IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 248

Originating Summons No 419 of 2019
(Summons Nos 3666 of 2019 and 3920 of 2019)

In the matter of Section 285 of the Companies Act (Cap 50)

And

In the matter of Coastal Oil Singapore Pte Ltd (in Creditors' Voluntary Liquidation)

Between

(1) Joshua James Taylor
(2) Yit Chee Wah

… *Plaintiffs*

And

Sinfeng Marine Services Pte Ltd

… *Defendant*

Originating Summons No 420 of 2019
(Summons Nos 3563 of 2019 and 3998 of 2019)

In the matter of Section 285 of the Companies Act (Cap 50)

And

In the matter of Coastal Oil Singapore Pte Ltd (in Creditors' Voluntary Liquidation)

Between

(1) Joshua James Taylor
(2) Yit Chee Wah

… *Plaintiffs*

And

Costank (S) Pte Ltd

… *Defendant*

Version No 1: 27 Oct 2020 (22:41 hrs)

Originating Summons No 421 of 2019
(Summons Nos 3667 of 2019 and 3921 of 2019)

In the matter of Section 285 of the Companies Act (Cap 50)

And

In the matter of Coastal Oil Singapore Pte Ltd (in Creditors' Voluntary Liquidation)

Between

(1) Joshua James Taylor
(2) Yit Chee Wah

… *Plaintiffs*

And

Cosco Petroleum Pte Ltd

… *Defendant*

JUDGMENT

[Civil Procedure] — [Appeals] — [Leave] — [Interlocutory application]
[Civil Procedure] — [Appeals] — [Stay of execution pending appeal]

Version No 1: 27 Oct 2020 (22:41 hrs)

TABLE OF CONTENTS

INTRODUCTION **1**

THE ISSUES **2**

MY DECISION 3

LEAVE IS NOT REQUIRED TO APPEAL AGAINST S 285 ORDERS MADE IN VOLUNTARY WINDING-UP PROCEEDINGS 3

EVEN IF LEAVE IS REQUIRED, A QUESTION OF IMPORTANCE IS RAISED 8

PRIMA FACIE CASE OF ERROR 9

STAY OF EXECUTION **12**

APPLICABLE PRINCIPLES 13

STAY OF EXECUTION OUGHT NOT TO BE GRANTED 14

CONCLUSION AND CONSEQUENTIAL ORDERS **18**

ANNEX **20**

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Taylor, Joshua James and another
v
Sinfeng Marine Services Pte Ltd and other matters

[2019] SGHC 248

High Court — Originating Summons No 419 of 2019 (Summons Nos 3666 of 2019 and 3920 of 2019), Originating Summons No 420 of 2019 (Summons Nos 3563 of 2019 and 3998 of 2019), Originating Summons No 421 of 2019 (Summons Nos 3667 of 2019 and 3921 of 2019)
Vincent Hoong JC
12, 23 September, 15 October 2019

18 October 2019 Judgment reserved.

Vincent Hoong JC:

Introduction

1 By way of Summonses 3666 of 2019, 3563 of 2019 and 3667 of 2019, the defendant in each matter seeks a declaration that it does not require leave to appeal to the Court of Appeal against various disclosure orders (collectively referred to as "the Orders") made by me pursuant to s 285 of the Companies Act (Cap 50, 2006 Rev Ed) ("the Act"). Alternatively, should such leave to appeal be required, the defendants seek leave to appeal against the Orders.

2 Summonses 3920 of 2019, 3998 of 2019 and 3921 of 2019 (collectively, "the extension of time summonses") are consequential applications to grant the defendants an extension of time to file their respective Notices of Appeal

("NOA") in the event that I grant the declarations sought in Summonses 3666 of 2019, 3563 of 2019 and 3667 of 2019 above.

Background

3 Coastal Oil Singapore Pte Ltd ("the Company") is at the heart of all the above summonses. The Company is subject to a creditors' voluntary winding-up,[1] and the plaintiffs were appointed the liquidators of the Company on 10 January 2019.[2]

4 By way of Originating Summons No 419 of 2019 ("OS 419/2019"), Originating Summons No 420 of 2019 ("OS 420/2019") and Originating Summons No 421 of 2019 ("OS 421/2019"), the plaintiffs took out applications against the respective defendants, seeking disclosure orders under s 285 of the Act.

