IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 63

Civil Appeal No 116 of 2020

Between

Jane Rebecca Ong

… *Appellant*

And

Lim Lie Hoa also known as
Lim Le Hoa also known as
Lily Arief Husni

… *Respondent*

Civil Appeal No 190 of 2020

Between

Jane Rebecca Ong

… *Appellant*

And

Lim Lie Hoa also known as
Lim Le Hoa also known as
Lily Arief Husni

… *Respondent*

In the matter of Bill of Costs No 118 of 2006

Between

Jane Rebecca Ong

… *Applicant*

And

(1) Lim Lie Hoa also known as
Lim Le Hoa also known as
Lily Arief Husni
(2) Sjamsudin Husni also known
as Ong Siauw Tjoan
(3) Ong Siauw Ping
(4) Ong Keng Tong

… *Respondents*

Civil Appeal No 191 of 2020

Between

Jane Rebecca Ong

… *Appellant*

And

Ong Siauw Ping

… *Respondent*

Civil Appeal No 192 of 2020

Between

Jane Rebecca Ong

… *Appellant*

And

Ong Siauw Ping

… *Respondent*

In the matter of Suit No 47 of 2020

Between

Jane Rebecca Ong

… *Plaintiff*

And

Ong Siauw Ping

… *Defendant*

GROUNDS OF DECISION

[Abuse of Process] — [*Riddick* principle]
[Civil Procedure] — [Disclosure of documents] — [*Riddick* principle]
[Civil Procedure] — [Striking out] — [Abuse of process]
[Civil Procedure] — [Appeals] — [No order made]
[Insolvency Law] — [Administration of insolvent estates] — [Conduct of legal proceedings] — [Stay of proceedings]
[Insolvency Law] — [Bankruptcy] — [Trustee in bankruptcy] — [Conduct of legal proceedings] — [Sanction of trustee in bankruptcy]
[Statutory Interpretation] — [Construction of statute] — [Insolvency, Restructuring and Dissolution Act 2018]

TABLE OF CONTENTS

Ong Jane Rebecca
v
Lim Lie Hoa and other appeals and other matters

[2021] SGCA 63

Court of Appeal — Civil Appeal Nos 116, 190, 191 and 192 of 2020 and Summonses Nos 34, 35, 36, 37, 38 and 39 of 2021
Steven Chong JCA and Woo Bih Li JAD
9 April, 27 May 2021

29 June 2021

Steven Chong JCA (delivering the grounds of decision of the court):

Introduction

1 The heart of the four related appeals and six applications before this court concerned the use of four affidavits ("the EJD documents") which were filed in response to the appellant's application for examination of judgment debtor ("the EJD proceedings"). The judge below ("the Judge") concluded that the appellant's use of the EJD documents to commence HC/S 47/2020 ("Suit 47") was an abuse of process in violation of the principle in *Riddick v Thames Board Mills Ltd* [1977] QB 881 ("*Riddick*"). Suit 47 was consequently struck out. In essence, the ultimate purpose of these various appeals and applications relate to the lifting of the *Riddick* undertaking to permit the appellant to use the EJD documents in pursuit of Suit 47. In these grounds, we

clarify the contours of the *Riddick* undertaking, which is an expression of the doctrine of abuse of process.

2 The present appeals and applications also serve as a cautionary tale on the undesirable consequences of poor case management. Through a series of missteps and impulsive applications which were filed by both parties without applying their minds to their necessity or utility, for reasons which will be elaborated below, what should have been *one* appeal before this court regrettably led to the proliferation of *four* appeals and *six* ill-advised applications. Unfortunately, as we will explain below, the Judge partly contributed to this state of affairs by hearing one prayer of an application and directing the alternative prayer to be heard by an Assistant Registrar. This led to two appeals being filed arising from one application.

3 Proper case management is the responsibility of *both* the court and the parties in the action. Filing futile applications without a proper understanding of their purposes only leads to the incurring of unnecessary costs and expense and wastage of judicial time. This case offers a paradigm illustration of the undesirable consequences of less than satisfactory case management.

4 Beyond the unnecessary multiplicity of appeals, the appellant made the estate of Mdm Lim Lie Hoa ("Mdm Lim"), the respondent in two of the appeals, bankrupt on the *eve* of her pending appeals. This added a further layer of complications entirely induced by the appellant. In fact, the six applications before this court can be traced to the questionable decision of the appellant to make Mdm Lim's estate bankrupt notwithstanding her *own* pending appeals. We are not suggesting that the appellant should not have made Mdm Lim's estate bankrupt but rather that this should have been done at the earliest opportunity after obtaining information from the EJD proceedings. Had she

done so, it is likely that the arguments about *Riddick* and all the applications and appeals relating thereto might have been avoided.

5 On 27 May 2021, having heard the parties, we disposed of the six applications and allowed two of the four appeals, namely CA/CA 190/2020 ("CA 190") and CA/CA 191/2020 ("CA 191"). The two other appeals (CA/CA 116/2020 and CA/CA 192/2020; "CA 116" and "CA 192") were dismissed. We now set out the detailed grounds of our decision.

Factual background

6 The appellant's quest to recover a legitimate judgment debt has spanned over three decades. In that time, she has been involved in a considerable amount of litigation in our courts, as well as abroad. There have been no less than 15 local judgments and three foreign judgments in relation to disputes between the appellant, her former husband and her in-laws. To give context to the present appeals, it would be apt for us to recapitulate, in brief, the events that have transpired.

Origin of the dispute and dramatis personae

7 On 23 October 1974, Mr Ong Seng Keng ("Mr Ong"), the patriarch of the Ong family, passed away. He was survived by his widow, Mdm Lim, and his three sons, Ong Siauw-Tjoan ("OST"), Ong Siauw Ping ("OSP") and Ong Keng Tong ("OKT"). Mdm Lim passed away on 8 August 2009; her estate ("the Estate") is the respondent in CA 116 and 190. OSP is the sole executor of the Estate, and the respondent in CA 191 and 192 in his personal capacity. Where appropriate, we will refer to the Estate and OSP collectively as "the respondents".

8 The appellant in all four appeals, Jane Rebecca Ong, is the estranged wife of OST. They were married in England on 1 October 1982. The appellant commenced divorce proceedings in Singapore in March 1988, and a decree *nisi* was obtained in July 1988.

9 On 10 August 1988, the appellant obtained a maintenance order in proceedings against OST. Subsequently, in late 1990, the appellant and OST decided to collaborate to recover OST's share of Mr Ong's estate from Mdm Lim. The appellant thus withheld enforcement of the maintenance order.

10 The monumental litigation that followed spanned from 1991 to the present, and may broadly be understood as a trilogy, as follows:

(a) The appellant's claim for a share of Mr Ong's estate. This involved OS 939/1991 ("OS 939"), the inquiry that followed, and the taxation of the Bill of Costs for OS 939 *vide* BC 118/2006 ("BC 118").

(b) The appellant's suit against PricewaterhouseCoopers ("PwC"), PwC UK, and her ex-solicitors via S 156/2006 ("Suit 156"). This was a claim for breach of contract and negligence.

(c) The litigation in the English courts. This involved the appellant challenging an order for mesne profits made against her in the amount of £2,269,784.90 by the English High Court on 20 December 2007, on the basis that such order was procured by Mdm Lim's fraud.

Most germane, for the purposes of the present appeals and applications, would be the first instalment of the trilogy, *ie*, OS 939 and BC 118.

OS 939, the inquiry and BC 118

11 In 1991, OST assigned to the appellant half of his entitlement to the residuary estate of Mr Ong. He also executed a power of attorney to confer on the appellant powers to demand and sue the representatives of Mr Ong's estate for OST's share.

12 On 21 September 1991, the appellant commenced OS 939 in OST's name against Mdm Lim, to claim a share of Mr Ong's estate. OST and the appellant were on the same side at this stage. Soon after, however, OST shifted his allegiance back to Mdm Lim. He claimed that he had received his entitlement under Mr Ong's estate, and instructed his lawyer to discontinue OS 939. Following this development, the appellant replaced OST as the plaintiff in OS 939, OST was added as the second defendant, and the proceedings were converted into one as if commenced by writ. Around the same time, the appellant restored the maintenance proceedings against OST.

13 On 16 July 1996, Chao Hick Tin J (as he then was) delivered judgment on OS 939 in favour of the appellant: *Jane Rebecca Ong v Lim Lie Hoa also known as Lim Le Hoa also known as Lily Arief Husni and another* [1996] SGHC 140. Mdm Lim's and OST's appeals were dismissed by this court in *Lim Lie Hoa and another v Ong Jane Rebecca* [1997] 1 SLR(R) 775.

14 Following the outcome of OS 939, the court ordered an inquiry into the estate of Mr Ong. An extensive inquiry, detailed in a 185-page judgment dated 13 June 2003, was conducted by an Assistant Registrar: see *Ong Jane Rebecca v Lim Lie Hoa (also known as Lim Le Hoa and Lily Arief Husni) and others* [2003] SGHC 126. The appeals against the Assistant Registrar's decision were dismissed by the High Court in *Ong Jane Rebecca v Lim Lie Hoa and others (No 5)* [2004] SGHC 131, and by this court in *Ong Jane Rebecca v Lim Lie Hoa*

and others [2005] SGCA 4 and *Lim Lie Hoa v Ong Jane Rebecca and others and another appeal* [2005] 3 SLR(R) 116.

15 On 29 May 2006, having been awarded the costs of the inquiry proceedings, the appellant filed BC 118 for taxation of her costs against Mdm Lim. There was partial taxation of costs, and on 19 July 2007, the appellant was awarded £78,981.66, S$559,853.45 and HKD217,132.37 in section 3 costs, and S$50,000 in section 2 costs. On 25 March 2008, the appeal against taxation was dismissed by the High Court in *Ong Jane Rebecca v Lim Lie Hoa and others* [2008] 3 SLR(R) 189.

16 Interspersed between the aforementioned decisions were multiple judgments on various interlocutory matters. These include *Ong Jane Rebecca v Lim Lie Hoa and others* [2002] 1 SLR(R) 798, *Ong Jane Rebecca v Lim Lie Hoa and others (Lim Lie Hoa, third party)* [2002] 2 SLR(R) 1078, *Ong Jane Rebecca v Lim Lie Hoa and others* [2003] 1 SLR(R) 457 and *Ong Jane Rebecca v Lim Lie Hoa and others* [2004] 4 SLR(R) 301.

17 The appellant, however, could not proceed with enforcement of the orders obtained in BC 118. On 29 August 2011, Belinda Ang J (as she then was) stayed the enforcement of BC 118 on the basis that Mdm Lim was then a net creditor of the appellant (the "Stay Order"). Specifically, Mdm Lim relied on the order of the English High Court referred to at [10(c)] above.

The litigation involving PwC

18 In the interim, on 20 March 2006, the appellant had commenced Suit 156 against PwC, PwC UK and her ex-solicitors. She alleged that these entities, who had represented her in various professional capacities in the course of the proceedings in OS 939, had acted negligently. Suit 156 lent itself to the

decisions in *Ong Jane Rebecca v PricewaterhouseCoopers and others* [2009] 2 SLR(R) 796, *Ong Jane Rebecca v PricewaterhouseCoopers and others* [2011] 4 SLR 242 and *Ong Jane Rebecca v PricewaterhouseCoopers and others* [2011] SGHC 203. The dispute culminated in *Ong Jane Rebecca v PricewaterhouseCoopers and others* [2012] 3 SLR 606. Lai Siu Chiu J (as she then was) dismissed the suit, as well as the applications by the appellant to set aside the judgment entered against her and to stay her appeal. The appellant's appeals against Lai J's decision were eventually deemed withdrawn.

The litigation abroad

19 As noted, Mdm Lim passed away on 8 August 2009. Following this, protracted proceedings took place in the English Courts between the appellant, the Estate and OSP. The appellant's efforts in the United Kingdom ("UK") were to challenge the sum she allegedly owed to Mdm Lim, *ie*, the basis upon which Ang J stayed the enforcement of BC 118: see [17] above.

20 On 17 June 2015, the orders against the appellant relating to the sum of £2,269,784.90 owed to Mdm Lim were set aside on the basis of fraud. Two judgments were issued by Mr Justice Morgan of the English High Court: *Ong and others v Ping* [2015] EWHC 1742 (Ch) and *Ong and others v Ping* [2015] EWHC 3258 (Ch). On 12 December 2017, the English Court of Appeal dismissed the appeal and upheld the English High Court's decision: *Ong and others v Ping* [2017] EWCA Civ 2069. On 15 May 2018, OSP's application for leave to appeal to the UKSC was dismissed. Damages and costs have been awarded to the appellant, albeit these have yet to be quantified.

21 On 9 January 2019, the appellant applied to the High Court in HC/SUM 153/2019 for the Stay Order to be lifted, based on the outcome of the UK proceedings. On 4 February 2019, the Judge ordered the Stay Order to be

lifted or dismissed. The appellant was thus allowed to proceed with enforcement of BC 118. This brings us to the litigation that directly spawned the present appeals and applications.

Procedural history of the appeals and applications

The EJD proceeding

22 On 28 February 2019, the appellant applied to extract an interim Registrar's Certificate for BC 118. On the court's directions, the foreign currencies (see [15] above) were converted to Singapore dollars, and the total sum owed to the appellant by the Estate was S$786,348.30.

