to decide all questions of priorities and all other questions, whether of law or fact, that may arise in any case or matter under this Act coming within the cognizance of the Court, or that the Court considers expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case or matter.
>
> (2) The Court may adjourn any case or matter under this Act coming within the cognizance of the Court, or make such order or give such direction as the Court thinks fit for the just, expeditious and economical disposal of any such case or matter, without requiring the parties to appear in person, by giving written notice of the adjournment, order or direction to all parties concerned.
>
> (3) Where any debtor or bankrupt, or any other person, fails to obey any order or direction given under this Act by the Court, the Official Assignee or the Official Receiver, the Court may, on the application of the Official Assignee, the Official Receiver or any other person duly authorised by the Official Assignee or Official Receiver, or on the Court's own motion —
>
> (a) order that debtor, bankrupt or person to comply with that order or direction; and
>
> (b) if the Court thinks fit, make an order for the committal of that debtor, bankrupt or person.

> (4) The power given by subsection (3) is in addition to any other right or remedy in respect of the failure to obey the order or direction.
>
> …
>
> **Where no specific procedure provided**
>
> **10.**—(1) In any matter of practice or procedure for which no specific provision has been made by this Act, the procedure and practice for the time being in use or in force in the Supreme Court must, as nearly as possible, be followed and adopted.
>
> (2) Where in respect of any matter of practice or procedure it is not possible to apply subsection (1), the Court may make such orders and give such directions as are likely to secure substantial justice between the parties.

126 On a plain reading of these provisions, it is clear that the court has wide powers under the IRDA to regulate the modalities by which questions of fact and/or law are to be decided in relation to any case or matter under the IRDA. In my view, these powers would include directing how a claim that has been submitted in a proof of debt is to be decided. In any case, none of the parties contended that the court did not have the power to direct how the claims of HSBC and SG are to be decided.

127 I therefore direct that there be a trial of the claims of HSBC and SG. A case conference before an Assistant Registrar is to be convened within four weeks from the date of this judgment for appropriate directions to be given for the determination of those claims at a trial.

Conclusion

128 To summarise, I set out below my decision on the various applicationns before me:

(a) With regard to SUM 3030, as prayed for in prayer 1 of the application, I grant Mr Yit leave to commence and proceed with SUM 2972 against An Wei.

(b) With regard to SUM 2972, I direct that there be a trial of the claims of HSBC and SG. Further directions will be given in relation to the trial of those claims at a case conference before an Assistant Registrar to be convened within four weeks of the date of this judgment. Pending the trial of those claims, the rest of SUM 2972 is adjourned to a date to be fixed after the claims of HSBC and SG have been tried and determined.

(c) With regard to SUM 2280:

(i) as prayed for in prayer 1 of the application, I grant An Wei's liquidators leave to commence and proceed with the application. As for the substantive prayers in SUM 2280 pertaining to subrogation, namely prayers 2 and 3, both prayers are dismissed.

(ii) as there is no dispute that An Wei is, as a co-borrower with Da Shun *vis-à-vis* BofA, entitled to a contribution from Da Shun in the amount claimed of US$6,083,702.55, An Wei's claim for contribution against Da Shun in the amount claimed is allowed, and is to rank as an unsecured claim in Da Shun's liquidation.

(iii) prayer 4 of SUM 2280, in which An Wei seeks payment of the sum of US$6,083,702.55 from the Balance Proceeds, is adjourned pending the trial of the claims of HSBC and SG as directed above at [128(b)]. As I had foreshadowed at [32(b)], if,

> after the trial of the claims of HSBC and SG, it is determined that they are able to prove their claims, then HSBC and SG would be entitled to be paid (rateably) from the Balance Proceeds sitting in court as security for those claims, in priority to An Wei – in that event, and given the size of the claims of HSBC and SG (amounting in aggregate to approximately US$64m), the Balance Proceeds will be exhausted. However, if HSBC's and SG's claims fail, then An Wei and any other creditors with claims against Da Shun, will simply rank as unsecured creditors in respect of the Balance Proceeds. For that reason, it is premature to deal with prayer 4 of SUM 2280 at this time as much would depend on the outcome of the trial of the claims of HSBC and SG.

129 I will hear the parties separately on the question of costs of the various applications.

S Mohan
Judge of the High Court

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Tan Hong Liang, Charis Toh Si Ying and Chin Yan Xun (JWS Asia Law Corporation) for the second respondent (Societe Generale, Singapore Branch);
Tan Hui Tsing, Mathiew Christophe Rajoo, Probin Dass, Ng Jun Jie, Justin and Ng Jin Wei (DennisMathiew) for the third respondent (An Wei Shipping Pte Ltd (in creditors' voluntary liquidation))