5 After hearing the parties, I granted the Orders as annexed in this judgment, in favour of the plaintiffs against the respective defendants. The present summonses arise from the Orders, as the respective defendants seek to appeal against the Orders made.

The issues

6 The issues that arise for my consideration in this judgment are:

(a) first, is leave required for the defendants to appeal against the Orders, made under s 285 of the Act?

---

1 Joshua James Taylor's affidavit dated 2 April 2019 ("JJT1") at p 14.

2 JJT1 at p 4, para 9.

Version No 1: 27 Oct 2020 (22:41 hrs)

(b) second, if leave is required, should such leave be granted?

(c) third, should there be a stay of execution of the Orders pending the disposal of any renewed application to the Court of Appeal?

My decision

7 Having considered the submissions and authorities, I declare that the respective defendants do not require leave to appeal against the Orders. In the alternative, if leave is required, I find that there is a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage, and accordingly grant such leave to appeal.

8 In relation to the third issue, subject to the undertakings furnished by the plaintiffs as set out in [45] below, I decline to grant a stay of execution of the Orders pending the disposal of any renewed application to the Court of Appeal.

9 These are my reasons.

Leave is not required to appeal against s 285 orders made in voluntary winding-up proceedings

10 Section 34(2)(*b*) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") read with paragraph 1(*h*) of the Fifth Schedule of the same states that leave of the High Court or of the Court of Appeal is required where the subject matter of the appeal relates to an "interlocutory application", save in certain cases which are inapplicable in this case.

11 The issue here is whether the Orders, made pursuant to s 285 of the Act, were orders made "at the hearing of any *interlocutory application*" [emphasis

Version No 1: 27 Oct 2020 (22:41 hrs)

added] (paragraph 1(*h*) of the Fifth Schedule of the SCJA), such that leave of the court is required for an appeal against the Orders.

12 On its face, the Court of Appeal's decision in *PricewaterhouseCoopers LLP and others v Celestial Nutrifoods Ltd (in compulsory liquidation)* [2015] 3 SLR 665 ("*Celestial Nutrifoods*") appears to conclusively dispose of the issue. At [27] of *Celestial Nutrifoods*, it was remarked that "[t]he disclosure order made under s 285 is *undoubtedly an interlocutory order*" [emphasis added]. Reading the Court's statement in isolation, it would appear that the court's leave is therefore required before a defendant can file a NOA against the Orders made under s 285 of the Act.

13 However, Costank (S) Pte Ltd ("Costank"), the defendant in OS 420/2019, submits that the Court of Appeal's remarks in *Celestial Nutrifoods* were made "on the assumption that the s 285 application in question was one which had been made in the wider context of ongoing winding-up proceedings."[3] The present case, being a creditors' voluntary winding-up, is materially different from a compulsory winding-up application, which was before the Court in *Celestial Nutrifoods*. This is because, unlike a case of a compulsory winding-up, no winding-up proceedings are in fact ongoing in a creditors' voluntary winding-up situation. Accordingly, the Orders granted in the present case, which relate to a company in a creditors' voluntary winding-up, were not interlocutory orders, and therefore no leave ought to be required to appeal against them.[4] I agree.

---

3 Respondent's Written Submissions (OS 420/2019) at para 21.

4 Respondent's Written Submissions (OS 420/2019) at paras 14 – 22.

Version No 1: 27 Oct 2020 (22:41 hrs)

14 In *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 ("*Dorsey James*"), the Court of Appeal confirmed that an application to administer pre-action interrogatories is not an interlocutory application. This was because (*Dorsey James* at [60]):

> … [An application to administer pre-action interrogatories] is an *application made by way of originating summons and its only end is the particular relief sought in the originating summons*. Once the application for such relief has been considered and ruled upon by the court, that matter ends and those proceedings are not followed by any other steps leading to any trial or further disposal of that matter. [emphasis added]

15 In other words, an application for pre-action interrogatories is not an interlocutory application because, unlike an interlocutory application which is "peripheral to the main hearing determining the outcome of the case" (*Dorsey James* at [58], citing *Jowitt's Dictionary of English Law* (Sweet & Maxwell, 3rd Ed, 2010)), "the entire subject matter of that originating summons is spent and there is nothing further for the court to deal with" once the application to administer pre-action interrogatories is disposed of (*Dorsey James* at [64]).

