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

[2024] SGHCR 3

Originating Claim No 5 of 2023 (Summons No 2489 of 2023)

Between

Mitsui E&S Power Systems Inc

… *Claimant*

And

(1) Neptun International Pte Ltd
(2) Rian Bin Rahim

… *Defendants*

And

DBS Bank Ltd

… *Non-Party*

GROUNDS OF DECISION

[Civil Procedure – Judgments and orders – Enforcement – Attachment of debts]

Version No 1: 16 Feb 2024 (16:22 hrs)

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Mitsui E&S Power Systems Inc
v
Neptun International Pte Ltd and another
(DBS Bank Ltd, non-party)

[2024] SGHCR 3

General Division of the High Court — Originating Claim No 5 of 2023
(Summons No 2489 of 2023)
AR Victor Choy
18 September 2023, 30 October 2023, 29 November 2023

16 February 2024

AR Victor Choy:

Introduction

1 This was an application by the Non-Party, DBS Bank Ltd ("**DBS**"), for monies standing in Neptun International Pte Ltd's ("**Neptun**") account with DBS ("**Account**"), having been attached by the Sheriff pursuant to the enforcement order granted in HC/EO 55/2023 ("**Enforcement Order**"), to be released from attachment ("**Application**") pursuant to O 22 r 10(5) of the Rules of Court 2021 ("**ROC 2021**"). The Application was brought as the Commercial Affairs Department ("**CAD**") had directed DBS not to allow any dealings with

the monies in the Account ("**CAD Order**") pursuant to section 35(2)(*b*) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("**CPC**").

2 After hearing parties' submissions, I dismissed the Application and ordered that the monies in the Account remain attached pursuant to the Enforcement Order.

3 However, in view of the CAD Order, I ordered that the monies that have been attached shall not be paid by DBS to the Sheriff or the enforcement applicant, Mitsui E&S Power Systems Inc ("**Mitsui**"), until and unless:

(a) the CAD Order has been lifted or has expired; or

(b) the outcome of any disposal inquiry concerning the monies in the Account has been determined, including any appeals therefrom, and the Court finds that the monies in the Account are to be paid to Mitsui or Neptun. For the avoidance of doubt, in such event, payment shall be made only after the CAD Order has been lifted or has expired.

4 I now set out the full grounds of my decision.

Background

5 The facts in this Application were not in dispute.

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6 On 6 January 2023, Mitsui commenced a suit against *inter alia*, Neptun.[1] When Neptun and its co-defendant (together, the "**Defendants**"), failed to file a Notice of Intention to Contest or Not Contest within the prescribed time period, Mitsui sought and obtained a Judgment in Default of a Notice of Intention to Contest or Not Contest on 27 April 2023 ordering that the Defendants pay Mitsui a sum of money ("**Judgment Debt**").[2]

7 The Defendants failed to make payment and Mitsui applied for an enforcement order to attach the monies in the Account to satisfy the Judgment Debt.[3] The Enforcement Order was granted on 30 June 2023 and pursuant to O 22 r 6(4)(e) of ROC 2021, the Sheriff served DBS with a notice of attachment dated 12 July 2023 ("**Notice of Attachment**").[4]

8 On 26 July 2023, DBS filed a notice of objection to object to the attachment by the Sheriff ("**Notice of Objection**").[5] The Notice of Objection was disputed by Mitsui, following which, the Sheriff directed that DBS apply to the Court for an order to release the attached debt. Accordingly, DBS filed the present Application before me for the release of the attached debt from attachment.

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1 Originating Claim (HC/OC 5/2023); see 2nd Affidavit of Masao Morita ("**Morita's Affidavit**") at para 5.

2 Judgment in Default of a Notice of Intention to Contest or Not Contest (HC/JUD 162/2023); see Morita's Affidavit at para 8.

3 Morita's Affidavit at paras 10, 12.

4 Morita's Affidavit at para 12; Lim Chew Ling's 2nd Affidavit ("**Lim's Affidavit**") at para 8.

5 Morita's Affidavit at para 13; Lim's Affidavit at para 9.

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The Parties' Positions

9 It was clear from the affidavit filed by DBS in support of its Application that there was no dispute that Neptun had the Account with DBS or that there were monies in the Account. DBS's objection to the attachment of the monies in the Account stemmed solely from the CAD Order made pursuant to section 35(2)(*b*) of the CPC which it received on 10 January 2023. The CAD Order directed that DBS was not to "*allow any dealings with (i.e. freeze) the moneys [in the Account] … except with prior instruction of the Police*" for the purposes of investigations.[6] In view of the CAD Order, DBS's position was that it was unable to make payment of the monies in the Account to Mitsui pursuant to the Enforcement Order.