23 As at 8 March 2019, the total amount owing to the appellant under the interim Registrar's Certificate was S$1,335,286.57, including accrued interest. Mdm Lim's former solicitors then made payment to the appellant's solicitors of the entire balance of stakeholder monies, amounting to S$423,581.03. The balance owing to the appellant by the Estate amounted to S$911,705.54.

24 On 14 May 2019, the appellant commenced the EJD proceedings. OSP was the respondent in his capacity as the sole executor of the Estate. OSP proceeded to file the EJD documents. Based on information disclosed in these documents, the appellant was of the view that OSP had breached his duties as the sole executor of the Estate. Chiefly, the appellant relied on the fact that OSP transferred one of the Estate's properties (16 East Sussex Lane, Singapore 279802 ("16 East Sussex")) to himself. This was stated in, *inter alia*, OSP's first affidavit in the EJD proceedings.

Suit 47

25 On 14 January 2020, using the information obtained from the EJD documents, the appellant commenced Suit 47 against OSP. The claim was premised on OSP's alleged misconduct as the sole executor of the Estate. It concerned OSP's alleged misappropriation of sales proceeds and/or rental income from several properties of the Estate, namely, 16 East Sussex, 37 Mount Sinai Rise #09-01, Singapore 276956 ("37 Mount Sinai") and 45 Mount Sinai Rise #17-01, Singapore 276958 ("45 Mount Sinai"). This misappropriation deprived the appellant of payment of the costs award in BC 118.

26 On 3 March 2020, the appellant applied for summary judgment in HC/SUM 1046/2020 ("SUM 1046"). On 10 March 2020, OSP applied to strike out Suit 47 in HC/SUM 1168/2020 ("SUM 1168"). He argued that Suit 47 should be struck out because the appellant had used the EJD documents to commence Suit 47 in violation of the *Riddick* principle.

27 On 12 March 2020, the appellant filed HC/SUM 1237/2020 ("SUM 1237"), seeking a declaration that she was entitled to use the EJD documents, and the information therein, in Suit 47 without the leave of court ("Prayer 1"), or alternatively for the leave of court to be granted ("Prayer 2"). We reproduce the prayers in SUM 1237 below:

> 1. A declaration that the Plaintiff is at liberty to use the documents and information obtained in the examination of judgment debtor (**"EJD"**) proceedings in this action, in Suit 47 of 2020 without leave of Court, and specifically the following (**"Defendant's Affidavits"**):
>
> a. Defendant's 1st affidavit dated 10 September 2019,
>
> b. Defendant's 2nd affidavit dated 9 January 2020,
>
> c. Defendant's 3rd affidavit dated 21 February 2020, and

> d. Defendant's 4th affidavit, which is currently due to be filed and served by 31 March 2020.
>
> 2. Further or in the alternative, an Order that the Plaintiff be granted leave to use the documents and information obtained in the EJD proceedings in this action, in Suit 47 of 2020 and specifically the Defendant's Affidavits.

The decision below

Prayer 1 of SUM 1237

28 SUM 1046, 1168 and 1237 were fixed for hearing before the Judge. On 5 June 2020, the Judge part-heard SUM 1237 and dismissed Prayer 1. She found that there was no basis to conclude that the *Riddick* principle did not apply to the EJD documents.

29 The Judge directed Prayer 2 of SUM 1237, SUM 1046 and SUM 1168 to be heard by an Assistant Registrar. On 15 July 2020, the Assistant Registrar made the following orders:

(a) Prayer 2 of SUM 1237 was dismissed. The appellant was thus not granted leave to use the EJD documents and the information therein in Suit 47.

(b) SUM 1168 was allowed. The appellant's claim in Suit 47 was thus ordered to be struck out.

(c) No order was made on SUM 1046 which had become academic as Suit 47 was struck out.

(d) Costs were awarded to the Estate and OSP.

30 The appellant appealed against these orders in HC/RA 157, 158 and 159/2020 ("RA 157", "RA 158" and "RA 159"). On 8 October 2020, the Judge heard and dismissed the three appeals against the Assistant Registrar's decision.

RA 157

31 RA 157 was the appeal against the Assistant Registrar's dismissal of Prayer 2 of SUM 1237. The Judge concluded, applying this court's decision in *Lim Suk Ling Priscilla and another v Amber Compounding Pharmacy Pte Ltd and another and another appeal and another matter* [2020] 2 SLR 912 ("*Amber Compounding*"), that there was no basis for granting retrospective leave to use the EJD documents. There was nothing "so unusual or exceptional about the present case that warrants the sparing exercise of the Court's discretion". Amongst other things, the Judge also found that OSP had not "waived" his right to privacy in the EJD proceedings, and that the merits of Suit 47, if any, were insufficient to warrant a lifting of the *Riddick* undertaking.

RA 158

32 RA 158 was the appeal against the Assistant Registrar's decision to strike out the appellant's claim in Suit 47 for abuse of process. The abuse of process complained of was the appellant's conduct in taking the EJD documents and information outside of the confines of the EJD proceedings and using them to launch Suit 47. The Judge noted that the appellant's supporting affidavit stated clearly that *the EJD documents*, namely OSP's four affidavits, had allowed her to commence and to sustain Suit 47. The appellant therefore could not contend that she (a) did not need the EJD documents to commence Suit 47 and (b) could rely on other documents which she had obtained herself.

33 The Judge emphasised that the appellant had *deliberately* chosen to disregard the *Riddick* undertaking without leave. She was not ignorant of the existence of the *Riddick* principle. Instead, her explanation was that she did not first seek leave because she feared OSP would try to delay the proceedings if she did so. This was a conscious assessment. In any event, OSP did not conduct himself in such a manner as to delay and prolong the EJD proceedings, nor was he allowed to engage in delay tactics. In these circumstances, it was not possible to characterise the appellant's breach of her *Riddick* undertaking as only a "very minor" breach, especially in view of the fact that she acted deliberately and with full awareness of the undertaking.

34 The Judge discussed this court's recent decision in *ED&F Man Capital Markets Limited v Straits (Singapore) Pte Ltd* [2020] 2 SLR 695 ("*ED&F*"), and found that it did not support the appellant's case in resisting the striking out application. In that case, the foreign proceedings were permitted to continue because the High Court had separately concluded that the grounds for granting an anti-suit injunction were not made out (on grounds of natural forum). This was independent of any finding on the *Riddick* undertaking.

RA 159

35 RA 159 was the appeal against the Assistant Registrar's decision to make no order on SUM 1046. The Judge agreed with the Assistant Registrar and observed that once Suit 47 was struck out for the appellant's abuse of process, there was no basis upon which any orders could be made on the appellant's application under O 14 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court").

Summary of appeals against the Judge's decisions

36 To summarise, the four appeals before us were against the Judge's decisions on (a) Prayer 1 of SUM 1237, via CA 116; (b) RA 157, via CA 190; (c) RA 158, via CA 191; and (d) RA 159, via CA 192. These four appeals were, as it turned out, not the end of the matter, due to the various steps taken by the appellant and OSP after the filing of the appeals.

Subsequent events: Bankruptcy of the Estate

37 The appeals were fixed for hearing before this court on 9 April 2021. Just before the hearing, however, the parties filed the six applications. These arose from the bankruptcy of the Estate, which was set into motion by the appellant.

38 On 17 December 2020, shortly after CA 190–192 were filed on 4 November 2020, the appellant filed the originating summons in HC/B 2704/2020 for the administration of the bankruptcy of the Estate. It was accompanied by an affidavit by the appellant's solicitor, Mr Andrew Ohara ("Mr Ohara"). The sum in question in the application, which landed the Estate in bankruptcy, is S$1,038,511.01. This sum arose from *inter alia* the amounts owed to the appellant in BC 118, with accrued interest.

39 On 4 March 2021, the High Court ordered the administration of the bankruptcy of the Estate. Seshadri Rajagopalan ("Mr Rajagopalan") and Paresh Tribhovan Jotangia ("Mr Jotangia") of Grant Thornton Singapore Pte Ltd were appointed as joint and several private trustees of the Estate ("the PTs"). Mr Rajagopalan and Mr Jotangia had been named and nominated as private trustees in Mr Ohara's affidavit dated 17 December 2020. On 9 March 2021,

the PTs filed their consent to being appointed as joint and several trustees of the Estate in bankruptcy. Thereafter, the bankruptcy order was extracted.

40 At this juncture, the appellant had not filed any stay application. Instead, the litigation over the issue of the stay of the appeals proceeded unsatisfactorily through *correspondence*. This correspondence comprised *five* letters from the appellant's solicitors, dated 5, 8, 17, 19 and 21 March 2021, which contained arguments on why the appeals should be stayed, and *two* letters from the respondents' solicitors, dated 5 and 19 March 2021, on the same issue.

41 It was only on 26 March 2021 that the appellant filed four applications in CA/SUM 34–37/2021 ("SUM 34" to "SUM 37" respectively). This was following directions from the court on 25 March 2021 that the appellant should, if she so wished, urgently file *formal* stay applications and proper written submissions in support. In SUM 34–37, the appellant sought to stay all four appeals, and argued that the appeals and Suit 47 were rendered redundant by the Estate's bankruptcy. The respondents argued that there should be no stay, and that the appellant should discontinue the appeals if she deemed them redundant in light of the Estate's bankruptcy.

42 On the same day (26 March 2021), the PTs informed that they had not appointed solicitors and were unable to take a position in respect of the appeals. They also faced issues with funding. It bears reiteration that it was the appellant herself who nominated Mr Rajagopalan and Mr Jotangia as private trustees, and this was a position taken as early as 17 December 2020, as expressed in Mr Ohara's affidavit.

43 On 30 March 2021, OSP filed two applications in his personal capacity in CA/SUM 38 and 39/2021 ("SUM 38" and "SUM 39" respectively), applying

for leave to intervene in CA 116 and 190 as a non-party and to make submissions on these appeals. These applications were filed out of the concern that the Estate might be deemed unable to defend CA 116 and 190.

44 Given the significance of the Estate's bankruptcy on the appeals, the court issued directions for the PTs to attend at the hearing of the appeals on 9 April 2021. On 7 April 2021, the PTs informed the court via letter that they had appointed BlackOak LLC as their solicitors.

45 At the hearing on 9 April 2021, the PTs' solicitors informed the court that they required more time to consider the Estate's position, and that an adjournment of the hearing would be appropriate. Thus, the four appeals and six applications were adjourned to be heard on 27 May 2021. The parties, including the PTs, were also directed to affirm their positions on certain issues prior to the next hearing.

46 On 14 May 2021, the PTs wrote to the appellant and the court, informing that:

> (a) they will not be receiving funding for the purposes of the administration of the Estate, but reserve their right to seek third-party funding for any litigation commenced by the Estate subsequently;
>
> (b) they would not be commencing, for the time being, any fresh action against OSP, as their investigations into the affairs of the Estate will require three to six months; and
>
> (c) subject to the appellant's view on whether the appeals should proceed, they have no issues with the Estate participating in the appeals.

47 On 21 May 2021, having considered the position of the PTs, the parties filed written submissions on whether Suit 47 could proceed in light of the Estate's bankruptcy, and, if so, the impact of the Estate's bankruptcy on the appeals, the applications and all outstanding matters. The parties maintained the respective positions they took in SUM 34–37 (see [41] above). We add that any reference to arguments or positions taken by the respondents is to those taken by OSP and not the PTs who essentially took a neutral position in respect of the appeals and applications.

48 On 27 May 2021, we heard the parties and the PTs. Importantly, at the hearing, the PTs confirmed that they had no objections to the Estate participating in the appeals if the appellant was of the view that she should proceed. At the conclusion of the hearing, we made the following orders:

(a) SUM 34–37 were dismissed with costs.

(b) SUM 38 and 39 were withdrawn with leave and with no order as to costs.

(c) CA 116 was dismissed with costs.

(d) CA 190 was allowed, and consequently, CA 191 was allowed.

(e) CA 192 was withdrawn with leave and with no order as to costs.

(f) Each party was to bear their own costs of the appeals and applications.

The parties' cases on the appeals and applications

49 The parties have filed multiple volumes of written submissions, bundles and correspondence in relation to the multiple appeals and applications. We

herein provide only a brief clarification of their positions on each of the appeals/applications. Where necessary, we will set out the specifics of the parties' arguments in the course of these grounds.

50 The appellant sought the following relief:

(a) **CA 116:** A reversal of the Judge's decision on Prayer 1 of SUM 1237, *ie*, a declaration that the appellant may use the EJD documents to pursue Suit 47 without the leave of court.

(b) **CA 190:** A reversal of the Judge's decision in RA 157 and consequently leave to use the EJD documents to pursue Suit 47. In other words, the appellant sought a lifting of the *Riddick* undertaking. The relief sought in CA 190 was alternative to that sought in CA 116.

(c) **CA 191:** Restoration of Suit 47, *ie*, a reversal of the Judge's decision in RA 158 to strike out her claim. The outcome of CA 191 was dependent on the outcomes of CA 116 and 190, because the appellant's failure to obtain the reliefs sought in SUM 1237 was the basis upon which the Judge struck out Suit 47.