16 In contrast with an application to administer pre-action interrogatories, the Court in *Celestial Nutrifoods* considered that a s 285 application is an interlocutory application. This was because "unlike that of an application under originating summons for leave to administer pre-action interrogatories, [it] is made in the *wider context of* ***ongoing*** *winding-up proceedings*" [emphasis added in italics and bold italics] (at [34]).

17 Hence, while both pre-action interrogatories and s 285 applications seek information which may reveal potential causes of action against errant parties, s 285 applications are interlocutory in nature, as they operate *within* the winding-up proceedings, and the determination of a s 285 application does not

Version No 1: 27 Oct 2020 (22:41 hrs)

therefore dispose of everything in the proceedings (*Celestial Nutrifoods* at [32]–[34]).

18 The observations in *Celestial Nutrifoods* are correct in so far as they relate to compulsory winding-up orders. As s 254 of the Act shows, a compulsory, or court-ordered winding-up order is granted at the order of the court. After the making of such an order for winding-up, a compulsory winding-up order only concludes when the court, on application of the liquidator, orders that the company be dissolved (ss 275 and 276 of the Act). Hence, compulsory winding-up proceedings only come to a close when the liquidator has shown, to the court's satisfaction, that he has "realised all the property of the company or so much thereof as can in his opinion be realised…" (s 275 of the Act). Therefore, where the company is subject to a compulsory winding-up order, which was the type of winding-up order before the court in *Celestial Nutrifoods,* a s 285 application plainly operates "in the wider context of ongoing winding-up proceedings" (*Celestial Nutrifoods* at [34]).

19 In contrast, a voluntary winding-up is commenced upon the due resolution passed by the members of the company in a general meeting, without any need to initiate court proceedings (s 290 of the Act). The voluntary winding-up also comes to a close "[a]s soon as the affairs of the company are fully wound up" and the liquidator thereupon calls a meeting of the members or creditors, lodging a return of the meeting with the Registrar of Companies and the Official Receiver thereafter. Three months after the lodging of the return, the company is dissolved (s 308 of the Act). Plainly, unlike a compulsory winding-up order, a voluntary winding-up may take place *independently* of court proceedings, and the court's supervision of the winding-up is only triggered when there is an application to the court through, for example, a s 285 application.

Version No 1: 27 Oct 2020 (22:41 hrs)

20 Given the fundamental differences between a compulsory winding-up and a voluntary winding-up, it is clear that the Court in *Celestial Nutrifoods* was only focused on a s 285 application made in the context of a compulsory winding-up application, which proceedings necessarily end in the courts. In contrast, in a creditors' voluntary winding-up, court proceedings need not in fact be initiated, and the liquidation may come to an end *without* the need to initiate *any* proceedings. In other words, while a s 285 application in a compulsory winding-up application necessarily occurs *within* winding-up proceedings, a s 285 application in a voluntary winding-up occurs *independently* of any winding-up proceedings.

21 This is reflected by the fact that while a s 285 application is made by way of a summons where there is an ongoing compulsory winding-up proceeding (see, *eg, Celestial Nutrifoods* at [11]), it is made by way of an originating summons when the company is being voluntarily wound up. This is not a distinction without a difference. As explained in *Hengwell Development Pte Ltd v Thing Chiang Ching* [2003] 3 SLR(R) 84 at [5], "[a]n originating summons is an originating process. Like the writ of summons it prescribes the plaintiff's cause of action and prays for judgments or orders, which in their nature (but subject to the avenues of appeal) are *determinative and final*. A summons in chambers is a *subsidiary process* which draws its life from the originating process" [emphasis added].

22 In the circumstances, a s 285 application made in a creditors' voluntary winding-up is in fact akin to an application for pre-action interrogatories, and is accordingly *not* an interlocutory application. This is because, like an application for pre-action interrogatories, which is also initiated by an originating summons, "[o]nce the application [is] determined, the entire subject matter of that

Version No 1: 27 Oct 2020 (22:41 hrs)

originating summons [is] spent and there [is] nothing further for the court to deal with" (*Celestial Nutrifoods* at [33]).