10 At the time of Mitsui's application for the Enforcement Order, Mitsui was unaware of the CAD Order. Upon being made aware of the CAD Order, Mitsui accepted that any investigation by the CAD would need to run its course and that DBS should not be required to make payment of the monies in the Account in the meantime.[7] However, Mitsui's position was that the monies in the Account should not be released from attachment. Mitsui took the view that the monies in the Account should remain attached and the attachment should be held in abeyance pending the lifting of the CAD Order and/or the outcome of any disposal inquiry.[8]

11 DBS disagreed. DBS took the view that, as a result of the CAD Order, there were no '*debts due or accruing due*' from DBS to Neptun when the Notice

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6 Lim's Affidavit at para 5, see also exhibit LCL-3.

7 Morita's Affidavit at para 24.

8 Morita's Affidavit at para 19.

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of Attachment was served on it.[9] Alternatively, any debt due from DBS to Neptun was a '*contingent debt*' which could not be attached.[10] The concepts of '*debts due or accruing due*' and '*contingent debts*' will be discussed below, but in essence, DBS's position was that no monies could be attached by the Notice of Attachment.[11]

The Issues

12 In view of the parties' positions, the key issue before me was whether the monies in Neptun's Account could be attached notwithstanding the CAD Order.

13 This turned on:

(a) whether there was a debt due to Neptun from DBS 'immediately or at some future date' (which is the language used in O 22 r 2(2)(c) of the ROC 2021); and

(b) whether the monies in Neptun's Account were a 'contingent debt'.

14 For the reasons set out below, I was of the view that the CAD Order did not render the monies in the Account incapable of being attached by the Sheriff but merely imposed a restriction on DBS from releasing the monies to the Sheriff and consequently Mitsui.

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9 Non-Party's Skeletal Submissions dated 23 October 2023 at paras 4, 16 to 24.

10 Non-Party's Skeletal Submissions dated 23 October 2023 at paras 5 to 9.

11 Notice of Objection dated 26 July 2023.

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The Law on Attachment of Debts

15 I begin with the law.

16 Enforcement orders for the attachment of debts are governed by O 22 r 2(2)(c) of the ROC 2021, which provides:

> **Enforcement order (O. 22, r. 2)**
>
> (1) An enforcement applicant may apply for an enforcement order to enforce one or more Court orders, without affecting any other methods of enforcement that are available to the enforcement applicant under any written law.
>
> (2) Subject to any written law, an enforcement order authorises the Sheriff to do one or more of the following:
>
> …
>
> (c) in respect of an enforcement order for attachment of a debt, to attach a debt which is due to the enforcement respondent from any non-party, whether immediately or at some future date or at certain intervals in the future, including where the debt which is due to the enforcement respondent is represented by a deposit of money by the enforcement respondent in a non-party that is a financial institution, whether or not the deposit has matured and despite any restriction as to the mode of withdrawal.
>
> (emphasis added)

17 The corresponding provision in the Rules of Court (Cap 322, 2014 Rev Ed) ("**ROC 2014**") is O 49 r 1 and provides:

> **Attachment of debt due to judgment debtor (O. 49, r. 1)**
>
> (1) Where a person (referred to in these Rules as the judgment creditor) has obtained a judgment or order for the payment by some other person (referred to in these Rules as the judgment debtor) of money, not being a judgment or order for the payment of money into Court, and any other person within the jurisdiction (referred to in this Order as the garnishee) is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any written law, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee,

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> or so much thereof as is sufficient to satisfy the judgment or order and the costs of the garnishee proceedings.
>
> (emphasis added)

18 The language used in both provisions is different. For a debt to be attachable under O 22 of the ROC 2021, the debt must be due "immediately or at some future date or at certain intervals in the future". On the other hand, a debt is attachable under O 49 of the ROC 2014 if the debt is "due or accruing due". Notwithstanding the difference in language, it was not disputed that the law on attachment of debts under the ROC 2021 is in substance the same as the law on garnishee proceedings under ROC 2014. I agreed. In my view, O 22 is merely a simplification of O 49. It seeks to explain what "due or accruing due" has come to mean as case law has developed: *Art Ask Agency SL v Person(s) Unknown ("LXS-WL STORE")* [2023] SGHCR 14 at [55]. It follows that common law principles concerning O 49 r 1(1) of the ROC 2014 continue to be relevant to the interpretation of O 22 r 2(2)(c) of the ROC 2021.

19 With that, I turned to consider the key concepts in relation to the attachment of debts.

Debts due immediately or at some future date

20 I first considered what it means for a debt to be due "immediately or at some future date", guided by the cases decided under O 49 of the ROC 2014.

21 A debt that is due "immediately", as the plain wording suggests, is a sum of money which is payable now: see *Webb v Stenton* [1883] 11 QBD 518 ("***Webb***") at p 527 cited in *O'Laughlin Industries Co Ltd v Tan Thiam Hock* [2020] SGHCR 6 ("***O'Laughlin***") at [14]. A debt that is due "at some future date" is a debt that is not yet actually payable, but will become payable in the future by reason of a present obligation: see *Webb* at p 527; *O'Laughlin* at [14].