(d) **CA 192:** A rehearing of SUM 1046. The Judge had affirmed the Assistant Registrar's decision to make "no order" on SUM 1046 – this flowed as a consequence of Suit 47 being struck out. Accordingly, the outcome of CA 192 would follow the outcome of CA 191.

(e) **SUM 34, 35, 36 and 37:** The appellant sought a stay of all four appeals on the basis of the Estate's bankruptcy. She contended that CA 116 and 190 were to be stayed pursuant to the provisions of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018)

("IRDA"). CA 191 and 192 were to be stayed because they related to, and depended on the outcome of, CA 116 and 190.

51 The respondents sought to affirm all of the Judge's findings in SUM 1237 and RA 157–159. On SUM 34–37, they argued that there is no basis for the appeals to be stayed under the IRDA. They stressed that the appropriate course of action was for the appellant to *discontinue* the appeals. As mentioned, in SUM 38 and 39, OSP sought leave to intervene in CA 116 and 190 in light of the Estate's bankruptcy.

Issues

52 We address the appeals and applications in the following order:

(a) the appellant's stay applications in SUM 34–37;

(b) OSP's leave to intervene applications in SUM 38 and 39;

(c) CA 116 – whether the *Riddick* undertaking applies;

(d) CA 190 – whether the *Riddick* undertaking should be lifted; and

(e) CA 191 and 192, which follow the outcomes of CA 116 and 190.

Before that, however, we make several observations on how the mismanagement of the litigation led to the present convoluted state of affairs.

Improper case management

53 For clarity, we tabulate in chronological order the four appeals and six applications that were before us, as well as the originating matters from which they arose:

CA/SUM	Subject Matter	Originating Interlocutory Matter	Originating Matter
CA 116	Using EJD documents without leave of court	SUM 1237, Prayer 1	BC 118
CA 190	Using EJD documents with leave of court	SUM 1237, Prayer 2 (RA 157)	BC 118
CA 191	Striking out	SUM 1168 (RA 158)	Suit 47
CA 192	Summary judgment	SUM 1046 (RA 159)	Suit 47
SUM 34	Stay application	-	CA 116
SUM 35	Stay application	-	CA 190
SUM 36	Stay application	-	CA 191
SUM 37	Stay application	-	CA 192
SUM 38	Leave to intervene application	-	CA 116
SUM 39	Leave to intervene application	-	CA 190

54 The multiplicity of appeals and applications can broadly be traced to three missteps by the appellant – (a) the failure to make the Estate bankrupt at the earliest opportunity, (b) the failure to seek a declaration or alternatively, leave to use the EJD documents for Suit 47 *at the outset* prior to commencing Suit 47, and (c) the questionable decision to make the Estate bankrupt on the eve of the appeals *after* taking the EJD route and thereafter commencing a separate action against the Estate's executor, OSP, for a different cause of action, though the actions ultimately share the same origin, *ie*, to enforce the judgment debt in BC 118. There were further missteps taken by the appellant thereafter, when the PTs stepped into the picture in light of the bankruptcy

proceedings which were commenced by the appellant herself. We elaborate on these in the course of these grounds. These missteps led to the unnecessary stay applications and leave to intervene applications (*ie*, SUM 34–39) being filed.

55 We also observe that as a matter of proper case management, it was inappropriate for the Judge to deal with Prayer 1 of SUM 1237 and to direct that Prayer 2 be heard by the Assistant Registrar. Both prayers emanated from the *same application* and largely engaged the *same legal issue*, *ie*, the applicability of the *Riddick* undertaking and whether it ought to be lifted. This unnecessarily resulted in two appeals to this court from a single application – SUM 1237. The Judge should either have adjourned both prayers to be heard by the Assistant Registrar in question or dealt with both prayers herself at the same hearing.

56 The above culminated in four appeals and six applications that had to be dealt with in a single hearing by this court. The said hearing only took place on 27 May 2021, after a lengthy adjournment. The first hearing on 9 April 2021 had to be adjourned for nearly seven weeks because of the unsatisfactory manner in which the parties had managed the appeals up to that point. As a consequence, as at 9 April 2021, the parties and the court required time to achieve clarity on how best to proceed moving forward. The lengthy adjournment and convoluted hearing could have been *easily* avoided if the parties had prospectively applied their minds to the significance and purpose of the various steps they had taken.

57 Each court process is meant to be invoked for a particular purpose, and at an appropriate time. The court will not condone trigger-happy invocation – whether wanton, impulsive or reckless – of such processes. As we explain at the end of these grounds, there were costs consequences flowing from the parties' unfortunate mismanagement of the appeals and applications.

Stay applications

58 The appellant sought a stay of all four appeals via SUM 34–37. The stay applications were necessitated by the appellant's own decision to make the Estate bankrupt on the eve of her pending appeals. It would have been understandable if the appellant had filed the stay applications in response to a bankruptcy that had been brought about by a third-party creditor. Such a situation would have been outside the appellant's control. But that was not what happened – it was the appellant *herself* who brought about the Estate's bankruptcy, in the face of the four outstanding appeals that *she* filed. Let us be clear: as we intimated, there is nothing improper about the appellant commencing bankruptcy proceeding to enforce a judgment debt. What was improper was the timing of the appellant's decision to commence bankruptcy proceedings on the eve of her own appeals and thereafter to use the bankruptcy status to apply to stay her own appeals.

59 The appellant should have anticipated the bankruptcy of the Estate and sought the views of the PTs at the earliest possible instance before filing the stay applications. As stated at [46] above, the PTs confirmed that they had no objections with the Estate's participation in the appeals or, for that matter, with the appellant proceeding with her appeals. After all, it was the appellant who nominated Mr Rajagopalan and Mr Jotangia as private trustees as early as December 2020 – yet, apparently, arrangements were not made in advance for the PTs to be sufficiently informed and to have prompt access to legal advice and/or funding, with the result that their ability to take timely positions on the appeals was impaired. This led to further delays in the proceedings.

60 Despite the non-objection from the PTs, the appellant still decided to proceed with her stay applications. That was probably due to her recognition

that the PTs would be in a better position to pursue any claim against OSP both in his capacity as executor of the Estate and in his personal capacity. This, however, harks back to our earlier point, *ie*, that she should have applied to make the Estate bankrupt and appoint the PTs at the earliest opportunity before commencing Suit 47.

61 We deal first with SUM 34 and 35, which pertained to CA 116 and 190. Two provisions were cited by the appellant, namely ss 327(1)(*c*) and 401(1) of the IRDA. We address each in turn.

No automatic stay under s 327(1)(c) IRDA

62 The first question that arose was whether CA 116 and 190, which were against the Estate, were proceedings that could not be sustained in light of s 327(1)(*c*) of the IRDA, which we reproduce below for convenience:

> **Effect of bankruptcy order**
>
> **327.**—(1) On the making of a bankruptcy order —
>
> (*a*) the property of the bankrupt —
>
> (i) vests in the Official Assignee without any further conveyance, assignment or transfer; and
>
> (ii) becomes divisible among the bankrupt's creditors;
>
> (*b*) the Official Assignee is constituted the receiver of the bankrupt's property; and
>
> (*c*) unless otherwise provided by Parts 3 and 13 to 22 —
>
> (i) no creditor to whom the bankrupt is indebted in respect of any debt provable in bankruptcy has any remedy against the person or property of the bankrupt in respect of that debt; and
>
> (ii) no action or proceedings may be proceeded with or commenced against the bankrupt in respect of that debt,

> except by the leave of the Court and in accordance with such terms as the Court may impose.

63 Section 327 is *creditor*-targeted. It is to be distinguished from s 401 of the IRDA, which is targeted at restricting the actions of the *bankrupt* – we elaborate on this distinction at [72] below. Section 327 of the IRDA operates *automatically* and disallows creditors to commence or sustain actions in debt against the bankrupt without the leave of court. Where leave is granted, the court may impose conditions to manage the litigation.

64 In this case, one key issue was whether CA 116 and 190 were "action[s] or proceedings … in respect of that debt" as *per* s 327(1)(*c*)(ii) of the IRDA. "Debt" is a reference to "any debt provable in bankruptcy", and the phrase "in respect of that debt" in s 327(1)(*c*) of the IRDA was derived from, and identical to, the wording in s 76(1)(*c*) of the now-repealed Bankruptcy Act (Cap 20, 2009 Rev Ed) ("Bankruptcy Act"). Section 76(1)(*c*) was amended in 2009 (pursuant to the Bankruptcy (Amendment) Act 2009) to include the words "in respect of that debt". Parliamentary debates are silent on the definition of "debt", and case law does not appear to have dealt with the significance of this suffix to s 76(1)(*c*) (or, for that matter, the new s 327(1)(*c*) IRDA). It was thus open to us to determine the scope of the provision and its applicability to CA 116 and 190.

65 As a preliminary point, the appellant contended that the costs orders made by the Judge and the Assistant Registrar, which were on appeal in CA 116 and 190, could constitute the "debt" within the meaning of s 327(1)(*c*) IRDA. We could not accept this argument. The implication of the appellant's argument is that *all proceedings, no matter their nature*, would be caught by s 327(1)(*c*) IRDA. This was untenable. Nearly all hearings will involve costs orders, whether they relate to a debt or otherwise. However, s 327(1)(*c*) draws a distinction between actions in debt and those not involving a debt. If costs of

any sort, *regardless of the nature of the underlying matter*, are deemed caught by s 327(1)(*c*), there would have been no need to draw such a distinction. Further, the language of s 327(1)(*c*) does not draw any distinction between actions involving costs orders and those that do not. What must be examined, therefore, is the nature of the underlying matters from which such costs arise, *ie*, CA 116 and 190, and whether these involve enforcement of a debt.

66 It was clear that the sums owing to the appellant in BC 118 were a judgment debt provable in the Estate's bankruptcy. The Estate was in fact placed into bankruptcy administration as a result of that debt. However, the appropriate actions to analyse were CA 116 and 190 specifically (and not BC 118 generally), and whether these were proceedings "in respect of that debt" by the mere fact that they arose from SUM 1237 and RA 157, which were applications made in BC 118.

67 In our view, CA 116 and 190 were not caught by s 327(1)(*c*) of the IRDA. SUM 1237 and RA 157 (and consequently, CA 116 and 190) were applications to use documents in BC 118 in Suit 47, against OSP. It was thus clear that the outcomes of CA 116 and CA 190 would not have any direct effect on the administration of the bankruptcy of the Estate. These proceedings would not affect the debt owed to the appellant in BC 118.

68 That being the case, CA 116 and 190 do not offend the purpose of s 327(1)(*c*). The rationale behind the provision is to prevent a scramble of creditors going after the bankrupt and potentially violating the *pari passu* principle of distribution, which is a key pillar of our insolvency regime. That is why the provision confers on the court the discretion to grant leave, where appropriate, for such proceedings to continue, and to *impose conditions* to manage such litigation. Allowing CA 116 and 190 to continue would not offend,

in any way, the *pari passu* principle, or prevent the principle from being effectively implemented by the PTs in the Estate's bankruptcy. We were accordingly satisfied that s 327(1)(*c*) of the IRDA had no application to CA 116 and 190, and that leave of the court was not required in order for the appellant to proceed with these appeals. In any event, we would have granted leave, if necessary, otherwise the purpose of the EJD proceedings would have been unwarrantedly constrained.

The PTs' sanction under s 401(1)(a) IRDA

69 The next issue was whether the Estate was incompetent to defend CA 116 and 190 by operation of s 401(1)(*a*) of the IRDA. As mentioned, this provision is *bankrupt*-targeted, and seeks to restrain bankrupts from acting in a manner that may prejudice the interests of creditors:

> **Disabilities of bankrupt**
>
> **401.**—(1) Where a bankrupt has not obtained his or her discharge —
>
> > (*a*) unless the bankrupt has obtained the previous sanction of the Official Assignee, the bankrupt is incompetent to commence, continue or defend —
> >
> > > (i) any action other than —
> > >
> > > > (A) an action for damages in respect of any injury to the bankrupt's person; or
> > > >
> > > > (B) a matrimonial proceeding; or
> > >
> > > (ii) any appeal arising from any action referred to in sub-paragraph (i); and
> >
> > (*b*) the bankrupt must not leave, or remain or reside outside, Singapore without the previous permission of the Official Assignee.

Equally relevant is s 39 of the IRDA, which confers on private trustees in bankruptcy the powers of the Official Assignee. Thus, in this case, it was the PTs' sanction that the Estate required in order to resist the appeals.

70 In addition, the PTs' *prior* sanction was required. This court in *Standard Chartered Bank v Loh Chong Yong Thomas* [2010] 2 SLR 569, referring to s 131 of the old Bankruptcy Act (which has been incorporated into s 401 IRDA), stated that the Official Assignee's sanction cannot be granted *ex post facto* (at [28]), and must be sought prospectively: see also the observations in *Takahashi Kenji v Koh Hiang Pin* [2012] 4 SLR 1032 ("*Takahashi Kenji*"). This is clear from the plain words of s 401(1)(*a*) of the IRDA, which mandate a "previous" sanction.

71 The respondents argued that the appellant must proceed with her appeals if she is not precluded from doing so under s 327, regardless of the PTs' position under s 401. In our view, this argument demonstrated a lack of understanding on how ss 327 and 401 of the IRDA operated as *conjunctive* requirements.