23 Hence, I declare that the leave of the court is not required for the respective defendants to appeal against the Orders, which relate to s 285 applications made in the context of a creditors' voluntary winding-up, rather than a compulsory winding-up order of the court.

Even if leave is required, a question of importance is raised

24 In any event, even if leave is indeed required, I find that the present matter raises a "question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage" (*Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 ("*Lee Kuan Yew*") at [16]). The question of importance here relates to whether the Court's pronouncement in *Celestial Nutrifoods* as regards the interlocutory nature of s 285 applications extends to *all forms* of winding-up proceedings, or whether it extends only to cases of a compulsory (or court-ordered) winding-up, wherein a s 285 application would necessarily be made in the context of ongoing winding-up proceedings. A clarification in this regard would be to the public advantage, as liquidators appointed pursuant to a voluntary winding-up proceeding would be relieved from having to spend additional company funds (often of an ailing company) simply to resolve the narrow issue of whether leave ought to be sought for a disputed s 285 order.

25 Hence, should leave be required, I grant leave for the respective defendants to appeal to the Court of Appeal against the Orders.

Version No 1: 27 Oct 2020 (22:41 hrs)

Prima facie **case of error**

26 For completeness, I should add that I respectfully do not agree with counsel for Costank that leave should be granted to appeal against my decision in OS 420/2019 on the basis that there has been a *prima facie* case of error (*Lee Kuan Yew* at [16]). The present case differs from the case of *Lee Kuan Yew*, where the Court of Appeal held that the Judge below had committed a *prima facie* case of error. In that case, the plaintiff filed certain affidavits in proceedings against the defendant. At a press conference in Malaysia, the defendant raised certain statements in the plaintiff's affidavits which caused anger in Malaysia. The plaintiff applied to delete the statements from his affidavits. The Judge allowed the application for deletion on the ground that the defendant had abused the process of the court by using the affidavits for a collateral purpose, and ordered costs against the defendant. The defendant applied to the same Judge for leave to appeal against the costs order but was unsuccessful. He then filed a motion for leave of court to appeal to the Court of Appeal against the costs order. The Court of Appeal granted the motion for leave to appeal, reasoning that an affidavit, once revealed in court, becomes a public record, such that the defendant was acting within the law in releasing the statements in the affidavits to the Malaysian press. On the face of it, the Judge had disregarded the nature of the affidavit, thereby resulting in the costs order which effectively rendered the defendant entirely responsible for all that had happened. Thus, a *prima facie* case of error had been established, and leave to appeal against the award of costs was granted.

27 The Orders made in the present case were the result of an application of established principles that were pronounced by the Court of Appeal in *Celestial Nutrifoods*, in relation to s 285 applications. All parties had relied on the same authority, and it is unclear what, if any, *prima facie* case of error has been

Version No 1: 27 Oct 2020 (22:41 hrs)

committed in this case. If anything, Costank's disagreement relates to the scope of the Orders that were made, which counsel for Costank described as an "[u]nprecedented abuse of s 285" of the Act, which has the effect of "pushing the boundaries to a point that it has become completely oppressive and unacceptable".[5] In particular, it is asserted that the liquidators have not provided sufficient grounds to show how the documents sought from Costank will assist them, and hence it is asserted that a *prima facie* case of error has been committed.[6]

28 However, "[s]ection 285 is couched in very generous terms and should not be interpreted in a restrictive manner". Also, a liquidator may use the provision "in gathering information that would aid him in discharging his duties". This expansive view of the power under s 285 serves to assist the liquidator "in the accumulation of facts, information and knowledge that would enable or facilitate a liquidator to better discharge his statutory functions". Hence, subject to the requirements that the liquidator must have some reasonable basis for his belief, and that the order granted by the court is not wholly unreasonable, unnecessary or oppressive to the person(s) concerned, the court has broad powers to grant orders under s 285 to assist the liquidator in the conduct of his statutory functions, which includes investigating into potential wrongdoings that were committed against the company (*Celestial Nutrifoods* at [41]–[43]).