72 Sections 327 and 401 are creditor-targeted and bankrupt-targeted respectively. The latter in particular exists to impose criminal liability on errant bankrupts. For litigation to continue in the administration of a bankruptcy, *both* provisions must be satisfied. They function as a double lock, with the two keys held by different entities.

(a) A creditor who wishes to pursue an action against a bankrupt must obtain the *court's* sanction under s 327 of the IRDA. The court is also statutorily empowered to stipulate conditions on creditors to manage the litigation if necessary. We have elaborated on this point at [68] above.

(b) At the same time, a bankrupt who wishes to defend or pursue the action must obtain the *Official Assignee's* (or private trustee's, where appointed) sanction under s 401 of the IRDA. The Official Assignee is

> statutorily empowered to determine whether it would be in the bankrupt's and creditors' interests for any litigation to proceed.

73 This distinction between the roles of the court and the Official Assignee in the context of a bankruptcy was recognised by the High Court in *Takahashi Kenji*. There, the court discussed whether retrospective leave to pursue proceedings could be granted by the court under s 76(1)(*c*) of the old Bankruptcy Act. It was held that "[t]he court cannot usurp the function of the Official Assignee where it is statutorily provided that it is the Official Assignee's sanction which is required" (at [3]). It is thus clear that the courts and the Official Assignee hold different but connected roles in the management of litigation involving a bankrupt. Sections 327 and 401 of the IRDA provide two layers of control mechanisms to ensure that the interests of all involved in the bankruptcy are preserved.

74 The respondents also argued that s 401(1) of the IRDA did not apply to bankruptcies under s 419, which is the provision for the administration in bankruptcy of the *estate* of a dying insolvent person. The parties did not dispute the applicability of s 419 to the present proceedings involving the Estate, and the sole area of contention was whether s 401 applied in the context of a bankruptcy administration under s 419.

75 The respondents' position was misconceived in light of s 419(2) of the IRDA, which makes Parts 16 to 21 of the IRDA applicable for s 419 bankruptcies. Section 401 falls under Part 19 of the IRDA and is thus applicable. The respondents' argument, with respect, was not only incorrect, but was one that failed to appreciate the difficult reality it propounded – that for some reason, bankruptcies involving estates of *deceased* persons would not be subject to the same stringent controls imposed on *living* bankrupts. That cannot be the case,

given that in both situations, the interests of other stakeholders – primarily, creditors – are equally at risk given a bankrupt's parlous financial predicament. Accordingly, in light of the bankruptcy of the Estate, the PTs' prior sanction under s 401(1)(*a*) of the IRDA had to be obtained before the Estate could continue defending any existing actions, including CA 116 and 190.

76 As it transpired, the s 401(1)(*a*) IRDA hurdle was crossed upon the PTs' confirmation, by letter and at the hearing of the appeals, that they had no objections to the Estate's participation in the appeals. Therefore, both s 327 and s 401 of the IRDA did not preclude the continuation of CA 116 and 190. SUM 34 and 35 were accordingly dismissed.

No consequential stay of CA 191 and 192

77 The appellant's argument in SUM 36 and 37 (concerning CA 191 and 192) was parasitic on the court granting the stay applications in SUM 34 and 35. The appellant argued that because of the relationship between the four appeals and the fact that the outcomes of CA 191 and 192 hinged on CA 116 and 190, the former ought to be stayed alongside the latter.

78 Having rejected the appellant's applications in SUM 34 and 35, there was no basis upon which the court could allow SUM 36 and 37. We accordingly dismissed these applications as well.

Further observations on the stay applications

79 We address briefly several further points raised by the appellant in support of SUM 34–37, as these cast further light on her mismanagement of the appeals and other related proceedings.

80 In her written submissions dated 21 May 2021, the appellant offered other reasons in support of the stay applications, namely considerations of practicality and the need to await the outcome of the PTs' investigations, which required three to six months. She took the position that once the PTs are done with their investigations, Suit 47 would be rendered redundant as the PTs were better placed to commence an action against OSP.

81 These reasons, however, did not offer a principled basis for a stay of proceedings. SUM 34–37 were filed under the IRDA, and had to be made out on that basis. As we have explained, they were not. It was uncertain that the PTs would eventually commence an action against OSP. The appellant's suggestion that Suit 47 was likely to be rendered redundant was thus speculative at present.

82 The appellant was also trying to adopt a wait-and-see approach in seeking for Suit 47 to be held in abeyance until documents from the administration of the Estate surfaced. This was objectionable. The appellant wished to use the documents from the bankruptcy to chart her course in Suit 47, and to determine, eventually, whether her claim against OSP would be sustainable. But Suit 47 is an independent action that, ordinarily, would proceed with its own discovery process. The suggestion of using discovered documents from one set of proceedings by the PTs to gauge the prospects of another ongoing action (Suit 47) bears shades of an abuse of the court's processes. If not improper, such an approach of maintaining overlapping actions and engaging in "cross-pollination" of documents is at the very least opportunistic, a waste of time and resources, and should be viewed with great circumspection.

83 In sum, the appeals, Suit 47 and the bankruptcy were all set into motion by the appellant. As the bankruptcy did not disclose grounds warranting a stay under the IRDA, the appeals (and Suit 47) had to continue or be discontinued

by the appellant. We highlighted this to Mr Ohara during the hearing on 27 May 2021, and the appellant opted to proceed. That said, we make no comment as to whether Suit 47 should be stayed if the PTs were to commence an action against OSP and/or anyone else, or if directions should be given for the conduct of Suit 47 and that action either on a consolidated basis, if available, or one after the other.

Leave to intervene applications

84 At the hearing on 27 May 2021, OSP withdrew SUM 38 and 39 with the leave of the court, and with no orders as to costs. We disposed of those applications on this basis. Nevertheless, our observations in relation to the futility of the stay applications apply equally to OSP's intervention applications. OSP should have asked the PTs for their position on the appeals, instead of filing the intervention applications impulsively. That way, the two Summonses could have been avoided as was conceded by OSP's counsel, Mr Chua Sui Tong, at the hearing.

85 Having dealt with the six applications, we now turn to our analysis of the issues in the four appeals.

Whether leave to appeal was required

86 A preliminary issue that arose in the context of CA 116, 190 and 192 was whether these were appeals from interlocutory applications, for which leave to appeal is required, and whether CA 192 (where "no order" was made) could even be appealed. In brief, the respondents argued that the court has no jurisdiction to hear CA 116, 190 and 192, pursuant to the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") prior to the amendments that took effect on 2 January 2021.

(a) CA 192 should be struck out on the basis that the Judge's and the Assistant Registrar's decisions to make "no order" in SUM 1046 were analogous to giving OSP leave to defend Suit 47. In respect of such leave, no right of appeal exists under the pre-amended SCJA regime: see *Sinwa SS (HK) Co Ltd v Nordic International Ltd and another* [2015] 2 SLR 54 ("*Sinwa*") at [38].

(b) CA 116 and 190 should be struck out on the basis that the orders made with respect to Prayers 1 and RA 157 are interlocutory orders within the meaning of para 1(h) of the Fifth Schedule of the SCJA. The orders made by the Judge were interlocutory as they did not finally dispose of the rights of the parties: see *The "Nasco Gem"* [2014] 2 SLR 63 ("*Nasco Gem*").

87 In our view, leave to appeal was not required for CA 116 and 190. Given the way the three inter-related appeals (CA 116, 190 and 191) developed from two inter-related summonses, *ie*, SUM 1168 (striking out) and SUM 1237 (*Riddick* undertaking), it was appropriate to treat them as final orders since they *collectively* resulted in the striking out of Suit 47 (which is a matter appealable as of right under the Fifth Schedule of the SCJA). While orders concerning a declaration to use documents might appear to be interlocutory, they must be examined in their proper context. In this case, Suit 47 was struck out *because* the appellant was not allowed to use the EJD documents for Suit 47, following the outcomes of SUM 1237 and RA 157. Thus, the outcomes of SUM 1237 and RA 157 directly led to the *final disposal* of the rights of the parties, in the language of the court in *Nasco Gem*.

88 As for CA 192, we will elaborate below that we did not consider there to be any decision by the Judge against which an appeal could be filed: see [178] below onwards.

89 We were accordingly satisfied that the appellant was not obliged to seek leave to bring the appeals. On this basis, we heard the parties' arguments on the merits. We first dealt with CA 116 and 190, because CA 191 and 192 followed the outcome of these two appeals.

CA 116 – Whether the *Riddick* undertaking applied to the EJD documents

90 We observe that Prayer 1 of SUM 1237 should not have been pursued in the first place. By then, Suit 47 and SUM 1168 had been filed, and the appellant had already utilised the EJD documents *without* leave of court. The argument that leave was not required in Prayer 1 of SUM 1237 could have been mounted as *a defence to resist SUM 1168*. It may have been understandable for the appellant to have sought alternative Prayers 1 and 2 if that had been done *prior* to the commencement of Suit 47. But it made no sense to do so *after* the commencement of Suit 47 and the filing of SUM 1168. This was a further example of an application filed without proper thought.

91 We address a preliminary factual issue which arose in CA 116 before engaging with the appellant's legal arguments on the *Riddick* principle. The appellant contended that (a) the declaration sought in Prayer 1 of SUM 1237 was for her to use the *transcripts* in the EJD proceedings ("the EJD transcripts"), not OSP's four affidavits; and (b) she could rely on OSP's *admissions* in Suit 47 to pursue her claim, and hence did not need to rely on OSP's four affidavits. In so arguing, the appellant purported to rely on the "open justice" argument, *ie*, that the information contained in the transcripts/admissions in open court was

public information, and that there was therefore no room for the *Riddick* undertaking to operate.

92 We disagreed with the appellant. First, on the EJD transcripts, this issue in essence was on the *scope* of the declaration sought in CA 116, *ie*, under Prayer 1 of SUM 1237, as reproduced at [27] above. The declaration sought in Prayer 1 was for the appellant to be allowed to use OSP's four affidavits without the leave of court. Although Prayer 1 referred to documents and information in the EJD proceedings generally, it then went on to specifically list the four affidavits that the appellant sought to rely on. The affidavit filed by the appellant in SUM 1237 also clearly referenced these documents and not the EJD transcripts. The Judge was accordingly correct in finding that the appellant's application in SUM 1237 pertained only to OSP's four affidavits.

93 It was furthermore telling that in the Appellant's Case, the appellant was not able to point to any specific part of the EJD transcripts in support of her "open justice" argument. The appellant was therefore unable to invoke the rule in *Foo Jong Long Dennis v Ang Yee Lim and another* [2015] 2 SLR 578 that a protected document ceases to fall under the *Riddick* undertaking once it has been used in open court.

94 On OSP's admissions, the appellant argued that OSP had made direct admissions in his defence in Suit 47, and that no claim to privilege against self-incrimination was invoked. According to the appellant, these admissions were not subject to the *Riddick* principle, and constituted relevant facts under the Evidence Act (Cap 97, 1997 Rev Ed) for the purposes of Suit 47.

95 This argument ignored the plain fact that the appellant did use the EJD documents, and the information therein, to commence Suit 47. The use of these

documents *preceded* any admissions made. Absent the EJD documents, there would have been no suit to begin with, and no admissions to speak of. Given that the appellant indisputably relied on the EJD documents, the real issue was whether the documents were covered by a *Riddick* undertaking at the time when the appellant commenced Suit 47. OSP also rightly pointed out that contrary to the appellant's assertion that no claim to privilege against self-incrimination was made, there was in fact such a specific reservation at para 19 of the defence in Suit 47.

96 As clarified at [1] above, by "EJD documents", we refer solely to the four affidavits mentioned in Prayer 1 of SUM 1237. The real issue in CA 116 was whether the EJD documents, *ie*, OSP's four affidavits, were covered by the *Riddick* undertaking, and if so, whether leave of court was required for their use.

97 In this respect, the appellant raised two main lines of argument:

(a) that the EJD documents were not disclosed on compulsion, and therefore the *Riddick* undertaking did not apply; and

(b) that Suit 47 is an *enforcement* proceeding in relation to BC 118, to which the *Riddick* principle has no application, as was the case in *Re Mohan Bhagwandas v Murjani* [1991] HKCFI 135 ("*Bhagwandas*").

These two arguments presented several legal issues and important conceptual distinctions. We thus use this opportunity to clarify the *framework* of the law on the *Riddick* undertaking, and the different conceptual considerations that arise at various stages of the inquiry.

A framework for approaching cases involving the* Riddick *undertaking

98 In any case involving questions of the *Riddick* principle, it is important to bear in mind that there is a difference as to whether a disclosed document is even subject to the *Riddick* undertaking as opposed to whether such a document can be used in separate proceedings *with or without leave*. These are distinct inquiries that should not be conflated: see *Amber Compounding* at [43] and [44]. Unfortunately, this distinction has at times been overlooked.

99 We clarify that where issues on the *Riddick* principle arise, the approach to be taken is as follows. Situations involving the *Riddick* principle may broadly be classified under three categories:

(a) First, one must determine whether, on the basis of the element of *compulsion*, a document produced in discovery is covered by the *Riddick* undertaking. If the answer is in the negative, the documents are not protected and may be used without the leave of court. We shall refer to such scenarios as the "first category" of situations.

(b) Next, if the *Riddick* undertaking applies (due to the element of compulsion), the question is whether, notwithstanding the undertaking, the protected documents may nonetheless be used *without* leave of court, due to the nature of the related *enforcement* proceedings for which the documents are being used. This is where the appellant's argument on Suit 47 being an "enforcement" proceeding is relevant. We describe such documents as being under the "second category" of situations.

(c) If neither of the above is satisfied, the party relying on the protected documents to commence or sustain related proceedings must seek the court's leave for the undertaking to be lifted. This will involve

> a discussion on the factors espoused in *Amber Compounding*, which we address below in relation to CA 190. Such scenarios may be referred to as the "third category" of situations. Cases such as *ED&F* and *Amber Compounding*, which involved an examination as to *whether leave should be granted to use protected documents*, fall under this category.

We elaborate below on the specifics of the inquiry, as each stage involves distinct considerations. We address, at the same time, how the above framework would apply to EJD proceedings as a particular species.

The first category of cases: documents not protected by the undertaking

100 The first question in any case is whether a document is even protected by the *Riddick* principle. This turns on whether the documents sought to be used were disclosed *on compulsion*. This much is clear from how the *Riddick* principle itself was first developed. The *Riddick* principle states that a party who discloses a document in discovery in an action under compulsion is entitled to the protection of the court against any use of the document otherwise than in that action: *ED&F* at [66].

101 This court in *ED&F* also elaborated on the contours of the principle:

(a) The *Riddick* principle is not engaged simply because information has been disclosed in court proceedings. The critical factor is *the element of compulsion* that accompanies the discovery: at [68].

(b) It is not invariably necessary for a breach of the court order to be punishable by contempt of court to engage the *Riddick* principle: at [69].

(c) Voluntariness is not an exception to the *Riddick* principle; the principle simply has no application to documents that have been voluntarily disclosed: at [81].

(d) In determining whether the discovery was voluntary or otherwise, the court must examine the context under which the disclosure was made: at [82].

102 There is no case law in our jurisdiction that directly addresses whether documents disclosed in EJD proceedings are considered as documents falling within the scope of the *Riddick* principle. Foreign jurisprudence, however, provides a useful point of reference. In the Canadian decision of *Branconnier (Re)* [2017] BCJ No 2107 ("*Branconnier*"), the Supreme Court of British Columbia held that the implied undertaking of confidentiality (*ie*, the *Riddick* undertaking) applied to the evidence and documents obtained at an examination in aid of execution. The court reasoned, *inter alia*, that examination in aid of execution is also an "examination for discovery", referring to Rule 13-4(2) of the Canadian *Supreme Court Civil Rules*, B.C. Reg 168/2009: *Branconnier* at [24]. The court highlighted that "judgment debtors are *compelled*, notwithstanding any privacy interest, to attend at the examination and to disclose information that is relevant" [emphasis added]: at [28]. The court also cited one of the key rationales undergirding the *Riddick* principle as recognised under Singapore law: that a "judgment debtor who has some assurance that the documents and answers that he or she provides will not be used for any collateral purpose is more likely to provide complete and honest responses to the questions that they are asked": at [29].

103 In substance, it must be recognised that EJD proceedings commenced under O 48 of the Rules of Court represent an invocation of the coercive powers

of the court. Order 48 states that it is the *court* that orders a judgment debtor to (a) attend before the Registrar and be examined; and (b) produce documents/books as part of EJD proceedings. The element of compulsion is thus patently present. We accordingly agree with the observations of the Supreme Court of British Columbia in *Branconnier*. Whilst the Canadian statutory provisions are not *in pari materia* with local legislation, the court's reasoning in *Branconnier* is applicable to local EJD proceedings. The court there focussed on the element of compulsion in making its findings. This corresponds with our jurisdiction's conception of the *Riddick* principle.

104 In this sense, EJD proceedings bear stark similarities to search (or Anton Piller) orders, to which the *Riddick* principle applies: see *Amber Compounding* at [43] and *Reebok International Ltd v Royal Corp and another action* [1991] 2 SLR(R) 688 at [17]. Such search orders are coercive and function as a form of discovery: *Amber Compounding* at [43]. An EJD application operates similarly in that it requires a judgment debtor to disclose documents and furnish answers that will reveal its financial state of affairs.

105 It is also relevant that non-compliance with orders made in EJD proceedings can result, and have resulted, in committal proceedings being commenced: see *Tay Kar Oon v Tahir* [2017] 2 SLR 342 ("*Tay Kar Oon*"). If breaches of court orders which are non-punishable by contempt of court can engage the *Riddick* principle in so far as compulsion is present (*ED&F* at [69]), *a fortiori*, the fact that non-compliance with orders of a certain species may lead to committal/contempt proceedings strongly suggests that the principle applies to such situations with full force.

106 Thus, in general, documents disclosed in EJD proceedings are covered by the *Riddick* principle. These will not fall under the first category of situations

identified in the framework above. The next question, then, is whether notwithstanding the *Riddick* undertaking, the protected documents may be used without leave of court.

The second category of cases: enforcement proceedings

107 The second category is perhaps the one that has featured least prominently in our case law. The dearth of jurisprudence in this regard, conceivably, arises from the fact that in such cases, *no leave* was required to use the protected documents, and parties hence did not raise the *Riddick* undertaking as a material objection. This point strictly need not be decided here because as we will explain shortly, Suit 47 was clearly not an *enforcement* action against the Estate, and the present case therefore does not fall within the second category. Nonetheless, in light of our delineation of the framework above, it would be useful for us to provide some guidance on when leave of court is required to use information and documents in subsequent *enforcement* actions.

108 In certain cases, the court has allowed use of documents disclosed in EJD proceedings in subsequent enforcement proceedings without the grant of leave. In *Timing Ltd v Tay Toh Hin and another* [2020] 5 SLR 974 ("*Tay Toh Hin No 1*") and *Timing Ltd v Tay Toh Hin and another* [2021] SGHC 5 ("*Tay Toh Hin No 2*"; collectively, the "*Tay Toh Hin* decisions"), the High Court permitted the appellant to garnish joint bank accounts held by the first respondent. The appellant took out a summons for a garnishee order for Standard Chartered Bank ("SCB") to show cause why the said bank accounts should not be garnished. He prevailed on appeal. In both cases, the information used in the garnishee proceedings had been obtained from prior EJD proceedings: see *Tay Toh Hin No 1* at [5] and [6] and *Tay Toh Hin No 2* at [6]. Notwithstanding the origin of the information (via EJD proceedings), the

appellant was allowed to use the said information to pursue garnishee proceedings against SCB.

109 The *Riddick* principle was not expressly addressed in the *Tay Toh Hin* decisions. We nevertheless consider these decisions as consistent with, and falling within, the second category of the framework. The appellant in both cases was allowed to use the information and documents he had obtained from EJD proceedings to pursue garnishee proceedings, *ie*, enforcement proceedings, against the judgment debtor and the entity obliged to dispense payments on behalf of the said debtor, *ie*, SCB, for the debt that formed the subject matter of the EJD proceedings.

110 That is not to say that the *Riddick* principle was completely inapplicable. In our view, the situation in the *Tay Toh Hin* decisions would have been different if the documents obtained from the relevant EJD proceedings had been used to commence a *fresh action*. In such a case, leave might have been required to use the documents. The documents, after all, were disclosed on compulsion in the context of EJD proceedings. This element of compulsion brings the *Tay Toh Hin* decisions into the second, not the first, category of the framework.

111 Similarly, in *Leads Engineering (S) Pte Ltd v Chin Choon Co (Pte) Ltd (personal representatives of the estate of Choo Kok Hoe, deceased, garnishee)* [2009] SGHC 53 ("*Leads Engineering*"), the High Court was content for the plaintiff to use information obtained from EJD proceedings to make absolute a garnishee order, *ie*, an enforcement order. No leave was sought or required. *Leads Engineering*, like the *Tay Toh Hin* decisions, did not involve any express discussion on the *Riddick* principle. Nevertheless, it was clear that the court had no reservations with the plaintiff using documents that emanated from EJD

proceedings in subsequent garnishee proceedings against the same judgment debtor.

112 Based on these cases, it may be observed that in determining whether related proceedings are "enforcement" proceedings (in which documents covered by the *Riddick* principle may be used without leave), there are two key points of reference. First, the nature of the proceedings in which the documents were *disclosed*, and second, the nature of the proceedings in which the said documents are being *used*.

113 The nature of the application which led to the disclosure of documents is highly material. We have explained that EJD proceedings involve an exercise in obtaining information to assist in the enforcement of a judgment debt. Indeed, such proceedings are "intended to aid the judgment creditor … in garnering additional *information* which might – or might not – result in the implementation of actual *execution* of the judgment concerned" [emphasis in original]: *PT Bakrie Investindo v Global Distressed Alpha Fund 1 Ltd Partnership* [2013] 4 SLR 1116 ("*PT Bakrie*") at [16]. Therefore, there is no question that the judgment debtor would know that information disclosed in the course of such EJD proceedings *will be used for subsequent related proceedings*. This is to be contrasted with, for example, specific discovery in the course of an action. The party producing documents pursuant to such discovery applications would have the expectation that the said documents would only be used for the purposes of *that action*. In ordinary circumstances, there would be no expectation that the documents would be used in related proceedings.

114 If the above hurdle is crossed, the focus then turns to the nature of the related proceedings in which the documents are being used. It may be observed

that the *Tay Toh Hin* decisions and *Leads Engineering* bear several common features. In those cases, the parties in both sets of proceedings were identical, the debt pursued was the same, and the subsequent related action (the garnishee application) was clearly an enforcement action to compel payment. Thus, in our view, three factors are relevant when examining the nature of subsequent related proceedings:

(a) **Identity of parties:** If the defendant in the related proceeding is also the defendant in the original proceeding in which the documents were obtained, a case may be made that the related proceeding constitutes enforcement against that defendant. The same could be said if the related proceeding is against an entity legally empowered or obliged to make payment on behalf of the said defendant, *eg*, a bank.

(b) **Nature of debt:** If the sum being pursued in the related proceedings is the same debt that forms the subject matter of the original proceedings in which documents were disclosed, this would indicate that the former set of proceedings is an enforcement of the latter. If, however, the sum being pursued in related proceedings is different, this might suggest that it is a claim *de novo*, and leave of the court might be required.

(c) **Nature of related proceedings:** The question under this factor is whether the related proceedings can be considered "enforcement" in the ordinary sense, *ie*, modes of execution or proceedings that facilitate the payment of judgment debts owing to a plaintiff. This is to be determined in the context of the particular case, albeit we note that "traditional" enforcement actions recognised under the Rules of Court (*eg*, garnishee proceedings) would most likely satisfy this requirement:

see also the discussion of this court in *PT Bakrie* at [14] on the various modes of execution under O 45 of the Rules of Court.

If a related proceeding complies with the factors delineated above, the party using protected documents to commence such proceeding would not require the leave of court, despite the existence of the *Riddick* undertaking.

115 In both the first *and* second category of situations, leave is not required to use the documents. Nevertheless, maintaining the distinction between the two categories is preferable because the inquiries are premised on different conceptual considerations. The first part of the inquiry hinges on the element of *compulsion* in relation to the disclosure of documents. In contrast, in determining whether a document falls under the second category, it is important to assess the separate considerations we have identified, which have less to do with the coercive nature of the discovery process, and more to do with the characteristics of the proceedings involved.

116 The distinction between the first and second categories is important for another reason. If a document falls under the second category, the *Riddick* undertaking *nonetheless endures* and will continue to cover the documents in question. The appropriate way to understand cases falling under the second category is that the specific use of the documents in the related enforcement proceeding is *not a breach* of the *Riddick* undertaking. There is no breach because, *inter alia*, the party against whom the documents are being used had an expectation that this would occur (*eg*, a judgment debtor facing enforcement proceedings). There is accordingly no abuse of process, because the protected documents are being used for *the very purpose for which they were sought*. This is important and must be borne in mind because while such documents can be used for enforcement proceedings, it may not be permissible to use them in

another distinct set of civil/criminal proceedings without the leave of court. In other words, a pronouncement that documents fall under the second category for one case does not operate *carte blanche* to allow indiscriminate use of the said documents in any and all subsequent proceedings.

The third category of cases: leave of the court

117 If documents in question fall within neither the first nor the second category, leave of the court is required. The present case falls under this category, for reasons that will be made clear shortly. We discuss the factors relevant to the grant of leave in the next section on CA 190.

The element of compulsion in the present case

118 In our view, the EJD documents were clearly covered by the *Riddick* undertaking, because they were disclosed by OSP on *compulsion* in the course of the EJD proceedings. The present case hence did not fall under the first category.

119 The appellant argued that OSP's disclosure of the information in his affidavits (*ie*, the EJD documents) was voluntary, and therefore not under compulsion. This was because the said affidavits were *filed* voluntarily. This was an artificial distinction that ignored the nature of the EJD proceedings. OSP might have filed his affidavits voluntarily, but that did not detract from the coercive nature of the EJD proceedings. The entire EJD process is one that *compels* a judgment debtor and its officers to assist in clarifying the assets of the debtor. We have explained this point at [102]–[106] above.