29 Furthermore, as explained in my oral judgment to OS 420/2019, on my review of the evidence, the plaintiffs have provided some reasonable basis for

---

5 Minute Sheet (7 October 2019).

6 Respondent's Written Submissions (OS 420/2019) at paras 38 – 39.

Version No 1: 27 Oct 2020 (22:41 hrs)

their belief that Costank can assist them in obtaining relevant information that are reasonably required:[7]

> I am persuaded that there is: (1) some reasonable basis for the liquidators' belief that Costank can assist them in obtaining these categories of information and documents; and (2) that they are reasonably required. This is primarily on the basis that a liquidator of a company is duty-bound to determine the events that led to the company's demise: … [*Celestial Nutrifoods*] at [1], and that a liquidator cannot rely solely on the Company's documents in investigating the allegations of fraud. In this regard, ascertaining whether there are discrepancies between the records kept by the respondents and those kept by the Company would be helpful and relevant. It would allow the liquidators to enquire into the period in which the alleged fraud took place and identify any fraudulent transactions. Seen in the context of the admission by Tan Sing Hwa, a director of the Company, that he had perpetrated or had been involved in fraud relating to the Company's trades, the trading loops also do give rise to some concern. In so far as compliance with this order imposes a practical burden on Costank, this is merely one factor to be weighed at the second stage of the *Celestial Nutrifoods* test.

30 I also made clear that the Orders made were not unreasonable in scope:[8]

> I am also satisfied that ordering the provision of this information strikes the right balance at the second stage of the *Celestial Nutrifoods* test. I have not ordered the production of the documents sought at category 4 of Annex A: if the liquidators find that this information is required because the amount due for particular invoices was adjusted, they are at liberty to apply for the relevant credit or debit notes at a later stage.

31 Hence, Costank's assertions in this regard is in substance a challenge of the exercise of my discretion in making the Orders. However, a Judge's exercise of his discretion "should not ordinarily be tampered with, unless a *prima facie*

---

7 Oral Judgment to OS 420/2019 at [3].

8 Oral Judgment to OS 420/2019 at [5].

Version No 1: 27 Oct 2020 (22:41 hrs)

case of error [can] be established" (*Lee Kuan Yew* at [31]). Given the expansive view of s 285 that was endorsed in *Celestial Nutrifoods*, and given that I had made the Orders pursuant to the clear and established principles in *Celestial Nutrifoods*, I find that no *prima facie* case of error has been established here.

32 Nonetheless, this does not change the result given my holding above that leave is not required to appeal against the Orders and, should leave be required, leave is granted as the present matter raises a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

Stay of execution

33 Finally, I turn to the issue of a stay of execution of the Orders. The defendants seek a stay of execution of my decisions to grant the Orders pending the disposal of any renewed application to the Court of Appeal.

34 According to the defendants, such a stay is necessary to ensure that the appeal, if successful, will not be rendered nugatory.[9] This is because the plaintiffs will not be able to "un-see" the materials once they are disclosed, such that the effects of the Orders will be irreversible even if the defendants were to succeed in overturning or varying them on appeal.[10]

---

9 Defendants' Skeletal Submissions (5 September 2019) (OS 419/2019 and OS 421/2019), at para 51; Respondent's Written Submissions (OS 420/2019) at para 59.

10 Respondent's Written Submissions (OS 420/2019) at para 61.

Version No 1: 27 Oct 2020 (22:41 hrs)

Applicable principles

35 As a starting point, the general rule is that the court should not deprive a successful litigant of the fruits of litigation, so that a stay will only be granted where "special circumstances" can be shown (*Naseer Ahmad Akhtar v Suresh Agarwal and another* [2015] 5 SLR 1032 ("*Naseer Ahmad*") at [96], citing *Lee Kuan Yew v Jeyaretnam Joshua Benjamin* [1990] 1 SLR(R) 772 at [6]).

36 Counterbalanced against this general rule is that the court ought also to ensure that the appeal, if successful, is not rendered nugatory (*Lee Sian Hee (trading as Lee Sian Hee Pork Trader) v Oh Kheng Soon (trading as Ban Hon Trading Enterprise)* [1991] 2 SLR(R) 869 at [5]).