120 Affidavits filed pursuant to EJD proceedings are quite different from, for example, documents appended to a plaintiff's affidavit of evidence-in-chief

("AEIC") for the purposes of trial. This court's discussion in *ED&F* on the case of *Derby & Co Ltd and others v Weldon and others* The Times (20 October 1988) ("*Derby*") is apposite. In *Derby*, Sir Nicholas Browne-Wilkinson VC held that the party in question had "for his own purposes in defending a case, decided himself to use the documents rather than maintain his privacy", and that no demand had been made "for documents of [that] class from [the respondents]": see *ED&F* at [84]–[85]. This is clearly distinguishable from EJD proceedings, where the entire process involves the applicant demanding information and documents from the debtor.

121 We note that this question of whether documents disclosed via affidavits fall within the ambit of the *Riddick* principle may not always admit to a clear answer: consider, for example, a defendant in a suit who, in responding to a specific allegation by a plaintiff, appends a document to his AEIC that addresses the allegation and also furnishes further related information. The question may then arise as to whether Sir Browne-Wilkinson's reasoning in *Derby* would apply to preclude the application of the *Riddick* principle. This question does not arise in the present case and would be better considered on the appropriate occasion.

122 The appellant also argued, in relation to the point made in *Tay Kar Oon* (see [105] above), that no questions were posed to OSP in the EJD proceedings, and that OSP would therefore not have been exposed to any contempt orders. This argument missed the point. Had OSP failed to comply at any stage with any of the requests or questions posed by the appellant, it would have been open to the court to make coercive orders, and/or expose OSP to potential committal proceedings. We add that during a hearing on 10 October 2019 before the Assistant Registrar who was conducting the EJD, OSP's counsel had raised the concern that any use of the EJD proceedings for some sort of tactical move in

the UK would be an abuse of process. Although the reference was to proceedings in the UK, it was clear from the context that he was concerned about the use of information disclosed during the proceedings in aid of any matter outside of the EJD proceedings. Therefore, OSP did not *volunteer* to provide information in the EJD proceedings.

123 Finally, we also disagreed with the appellant's argument that because an EJD order is a post-judgment order, the *Riddick* principle would not apply. This was yet another artificial distinction. Pre- or post-judgment, the element of compulsion remains, as explained. It is this compulsion that the *Riddick* principle responds to, and we see no principled reason to draw any line in the sand based on whether the proceedings in question were commenced prior or subsequent to the judgment.

124 We therefore concluded that the EJD documents were in fact disclosed by OSP on compulsion, and that the *Riddick* undertaking applied.

Whether Suit 47 is an enforcement proceeding

125 Next, the appellant argued that Suit 47 is an "enforcement" of BC 118 and therefore the EJD documents could be used without leave of court. Principally, the appellant relied on the decision in *Bhagwandas*. There, the Hong Kong High Court allowed the use of documents and information obtained in EJD proceedings in the hearing of a bankruptcy petition. Based on our observations above, *Bhagwandas* would fall within the second category of the framework.

126 *Bhagwandas* may, however, be understood in several ways. *Bhagwandas* involved a plaintiff using documents obtained from EJD proceedings in related bankruptcy proceedings. The judge (at pp 15–16) was

satisfied that there was no collateral or ulterior purpose in the use of the disclosed document/information. The judge did not suggest that the information was not subject to the *Riddick* undertaking. The judge also went on to state that he had the discretion to admit the information and that he saw no reason not to exercise his discretion to allow the use of the information. In so deciding, it appears that the judge implicitly accepted that the information was subject to the *Riddick* undertaking but that permission (*ie*, leave) should be granted for its use in the bankruptcy proceedings. In other words, *Bhagwandas* might also be construed as falling within the third category of cases as identified in the framework at [99(c)] above. That said, there are other parts of the *Bhagwandas* decision which might suggest that leave was not even required.

127 Irrespective of whether the case was one which fell within the second or third category, we agree with the outcome of that decision to permit the use of the disclosed documents. Both the EJD and bankruptcy proceedings in *Bhagwandas* concerned the enforcement of the same debt and against the same judgment debtor. Hence, the facts there would fall within the second or third categories in any event (and for the latter, leave would have been granted).

128 The present case was quite different. One hurdle had been crossed, because the EJD documents were disclosed in the course of the EJD proceedings. The Estate therefore had knowledge that the EJD documents would most likely be used in subsequent *related enforcement* proceedings. The appellant's case, however, fell at the next hurdle: the related proceeding, Suit 47, could not be considered an "enforcement" of BC 118 or the EJD proceedings.

129 BC 118 and the EJD proceedings were strictly against the Estate. While OST, OSP and OKT were joined as parties, it is clear from the correspondence

and the orders made that the judgment debt pursued in BC 118 was only as against the Estate. On the other hand, Suit 47 is against OSP. Enforcement of the orders in BC 118, if any, must be against *the Estate*.

130 Suit 47 is also in respect of a different cause of action. Unlike the plaintiff in *Bhagwandas*, the appellant here sought to use the EJD documents to sue OSP for different reliefs, including damages in his personal capacity, and not directly to enforce the costs order in BC 118 although the eventual outcome was to seek recovery of the costs. Suit 47 therefore was not an enforcement of the judgment debt owed by the Estate.

131 Finally, Suit 47, as a pending civil suit, could not be characterised as an enforcement of the orders obtained in BC 118. An ongoing civil suit does not fall within any of the modes of execution under O 45 of the Rules of Court and does not, in and of itself, compel payment in satisfaction of a debt. While the appellant referenced the fact that a judgment creditor can commence garnishee proceedings to attach a chose in action, this argument placed the cart before the horse. Here, *if and when* the appellant obtains a judgment in Suit 47, it will operate as a judgment against OSP and not against the Estate. At *that* juncture, the appellant may then take out enforcement measures against OSP.

132 The position might have been different if the EJD documents revealed some bank accounts of the Estate which the appellant *then used for garnishee proceedings against the bank*. In that situation, the information could be used for the garnishee proceedings which is a form of enforcement proceedings against *the same judgment debtor*: see *Tay Toh Hin No 1*, *Tay Toh Hin No 2* and *Leads Engineering* as discussed at [108]–[111] above. But that is not what took place; as we have explained, Suit 47 was not an enforcement proceeding against

the Estate. That is precisely the reason why leave had to be sought for the use of the EJD documents in Suit 47.

Conclusion on CA 116

133 Accordingly, the EJD documents did not fall within the second category and could not be used without leave of the court. Instead, they fell within the third category. We therefore dismissed CA 116 since the appeal was an attempt to use the EJD documents without leave.

134 The more pressing question in these appeals was whether, due to the balance of interests at hand, the court ought to have released the appellant of the *Riddick* undertaking and granted the appellant leave to rely on the EJD documents in Suit 47. This formed the subject matter of CA 190.

CA 190 – Whether the *Riddick* undertaking should be lifted

135 We divide our analysis in this section into two parts for clarity, mirroring the manner in which this court in *Amber Compounding* set out the law on this issue.

(a) First, we consider whether the *balance of interests* lies for or against the grant of leave for the appellant to use the EJD documents to commence and sustain Suit 47.

(b) Next, we consider whether the fact that the leave sought by the appellant was *retrospective* militates against the granting of such leave, despite the conclusion on the balance of interests.

The law on the balance of interests

136 The law on the circumstances warranting a lifting of the *Riddick* undertaking has been clearly and extensively set out in *Amber Compounding*. The relevant portions of this court's decision are reproduced below:

> 69 The general tenor of the authorities demonstrates that a balancing exercise is to be conducted in determining whether the circumstances are such as to justify lifting the *Riddick* undertaking. Under this balancing approach … prejudice is but a factor amongst others, with the appropriate weight dependent on the specific circumstances of each case. …
>
> 70 … the following are non-exhaustive factors which may be considered in determining whether the circumstances warrant the release of the *Riddick* undertaking.
>
> 71 On the one hand, the following factors have been raised in favour of lifting the undertaking:
>
> > (a) ***Countervailing legislative policy****:* Legislative policy may provide countervailing considerations to support the lifting of the *Riddick* undertaking …
> >
> > (b) ***Support of related proceedings***: The disclosed documents may also be used in support of related civil or criminal proceedings, whether domestic or foreign (see *Crest Homes* ([43] *supra*), *Marlwood* ([46] *supra*), *Bailey* ([46] *supra*) and *Reebok* ([43] *supra*). This is because there is a "strong countervailing public interest in ensuring that all relevant evidence which may be required … [is] before the court" (*Microsoft Corp and others v SM Summit Holdings Ltd and another* [1999] 3 SLR(R) 1017 ("*Microsoft Corp (HC)*") at [35]). In this respect, the identity of the parties and the nature of the related proceedings is relevant (*Crest Homes* at 860; *Reebok* at [32]). Hence, in *Crest Homes*, where the related proceedings involved the *same* parties and as it was "purely adventitious that there happened to be two actions", the court was satisfied that releasing the plaintiff from its undertaking would not "detract from the solemnity and importance of the [*Riddick*] undertaking" (*Crest Homes* at 860–861; see also *Sybron Corporation and another v Barclays Bank Plc* [1985] 1 Ch 299 at 326–328). Documents obtained on discovery may also be utilised to discredit a witness' contradictory testimony in a separate action (*Re NDT* ([46] *supra*) at [11]–[13]), as "[a]n undertaking implied by the court … to make civil litigation more effective should not permit

> a witness to play games with the administration of justice" by tailoring his evidence to suit his needs in each particular proceeding (*Doucette (SC)* at [41]).
>
> (c) ***Investigation and prosecution of criminal offence(s)***: Another public interest in favour of release may be the location and prosecution of criminal offence(s). …
>
> (d) ***Public safety concerns*** raised by the disclosed documents, such as concerns of paedophilia (*O Ltd v Z*) or a plan to commit heinous crimes against an identifiable person or group or persons …
>
> (e) ***International comity***: …

72 The factors in favour of granting leave are then to be balanced against the interests sought to be protected by the *Riddick* undertaking, namely the public interest in ***encouraging full disclosure*** and the disclosing party's ***privacy interests*** … Other factors which may militate against the grant of leave include:

> (a) ***Injustice or prejudice*** to the disclosing party (*Beckkett* ([36] *supra*) at [42]; *Crest Homes* at 860; *Doucette (SC)* at [33]). However, where no irremediable prejudice is demonstrated, this factor may be accorded little weight. Hence, in *AG v May* ([64] *supra*) at 1010, the English court lifted the *Riddick* undertaking as there was no suggestion of any specific prejudice to the first defendant otherwise than in relation to its privilege against self-incrimination, which the court was satisfied could be fully protected in the Gibraltar criminal proceedings (see also *Bailey* at 490–491).
>
> (b) ***Improper purpose for which leave is sought***: While "[i]nformants are valued for what they can tell [and] not for their worthy motives" (*Doucette (SC)* at [49]), the court nonetheless has a general concern to control the collateral use of disclosed documents (*Marlwood* at [47] and [52]). This bears relation to the concept of abuse of process, which "pervades the whole law of civil (and criminal) procedure", and by which the court ascertains "whether the proceedings in question constitute an 'improper use of its machinery'" (*JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 at [99], citing *Gabriel Peter & Partners v Wee Chong Jin* [1997] 3 SLR(R) 649 at [22]; see also *Microsoft Corp and others v SM Summit Holdings Ltd and another and other appeals* [1999] 3 SLR(R) 465 ("*Microsoft Corp (CA)*") at [36]). Hence, where relevant, the court may also consider whether the application has

> been brought for some personal advantage or improper purpose (*North East Equity Pty Ltd v Goldenwest Equities Pty Ltd [*2008] WASC 190 at [44]). For example, in *755568 Ontario Ltd v Linchris Homes Ltd* [1990] 1 OR (3d) 649 at [15], the court dismissed an application to release documents covered by the *Riddick* undertaking to the police, as a reasonable inference was that the applicant was hoping that the police could help uncover additional information that would assist the applicant's action, or that the police investigations would pressure the other party into offering to settle the matter.
>
> (c) **Privilege against self-incrimination**: It is also relevant to consider whether the disclosing party may rely on the privilege against self-incrimination, and whether such privilege has been waived in the circumstances. … While we accept that the privilege against self-incrimination is necessarily a weighty factor that is not to be easily displaced, it is our view that the better approach is for the privilege to be regarded as a factor to be given significant, but not necessarily overriding, weight. This accords with our observations relating to prejudice at [62]–[68] above, viz, that no one factor should be given overriding weight under the balancing approach, and that the appropriate weight to be given to any factor is, at end, fact-specific.
>
> …

137 What is clear from the decision in *Amber Compounding* is that the court undertakes a rigorous fact-sensitive inquiry in determining whether to exercise its discretion to lift the *Riddick* undertaking. The need to satisfy considerations of substantive fairness and justice, on the one hand, must be weighed carefully against the need to protect other interests such as a defendant's privacy and the preservation of the integrity of the court's processes.

138 The latter point, on preserving the integrity of the court's processes, is of utmost significance. It must be borne in mind that the *Riddick* undertaking is ultimately an expression of the doctrine of abuse of process. It is the lever to regulate the use of documents disclosed in a proceeding for other proceedings. This is precisely the reason why the inquiry as to whether the use and/or

procurement of documents was motivated by a collateral or improper purpose is critical. Where collateral or improper motives exist, the court will intervene to ensure its processes are not being insidiously invoked. We will elaborate below on how this is borne out in the existing jurisprudence on the law on abuse of process and the *Riddick* undertaking.

139 In the present case, our view was that the balance of interests militated in favour of lifting the *Riddick* undertaking. Four important considerations undergirded our decision. In summary:

(a) The appellant did not commence the EJD proceedings with a collateral purpose.

(b) The EJD documents are being meaningfully used to support related proceedings, namely BC 118.

(c) None of the other countervailing considerations militating against a lifting of the *Riddick* undertaking were present in this case.

Collateral or improper purposes

140 This was a pivotal point in our decision to lift the *Riddick* undertaking. There was no collateral or improper motive on the part of the appellant in commencing the EJD proceedings.

The significance of a collateral or improper purpose

141 A collateral or improper purpose in commencing disclosure or discovery proceedings is *the hallmark of an abuse of process* in situations involving a breach of the *Riddick* undertaking. Consequently, the *Riddick* undertaking, as an expression of the doctrine of abuse of process, would apply with full force

where such purposes exist. Specifically, it is the commencement of the proceedings leading to the disclosure/discovery, and the manner of use of the discovered documents, that present the focal points of the inquiry.

142 This is not an unprecedented notion. This court in *ED&F* strongly alluded to the significance of collateral purposes in the inquiry, and stated that "[a] party who commences proceedings for ***the predominant purpose of achieving something other than what the legal process was designed to achieve*** … is someone who has abused the process of the court" [emphasis added]: at [39]. This is the applicable form of abuse of process to be considered in the context of the *Riddick* principle. (Other recognised forms of abuse of process, *eg*, spurious claims or hopeless proceedings, are not relevant.) It follows that in a case where a party *chances* upon information disclosing fresh breaches/offences in documents covered by a *Riddick* undertaking, and acts upon this information, this ought not invariably to be deemed an abuse of process. Any finding of abuse of process should typically be examined with reference to the presence of a collateral purpose or ulterior motive in the use of protected documents.

143 In *ED&F*, the court found that the application for pre-action disclosure "was *an attempt to obtain documents and information* to assist the appellant in the UK proceedings" [emphasis added]: at [63]. The appellant in that case commenced the Singapore proceedings with the intent to use the documents for collateral purposes, namely, to assist in foreign proceedings and not the Singapore proceedings. It was on this basis that this court found an abuse of process in *ED&F*.

144 In *Amber Compounding*, this court remarked that the concept of abuse of process involves the court ascertaining "whether the proceedings in question

constitute an 'improper use of its machinery'": at [72(b)]. The court then inferred that Amber had "made the relevant disclosure *in the hope* that such documents could cause the authorities to conduct further investigations" [emphasis added]: at [101]. In so doing, Amber "acted in a manner … entirely contrary to its purported acceptance that it had *no* entitlement to the defendants' documents". This was a "blatant abuse of process" and a "grave *misuse* of the court's machinery" [emphasis added]: at [101]. Again, the emphasis was on Amber's purpose and motives in its use of the disclosed documents.

145 In *Relfo Ltd (in liquidation) v Bhimji Velji Jadva Varsani* [2009] 4 SLR(R) 351 ("*Relfo*"), there was a pending suit in England involving the same parties in Singapore. The foreign suit had been commenced based on findings made in the Singapore proceedings. Documents were then produced under compulsion in the Singapore suit, and the plaintiff sought, and was granted, leave to use these documents in the foreign suit. The decision in *Relfo* is distinguishable from the present case, in that the parallel proceedings had been *pending*, and no *fresh* related proceedings were commenced on the back of the discovered documents. But more importantly, *Relfo* reveals consistency in the court's approach. The court's decision to grant leave in *Relfo* is explicable on the basis that *there was no abuse of process or collateral/improper purpose* in the use of the documents discovered in the Singapore suit. All involved had clear sight of the two parallel proceedings, which were related; one had in fact spawned the other. It was clear to the parties and to the court that the documents disclosed in one set of proceedings could potentially, and transparently, be used in the related proceedings. The absence of improper or surreptitious invocation of the court's discovery process was crucial in the court's decision to grant leave.

146 Similarly, in *Ser Kim Koi and another v William Merrell Fulton and others* [2009] SGHC 5 ("*Ser Kim Koi*"), there were two related suits pending before the court. Leave was then sought and obtained to use documents discovered in one suit in the other suit. The situation in *Ser Kim Koi* was therefore much like that in *Relfo*. There was no abuse of process that would have militated against the lifting of the *Riddick* undertaking.

147 There are several authorities which might *appear* to suggest a different threshold, but these are reconcilable with the thread that runs through the four cases discussed above. In the seminal English decision of *Halcon International Inc v Shell Transport & Trading Co* [1979] RPC 97 ("*Halcon*"), Whitford J held that:

> However, these authorities [*ie Alterskye v Scott* [1948] 1 All ER 469; *Distillers Co (Biochemical) Ltd v Times Newspapers Ltd* [1975] QB613; *Riddick*'s case] to my mind, lead to the conclusion **that the *use of a document* disclosed in a proceeding in some other context**, or even in another proceeding between the same parties in the same jurisdiction, ***is an abuse of process unless there are very strong grounds for making an exception to the general rule***. It does, I think, emerge that some overriding public interest might be a good example, but not the mere furtherance of some private interest even where that private interest arises directly out of or is brought to light as a result of the discovery made.
>
> [emphasis added in bold italics]

148 One reading of Whitford J's pronouncement is that the mere "*use*" of a document protected by the *Riddick* principle, regardless of the parties' motivations or purposes when procuring or using that document, constitutes an abuse of process. But such a reading does not comport with the understanding across multiple jurisdictions, including England and Singapore, that the *Riddick* undertaking is a response to an *abuse* of the court's processes. Where there is no abuse, such undertaking can be lifted in certain circumstances. This much is acknowledged in Whitford J's pronouncement, where the learned judge noted

that the presence of "very strong grounds for making an exception" would warrant a departure from the *Riddick* undertaking.

149 Thus, in our view, the above passage in *Halcon* should be understood as reversing the burden of proof on the party seeking to use documents which are otherwise protected by the *Riddick* undertaking. Such an applicant would bear the burden of demonstrating that there was no abuse of process. Where it transpires that a plaintiff has in fact taken documents from one set of proceedings for use in another, and the documents were covered by the *Riddick* undertaking, such plaintiff must satisfy the court that the series of events which led to the discovery of the documents were not set into motion improperly. If the plaintiff had acted *bona fide* throughout, it would not be difficult to discharge this burden, given that the plaintiff would be in the best position to adequately explain his or her own purposes and motives. Such a reading of *Halcon* squares neatly with the other decisions discussed in these grounds. It also comports with the underlying rationale of the *Riddick* principle, which, as explained, is a lever to manage and prevent abuse of the court process.

150 Whitford J's reasoning in *Halcon* was cited with approval in *Sim Leng Chua v Manghardt* [1987] SLR(R) 52 ("*Sim Leng Chua*"). The High Court found the plaintiff's reliance on documents protected by the *Riddick* principle to commence a defamation suit to be an abuse of process: at [28]. There was no specific finding by the court of a collateral purpose by the plaintiff in procuring the documents that led to the uncovering of the alleged defamation. The pronouncement in *Sim Leng Chua* should be understood in light of our observations in the previous paragraph. The plaintiff, there, failed to discharge the burden of proving the absence of a collateral motive. The plaintiff was thus not allowed to use the documents protected by the *Riddick* undertaking.

The appellant did not possess a collateral or improper purpose

151 In the present case, the respondents did not allege improper purposes on the appellant's part. The furthest they went was to suggest that the appellant's *conduct* in relying on the EJD documents was "improper". That suggestion is quite different from alleging that the EJD documents were procured and used for a collateral or improper purpose.

152 On the evidence available, no improper purpose on the part of the appellant was borne out. In our view, the appellant in initiating the EJD proceedings was simply seeking to recover a long outstanding legitimate judgment debt which has in fact been partially paid (see [23] above). Upon discovering the information in the EJD documents, the appellant was then motivated by the real concern that the Estate's assets had been dissipated, and that she would be left with a paper judgment. She thus commenced Suit 47, having considered this to be the best option *after* reviewing the EJD documents.

153 Nothing on the record showed that the appellant commenced the EJD proceedings with a putative suit against OSP in mind. It was telling that the respondents did not make such an allegation. Thus, the compelling inference, which we accepted, was that the appellant *learned about OSP's wrongdoing upon reading his affidavits in the EJD proceedings*. If the appellant had, prior to the EJD proceedings, suspected OSP of wrongdoing and sought to procure evidence to this effect, she could simply have commenced Suit 47, made general allegations and further particularised her pleadings following discovery. The discovery process would have almost ensured that she would have obtained the documents she sought. In short, there was nothing to indicate that the EJD proceedings were commenced as a fishing exercise.

154 Accordingly, in our judgment, the appellant did not wrongfully exploit the court process in commencing the EJD proceedings. In stark contrast, the presence of a collateral motive was a key factor in the cases discussed above where the court declined to lift the *Riddick* undertaking: see *ED&F* and *Amber Compounding*. The absence of a collateral motive here distinguished the present case and militated in favour of a grant of leave to use the EJD documents in Suit 47.

Support of related proceedings

155 The second factor espoused by this court in *Amber Compounding* was also highly relevant: the support of related proceedings. Just to be clear, the reference to "related proceedings" in *Amber Compounding* was to distinct civil and criminal proceedings and not further *enforcement* proceedings as delineated in the second category above. On the face of the pleadings and what had transpired thus far, it is plainly arguable that OSP had been dissipating the Estate's assets to the detriment of the Estate and its creditors. Suit 47 was commenced to specifically address this issue. It was also not the mere existence of related proceedings, but the unique circumstances of the present case, that warranted a lifting of the *Riddick* undertaking.

156 First, OSP was the sole executor of the Estate. He wielded significant control and power over the Estate's assets. Absent an action such as Suit 47, only OSP, *qua* executor, could commence proceedings *for the benefit of the Estate*. It was unlikely that OSP would have commenced proceedings against himself.

157 Second, the admissions in Suit 47, if true, raise serious questions over a potentially egregious wrongdoing by OSP in his handling of the affairs of the Estate. We stress that this is not an assessment of the *strength* of the appellant's

case in Suit 47 with reference to the available evidence. On the pleadings alone, it is indeed arguable that OSP had wrongfully exploited his position as the sole executor of the Estate to frustrate the appellant's efforts at recovery of the judgment debt owed to her. OSP had transferred valuable assets out of the Estate (see [24] and [25] above). A serious question therefore arose as to whether in so doing, OSP had breached his duties to the Estate and undermined the appellant's interests. OSP's evidence on the actual transfers of the Estate's various properties simply lent weight to these concerns. During the hearing, Mr Ohara rightly highlighted that OSP's transfer of the properties occurred *after* the appellant had prevailed in the UK proceedings. In other words, the alleged dissipation occurred when it was clear that the Estate owed an outstanding judgment debt to the appellant.

158 Third, Suit 47 must be viewed in light of BC 118. We have noted earlier that the former is not an "enforcement" of the latter. But the two matters are inextricably tied. The appellant's success in Suit 47 might mean the difference between recovery and a paper judgment in BC 118, especially in light of the Estate's pending bankruptcy. Put another way, if the appellant's allegations in Suit 47 are true, then the EJD documents would have revealed that OSP deliberately frustrated the appellant's enforcement of the orders in BC 118.

159 Fourth, and relatedly, while Suit 47 is not an enforcement of BC 118, it is nonetheless a means to pursue a *legitimate* interest in BC 118. It was therefore not the case that the EJD documents were being used to pursue a frivolous or entirely unrelated action in furtherance of the appellant's personal interests, which would be viewed with greater circumspection. The documents that emanated from BC 118 were being used to pursue a legitimate interest in BC 118.

160 Fifth, the bankruptcy of the Estate has in fact heightened the risk of non-recovery in BC 118. The bankruptcy order, made on 4 March 2021, indicated that the Estate was unable to repay debts owed to creditors such as the appellant. 16 East Sussex, 37 Mount Sinai and 45 Mount Sinai had a collective value of some S$40m as at 2011, when OSP filed the Estate's schedule of assets to apply for a grant of probate. These are also the very properties that the appellant alleged to have been misappropriated by OSP. These properties, if retained by the Estate and liquidated, would have been more than sufficient to repay the judgment debt owed to the appellant.

161 In totality, we have grave misgivings with respect to the alleged misappropriations by OSP. It would be an understatement to say that there is serious acrimony between OSP and the appellant, and the vitriolic litigation between the parties spanning many years in several jurisdictions was testimony to that. These even led to findings of fraud against Mdm Lim in the UK proceedings. Consequently, it was clear that the EJD documents will assist the court in Suit 47 in arriving at a clear picture of the Estate's affairs. The documents may ultimately facilitate the appellant's recovery of the judgment debt in BC 118, bearing in mind that BC 118 is the original matter from which the said documents emanated.

No countervailing considerations militating against lifting of undertaking

162 The countervailing considerations set out in *Amber Compounding* that militate *against* release of the *Riddick* undertaking were absent in this case.

163 First, in the EJD proceedings, there was no express preservation of OSP's right to not incriminate himself. While OSP inserted specific reservations in his defence in Suit 47, these reservations were *after* the fact; there did not appear to be any express caveat preserving OSP's privilege against self-

incrimination in *the EJD documents*. This was completely understandable because OSP would have expected the EJD documents to be used to enforce the judgment debt. The appellant also did not make any express undertaking not to use the documents, unlike what had occurred in *Amber Compounding* (at [95]).