37 In essence, the task of the court when considering a stay application pending an appeal is to "hold the balance between the interests of the parties (pending the hearing of [the] appeal) to avoid any prejudice to any of the parties" (*Celestial Nutrifoods* at [19]).

38 Undertakings furnished by either party to allay the concerns raised by the other party are relevant in this context. For example, in *Naseer Ahmad*, the plaintiff, who was the majority shareholder of the company at the hub of the dispute, sought leave of court to convene an inquorate meeting to pass a set of resolutions, which included removing the first defendant from his directorship in the company. The Court granted leave to convene the inquorate meeting. Counsel for the defendants then sought a stay of execution of the Judge's order pending an appeal, arguing that there was a risk that the company's assets would be dissipated by the plaintiff should the first defendant be removed from his directorship. Apart from finding that the first defendant had not shown that there was any real substance to his assertion of such risk, the Judge considered that a stay ought not to be granted given that the plaintiff had offered an undertaking

Version No 1: 27 Oct 2020 (22:41 hrs)

that the company's funds would not be drawn down, save to be used in the ordinary business expenses of the company, without the prior consent of the first defendant. Given the plaintiff's undertaking, the grant of a stay was "unnecessary": *Naseer Ahmad* at [105].

39 Similarly, in *Celestial Nutrifoods*, the appellants had applied for a stay of the Judge's disclosure order. The Judge refused the application, which was subsequently also rejected by a single-judge of the Court of Appeal. Finally, a two-judge Court of Appeal granted the stay. Essential to this eventual grant of stay was an undertaking furnished by the appellants that time would not run for the intervening period between the date when the Judge's order was made and the date when the appeal was dismissed by the Court of Appeal (should the appeal be dismissed). This undertaking was sufficient to meet the respondent's contention that he could face time-bar issues in pursuing claims against the appellants if there was a delay in the disclosure of the requested documents.

Stay of execution ought not to be granted

40 Considering the above principles, I am of the view that a stay of execution ought not to be granted in this case.

41 In meeting the defendants' assertion that the plaintiffs will not be able to "un-see" the documents once they have been disclosed, counsel for the plaintiffs have indicated that the plaintiffs are willing to undertake that they will not disseminate the documents disclosed pursuant to the Orders to any third parties without the court's approval, pending the appeal.[11] The plaintiffs further indicated that they are prepared to return or destroy the documents provided

---

[11] Joshua James Taylor's affidavit dated 13 August 2019 at p 8, para 25.

Version No 1: 27 Oct 2020 (22:41 hrs)

should the defendants be successful in their appeal.[12] Finally, at the hearing before me on 7 October 2019, counsel for the plaintiffs also indicated that they are amenable to a staggered, or staged, disclosure, whereby the defendants would only be required to disclose the more recent documents, being documents from 2016 to 2018, that are the subject of the Orders. In my view, these broad undertakings are sufficient to allay the concerns raised by the defendants. As for the time and effort that would be expended by the defendants in complying with the Orders, no evidence was provided as to why such cannot be compensated with an appropriate award of costs, should the defendants' appeal against the Orders be successful.

42 I am guided by the decision in *Akai Holdings Ltd (in Compulsory Liq) & others v Ho Wing On Christopher & others* [2009] HKCU 542 ("*Akai Holdings*"). In that case, the first defendant sought a stay of execution of the disclosure order that had been sought by the plaintiff liquidators in the context of a Mareva injunction application. The Judge declined to order a stay, as the information that would be disclosed would be received by a very limited number of persons, and as the plaintiff liquidators had provided a sufficient undertaking (*Akai Holdings* at [57]):

---

12 Plaintiffs' Written Submissions (OS 420/2019) at paras 74 – 76.

Version No 1: 27 Oct 2020 (22:41 hrs)

> As to the contention that the appeal would be rendered nugatory absent a stay, … the recipients of the information to be disclosed is expressly limited to [eight] specified persons – together with the fact that Mr Borelli of the plaintiffs has undertaken to return or destroy any information provided in the event of a successful appeal … [These] made it unlikely in practical terms that any real prejudice would be suffered by [the first defendant] which otherwise could not be compensated in costs.

43 While counsel for Sinfeng Marine Services Pte Ltd ("Sinfeng") and Cosco Petroleum Pte Ltd ("Cosco") argues that *Akai Holdings* is inapplicable in the present case as *Akai Holdings* concerned a disclosure order made pursuant to a Mareva injunction application,[13] I do not find the difference to be material. As seen from the passage above, the Judge in *Akai Holdings* had declined to grant a stay upon balancing on the one hand the need to ensure that the first defendant's appeal would not be rendered nugatory, and on the other hand the fact that the information would be disclosed to a limited number of persons, as well as the plaintiffs' undertaking to return or destroy the information in the event of a successful appeal. The Judge had also considered that the disclosure order was necessary to "give the teeth which are critical to the [Mareva injunction]" (*Akai Holdings* at [56], citing *Motorola Credit Corporation v Cem Cegiz Uzan* [2002] 2 All ER (Comm) 945). It was only on balancing these countervailing considerations that the Judge arrived at his conclusion that a stay of the disclosure orders ought not to be granted, in particular as any prejudice suffered by the first defendant in complying with the disclosure orders could be compensated in costs.

44 In this case, the documents that will be released under the Orders will be disclosed to a restricted number of persons which include in the main the

---

13 Letter dated 11 October 2019 at para 9.

Version No 1: 27 Oct 2020 (22:41 hrs)

plaintiffs, as liquidators of the company, only. Further, given the plaintiffs' undertaking not to disseminate the documents pending the conclusion of the appeal(s), the documents will not be disclosed to third parties, unless the court otherwise orders. The documents that are released will also have to be returned or destroyed should the defendants be successful in their appeals against the Orders, and any efforts expended by the defendants in complying with the Orders can thereafter be compensated with a costs order.

45 In the circumstances, while I am cognisant of the consideration that the defendant's appeal ought not to be rendered nugatory, I find, in light of the above considerations, that a stay ought not to be granted. I thus decline to grant the stay of execution of the Orders pending disposition of the defendants' appeals (if any). For good order, I have considered and accept in substance the undertakings proposed by the plaintiffs, which apply separately to each of the defendants' appeal(s) (if any). I record the plaintiffs' undertakings in the following terms:[14]

(a) Pending the conclusion of the respective defendants' appeal(s),

(i) the plaintiffs will not disseminate any documents and/or information arising from the documents (including any derivative or secondary materials which arise from the primary documents and/or information) which are disclosed by the respective defendants pursuant to the Orders to any third parties; and

14 Plaintiffs' Letter dated 10 October 2019 at paras 2 and 3.

Version No 1: 27 Oct 2020 (22:41 hrs)

(ii) of the documents which fall under the Orders, the plaintiffs shall only seek the disclosure of documents between 1 January 2016 to 31 December 2018.

(b) In the event of and to the extent that any of the aforementioned defendants' appeal(s) succeed, the plaintiffs will return or destroy the documents (including any derivative or secondary materials which arise from the primary documents and/or information) provided by the respective defendant(s) and will not rely on such documents without leave of court.

46 The plaintiffs are given liberty to apply to deviate or vary from the above undertakings, if necessitated by the circumstances.

Conclusion and consequential orders

47 Given my declaration that no leave is required for the respective defendants to appeal to the Court of Appeal against the Orders, the parties have consented to an order in terms in respect of the extension of time summonses, such that the respective defendants shall have two calendar weeks from the delivery of this judgment to file their respective NOAs against the Orders.

48 If the defendants file their NOAs within two calendar weeks from the delivery of this judgment, the Orders made in the Originating Summonses, being OS 419/2019, OS 420/2019 and OS 421/2019 respectively, shall be complied with within six weeks from the date of this judgment in so far as documents between 1 January 2016 to 31 December 2018 that are subject to the Orders must be provided to the plaintiffs.

Version No 1: 27 Oct 2020 (22:41 hrs)

49 If any of the defendants fail to file their NOA within two calendar weeks of this judgment, that defendant shall comply with the Orders which it is subject to in full within eight weeks of this judgment (*ie,* the documents and information to be produced under the Orders shall not be limited to documents from 2016 to 2018 only).