164 In any case, the concern of OSP's right to privacy should not be accorded significant weight due to the circumstances at hand. OSP stands, to date, as the sole executor of the Estate. He owes duties to the Estate, and the law undoubtedly requires him to be honest and candid in his dealings with the Estate. As the claim in Suit 47 directly concerns OSP's duties to the Estate, and not simply the appellant's personal interest in recovery against the Estate, OSP's personal right to privacy ought not to be used as a trump card in favour of preserving the *Riddick* undertaking. The stakes involved go beyond OSP's and the appellant's personal interests; they involve the Estate and all its potential and actual creditors.

165 Second, prejudice is at best a neutral factor. In *Amber Compounding*, this court clarified its earlier decision in *Beckkett Pte Ltd v Deutsche Bank AG* [2005] 3 SLR(R) 555, which held that the prospect of criminal prosecution amounted to prejudice that would suffice to operate as an "overriding factor against the grant of leave": see *Amber Compounding* at [61]. *Amber Compounding* made it clear that prejudice is not an overriding factor. OSP was no doubt prejudiced by the commencement of Suit 47 in the sense that, if found liable, he will have to compensate the Estate for losses arising from his breach of duty. But this factor cannot be dispositive. If undue weight were placed on prejudice resulting to a defendant, it would be difficult for any proceedings to be commenced based on information protected by the *Riddick* principle. Put another way, it is not desirable for the *Riddick* principle to be employed (or abused) as a shield against *all* forms of civil and criminal liability.

166 Finally, the Judge's emphasis on the appellant "deliberately" ignoring the *Riddick* undertaking might have been misplaced (see [33] above). The appellant's intentional disregard of her undertaking does not logically lead to the conclusion that Suit 47 was commenced in abuse of process. As explained, the inquiry hinges on the purpose for which the EJD proceedings were commenced and the absence of collateral or improper motives in the use of the EJD documents. In the appropriate circumstances, an indifferent disregard of the *Riddick* undertaking can be addressed as a matter of costs. On this note, we turn to the address an issue that arose *because* the appellant deliberately disregarded the *Riddick* principle: the question of retrospective leave.

Retrospective leave

167 This court in *Amber Compounding* emphasised that retrospective leave is to be granted "very sparingly", and it requires "something unusual about the particular facts of a case": at [115]. It is relevant for the court to understand the reason why leave was not obtained in the first place prior to disclosure. Nevertheless, the factors relevant at the balancing stage remain pertinent in determining whether retrospective leave should be granted. By referring to the core factors that would warrant a lifting of the undertaking in the first place, the court will be able to discern whether a case is in fact exceptional. This has always been the approach of the court. In *Amber Compounding*, in determining that Amber should not be released of its undertaking, this court considered several of the balancing factors: see [144] and [163] above. Therefore, the respondents' submission at para 52 of the Respondents' Case – that there are "prospective" and "retrospective" leave factors, and the former cannot be considered in situations of retrospective leave – is incorrect.

168 The fact of SUM 1237 being a retrospective application for leave no doubt weighed heavily on the Judge's mind, as made clear by her views on the issue (see [31] above). We note, upon examination of the transcripts, that the appellant's arguments in RA 157 did not aid the court significantly and failed to draw attention to the important factors which we have discussed in the preceding paragraphs. The appellant's failure to shed light on the more pressing aspects of her case might have contributed to the important *Amber Compounding* factors not being fully explored in the proceedings below.

169 In our view, the salient aspects of the present case militated in favour of a grant of retrospective leave. We have elaborated on the relevant facts at [151]–[166] above as regards the potential wrong committed by OSP, the other *Amber Compounding* factors, and how the circumstances in totality as highlighted in [155] to [161] above were questionable. These, in our view, rendered the present case exceptional. In particular, if the appellant's allegations are proven true in Suit 47, this would be a classic case of a family (wrongfully and surreptitiously) squirrelling assets away to frustrate creditors' attempts at recovery. The recent order for the administration of the bankruptcy of the Estate also demonstrated a real risk that the appellant would be left without recourse in BC 118. This accentuated the exceptional nature of the present case.

170 In addition, the appellant offered a plausible explanation for her decision not to seek prospective leave. She was concerned that OSP might have engaged in delay tactics. The Judge observed that there was no evidence indicating that OSP had indeed employed such tactics. While that may be true, the appellant's voiced concerns were not frivolous, and were explicable in context.

171 The appellant's central concern in Suit 47 was that OSP had dissipated, and was continuing to dissipate, assets of the Estate to the detriment of creditors

of the Estate, including herself. She therefore rightly had a concern that OSP would, in the face of further court applications, use the opportunity to stall for time and continue dissipating the Estate's assets. In this context, the appellant's explanation was certainly neither contrived nor frivolous.

172 Further, the appellant's actions were consistent with the urgency one would expect of a party genuinely concerned by the possibility of dissipation of assets and a paper judgment. The appellant filed Suit 47 on 14 January 2020, five days after OSP filed his second affidavit in the EJD proceedings on 9 January 2020 (the longest of his four affidavits). In so doing, she promptly made her concerns clear. The appellant could of course have done better by filing a leave application at that point, but her failure to do so did not contradict the premise of her explanation.

173 For these reasons, the present case stands apart from *Amber Compounding*; the appellant's case does not suffer from "the absence of any *sensible* explanation" [emphasis in original]: at [115]. In contrast, in *Amber Compounding*, the court found that "Amber ha[d] been conspicuously silent as to why it omitted to apply for leave prior to disclosure": at [115].

174 Thus, in totality, the retrospective nature of the leave sought did not tilt the balance either way, given the unique facts of the present dispute and the plausible nature of the appellant's explanation. On this basis, we resolved CA 190 on the balance of interests, which favoured the appellant, and lifted the *Riddick* undertaking over the EJD documents. The prejudice occasioned to the Estate, if any, by virtue of the relatively late filing of SUM 1237 was resolved as a matter of costs. The adverse costs orders against the appellant, which we explain at the end of these grounds, reflected our disapproval of late or retrospective leave applications such as those made by the appellant.

Conclusion on CA 190

175 For the above reasons, we allowed CA 190 and lifted the *Riddick* undertaking over the EJD documents. The appellant is allowed to use these documents in Suit 47. In the round, there was nothing abusive or improper about the appellant's invocation of the EJD process. She had simply been attempting to recover what was rightfully hers, *ie*, the legitimate judgment debt in BC 118. The same may be said of her commencement of Suit 47. Her actions, viewed holistically, did not disclose an abuse of process.

CA 191 – Whether Suit 47 should be struck out

176 The respondents accepted that CA 191, which was the appeal against the striking out order upheld by the Judge, would follow the outcome of CA 190. The striking out was parasitic on the Judge's decision not to grant the appellant leave to use the EJD documents in Suit 47. Suit 47 was not struck out on any other basis (*eg*, for lack of merits). Having concluded as we did, *ie*, that the appellant is allowed to use the EJD documents, the Judge's finding of an abuse of process in RA 158 could not stand.

177 We accordingly allowed CA 191. Suit 47 was restored.

CA 192 – "No order" on application for summary judgment

178 As for CA 192, we were of the view that no appeal could lie against the decision of "no order" on SUM 1046 (and in RA 159), because Suit 47 had by then been struck out. This is quite different from the situation in *Sinwa*, where "no order" was construed as tantamount to giving leave to defend. That order was made in the context where the underlying suit remained afoot, unlike the present case. Here, the Judge's decision to make no order on the summary judgment application was a direct consequence of her decision to strike out

Suit 47. In other words, no decision on summary judgment could be made in the face of a non-existent suit.

179 Thus, in our view, there was no appeal that could be made against such a decision. At the hearing on 27 May 2021, the appellant accepted the court's invitation to withdraw CA 192 with no order as to costs. SUM 1046 was accordingly restored for hearing before the High Court as it was never heard or decided in the first place.

Observations on the utility or futility of Suit 47

180 To conclude, we make several pertinent observations on the overall picture of the litigation. The net effect of all the appeals and the related applications is that the appellant is permitted to use the EJD documents for the purpose of her action against OSP in Suit 47. However, it should not be overlooked that the appellant's ultimate aim is, and has been, to recover the judgment debt in BC 118. Given the Estate's present bankruptcy, which had been commenced under the aegis of *the debt in BC 118*, it is questionable whether the appellant has any independent cause of action against OSP other than to recover the debt in BC 118 from the Estate.

181 It is not clear to us whether the appellant, as a creditor of the Estate, has the requisite *locus standi* to bring an action against OSP, the executor of the Estate, for his alleged breach of *duties owed to the Estate*. The obvious plaintiff in such an action would have been the Estate itself, or its beneficiaries.

182 There was a practical obstacle, however: OSP was the sole executor of the Estate. Thus, any action brought against him by the Estate would have had to be commenced by *him*, *qua* executor. That left the appellant in an unenviable

predicament, and the question, at that juncture, was how the appellant would circumvent this in order to recover the judgment debt owed to her.

183 As it transpired, in March 2021, an order was made for the administration of the Estate's bankruptcy. Consequently, the PTs stepped into the picture. It thus became necessary to examine whether Suit 47 would *still* serve any purpose, given that it was now open to the PTs to conduct investigations into the Estate's affairs, including OSP's alleged wrongdoing.

184 In this respect, during the course of the 9 April and 27 May 2021 hearings, we reminded the parties that the central purpose of the appeals was to obtain leave to use the EJD documents in Suit 47 against OSP, *as part of the appellant's ultimate aim to recover the judgment debt in BC 118* (see [180] above). Therefore, it was critical to bear in mind the pleaded reliefs which the appellant is seeking in Suit 47. In the Statement of Claim, she seeks the following remedies:

(a) to discharge OSP as executor of the Estate and to appoint an alternate in his place;

(b) damages for herself; and

(c) payment by OSP of various sums of money into a new bank account of the Estate.

185 The first relief has been rendered unnecessary by the bankruptcy and the appointment of the PTs. The second might not result in recovery of the judgment debt in BC 118 (*ie*, damages, if paid by OSP to the appellant, may not add up to or be representative of the sum owed to her in BC 118). Even if it does, such recovery could potentially offend the *pari passu* principle in

bankruptcy. It was not thoroughly explored, during the appeals, how the appellant's claim in devastatit in Suit 47 could offer a tenable workaround to the Estate's bankruptcy. Finally, the third relief is a matter for the PTs to pursue not merely for the benefit of the appellant but for all the creditors of the Estate. That said, it appears for the moment that the appellant is the only creditor of the Estate which, in our view, made the decision to bankrupt the Estate all the more puzzling.

186 These are matters which will be fully ventilated and explored before the Judge during the rehearing of SUM 1046, and, if matters proceed, in Suit 47. The necessity to address these issues, we stress, is the direct result of the appellant making the Estate bankrupt *after* having commenced Suit 47.

Costs

187 As we noted earlier, SUM 38 and 39 and CA 192 were withdrawn with leave of the court, and with no orders as to costs. For all the remaining matters, namely, SUM 34–37 (dismissed), CA 116 (dismissed), and CA 190 and 191 (allowed), we ordered that the parties were to bear their own costs on appeal and below, with the usual consequential orders to follow.

188 Our decision not to award the appellant the costs of CA 190 and 191, despite her having prevailed (and thereby succeeding in achieving the ultimate aim of the four appeals collectively), was in light of the retrospective nature of the leave she sought in SUM 1237, as well as the layers of complications that she had added to the appeals due to her actions in the Estate's bankruptcy. As stressed repeatedly, nearly all of the complications in the present appeals were avoidable. It should well have been a *single* appeal, or at most two appeals, being heard by us. This could have been achieved if the appellant had not raised Prayer 1 in SUM 1237, and had simply raised the *Riddick* arguments when

resisting the striking out application. The stay applications could also have been avoided if the appellant had consulted the PTs at the earliest instance, or if she had chosen one clear course of action (between pursuing OSP via Suit 47 and bankrupting the Estate). Instead, she invoked both routes. In such circumstances, an admonishment by the court in denying her costs of CA 190 and 191 was entirely warranted.

Conclusion

189 For the above reasons, we allowed CA 190 and 191, dismissed CA 116 and SUM 34–37, and granted leave for CA 192 and SUM 38 and 39 to be withdrawn. The net effect was that the appellant was allowed to use the EJD documents in Suit 47.

190 This is the *sixteenth* judgment issued by this court on litigation involving the appellant, and the *twelfth* in relation to OS 939 and BC 118. We doubt that this will be the last word, by the High Court or the Court of Appeal, on this dispute. We however have sought, importantly, to clarify the legitimacy of the appellant's claim in these grounds. Hopefully, the conclusion of these appeals will bring the parties closer to final resolution of the dispute that has spanned more than three decades.

Steven Chong
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

Andrew Ohara (Eden Law Corporation) for the appellant in Civil Appeals Nos 116, 190, 191 and 192 of 2020;

The respondent in Civil Appeals Nos 116 and 190 in person;
Chua Sui Tong and Gan Jhia Huei (Rev Law LLC) for the respondent
in Civil Appeals Nos 191 and 192.