50 I further order that the costs of and/or occasioned by the applications be costs in the appeal.

Vincent Hoong
Judicial Commissioner

Sim Kwan Kiat, Ang Wei Kiat (Hong Weijie) and Chow Jie Ying (Rajah & Tann Singapore LLP) for the plaintiffs;
Tan Poh Ling Wendy and Carl Lim Kok Wee (Morgan Lewis Stamford LLC) for the defendants in OS 419/2019 and OS 421/2019;
Benny Jude Philomen and Mary-Anne Shu-Hui Chua (Joseph Tan Jude Benny LLP) for the defendant in OS 420/2019.

Version No 1: 27 Oct 2020 (22:41 hrs)

Annex

A.1 In respect of OS 419/2019, as against Sinfeng:

(a) that Sinfeng provides, in relation to the period from 1 July 2012 to 13 December 2018:

(i) by way of statutory declaration, a general description of the trading relationship between the Company and Sinfeng, including the nature of the trading activities and periods of time of the relationship;

(ii) copies of sales contracts between Sinfeng and the Company with respect to trading or other activities;

(iii) copies of invoices issued by the Company to Sinfeng and the accompanying delivery documentation *eg*, Bill of Lading, Bunker Delivery Note.

(iv) copies of Sinfeng's proof of payment which show the payments Sinfeng made to the Company and/or monthly or any other periodic summary of payments made by Sinfeng to the Company;

(v) invoices, debit notes, credit notes, contracts, delivery documents and payment proof relating to the onward buyer(s) of products supplied by the Company to Sinfeng during the period; and

(vi) invoices, debit notes, credit notes, contracts, delivery documents and payment proof relating to the initial supplier(s) to Sinfeng of products supplied by Sinfeng to the Company.

Version No 1: 27 Oct 2020 (22:41 hrs)

(b) The liquidators are at liberty to re-apply at a later stage if further documentation, information and/or oral examination are required.

A.2 In respect of OS 420/2019, as against Costank:

(a) that Costank provides, in relation to the period from 1 July 2012 to 13 December 2018:

(i) by way of statutory declaration, a general description of the trading relationship between the Company and Costank, including the nature of the trading activities, periods of time of the relationship, extent of management involvement of Mr Yeung Wing Sing and/or Mr Tan Sing Hwa over Costank and any other information relevant to explain the relationship and business dealings with the Company;

(ii) copies of sales contracts between Costank and the Company with respect to trading or other activities;

(iii) copies of invoices issued by the Company to Costank and the accompanying delivery documentation, *eg*, Bill of Lading, Bunker Delivery Note;

(iv) copies of Costank's proof of payment which show the payments Costank made to the Company and/or monthly or any other periodic summary of payments made by Costank to the Company;

(v) documentation, including invoices, debit notes, credit notes, contracts, delivery documents and payment proof relating to the onward buyer(s) of products supplied by the Company to Costank during the period; and

Version No 1: 27 Oct 2020 (22:41 hrs)

(vi) documentation, including invoices, debit notes, credit notes, contracts, delivery documents and payment proof relating to the initial supplier(s) to Costank of products supplied by Costank to the Company.

(b) The liquidators are at liberty to re-apply at a later stage if further documentation, information and/or oral examination are required.

A.3 In respect of OS 421/2019, as against Cosco:

(a) that Cosco provides, in relation to the period from 1 July 2012 to 13 December 2018:

(i) by way of statutory declaration, a general description of the trading relationship between the Company and Cosco, including the nature of the trading activities and periods of time of the relationship;

(ii) copies of sales contracts between Cosco and the Company with respect to trading or other activities;

(iii) copies of invoices issued by the Company to Cosco and the accompanying delivery documentation, *eg*, Bill of Lading, Bunker Delivery Note.

(iv) copies of Cosco's proof of payment which show the payments Cosco made to the Company and/or monthly or any other periodic summary of payments made by Cosco to the Company; and

Version No 1: 27 Oct 2020 (22:41 hrs)

(v) invoices, debit notes, credit notes, contracts, delivery documents and payment proof relating to the onward buyer(s) of products supplied by the Company to Cosco during the period.

(b) The liquidators are at liberty to re-apply at a later stage if further documentation, information and/or oral examination are required.

Version No 1: 27 Oct 2020 (22:41 hrs)