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22 At the end of the day, the key for a debt to be attachable is that there must be a present and existing obligation to pay a sum of money whether now or at some point in the future: see *Webb* at pp 524, 527; *O'Laughlin* at [14]-[15]. Put another way, for a debt to be attachable, it is essential that the relationship of creditor and debtor should exist between the enforcement respondent and the non-party: Cavinder Bull S.C. (ed), *Singapore Civil Procedure 2021* (Sweet & Maxwell: 2021) ("***Singapore Civil Procedure***") at para 49/1/10. Following from the above, a useful but not infallible test to determine if a debt is attachable is to consider whether the debt is actionable: *O'Laughlin* at [20] citing *Taurus Petroleum Ltd v State Oil Marketing Co of the Ministry of Oil, Republic of Iraq* [2018] AC 690; see also *Singapore Civil Procedure* at para 49/1/10.

Contingent debts

23 A slightly different but closely-related concept is that of contingent debts. Contingent debts are debts that do not exist until and unless the contingency or event that triggers their creation occurs: *O'Laughlin* at [16]; see also *Vintage Bullion DMCC (in its own capacity and as representative of the customers of MF Global Singapore Pte Ltd (in creditors' voluntary liquidation)) v Chay Fook Yuen (in his capacity as joint and several liquidator of MF Global Singapore Pte Ltd (in creditors' voluntary liquidation)* [2016] 4 SLR 1248 ("***Vintage Bullion***") at [45]. Until and unless the contingency occurs, there is no obligation between the enforcement respondent and the non-party that can be attached. It is for that reason that contingent debts cannot be garnished under O 49 of the ROC 2014.

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24 As I mentioned at [21] above, the key for a debt to be attachable under O 22 of the ROC 2021 is that there must be a present and existing obligation to pay a sum of money, without which, there is simply nothing to be attached. Accordingly, contingent debts are similarly not attachable under O 22 of the ROC 2021.

25 With these principles in mind, I returned to the present case.

A Present Obligation Exists

26 DBS's position was that the monies in the Account could not be attached because:

(a) There was no longer any property of Neptun in the hands of DBS in view of the CAD Order (i.e. there was no debt due or accruing due or no debt due immediately or at some future date); and/or

(b) The CAD Order and the ongoing investigations rendered the monies in the Account owed by DBS to Neptun a contingent debt.

27 I disagreed and dealt with each of them in turn.

Effect of the CAD Order

28 Whether there was any property belonging to Neptun in the hands of DBS to be attached depended on the effect of the CAD Order. In my view, it was only if the CAD Order extinguished the debt owed by DBS to Neptun (i.e. Neptun and DBS are no longer in a creditor-debtor relationship or the ownership of the monies no longer belonged to Neptun), then will the monies in the Account not be attachable as there would no longer be any obligation or debt for the Enforcement Order to attach to.

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29 However, I did not think that was the case.

30 The CAD Order was issued pursuant to s 35(2)(*b*) of the CPC, which provides:

> **Powers to seize property in certain circumstances**
>
> 35(1) A police officer may seize, or prohibit the disposal of or dealing in, any property –
>
> *(a)* in respect of which an offence is suspected to have been committed;
>
> *(b)* which is suspected to have been used or intended to be used to commit an offence; or
>
> *(c)* which is suspected to constitute evidence of an offence.
>
> (2) If the property liable to be seized under subsection (1) is held or suspected to be held in an account or a safe deposit box in a financial institution, a police officer of or above the rank of inspector may, by written order –
>
> *(a)* direct the financial institution to deliver the property to any police officer; or
>
> *(b)* direct the financial institution not to allow any dealings in respect of the property in such account or safe deposit box for such period as may be specified in the order.

31 It is clear from the wording of s 35(2)(*b*) of the CPC that any order issued by the police prohibits a financial institution from allowing any disposal of or dealings in respect of the property in such account for the specified period, which would include the release of the monies to the account holder. If any person such as the account holder wished to deal with the property during this period, he or she must then apply for an order to "release" the property pursuant to ss 35(7) and (8) of the CPC which provide:

> (7) A court may –
>
> *(a)* subsequent to an order of a police officer made under subsection (2); and
>
> *(b)* on the application of any person who is prevented from dealing with property,

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> order the release of the property or any part of the property.
>
> (8) The court may only order a release of property under subsection (7) if it is satisfied that –
>
> *(a)* such release is necessary for the payment of basic expenses, including any payment for foodstuff, rent, the discharge of a mortgage, medicine, medical treatment, taxes, insurance premiums and public utility charges;
>
> *(b)* such release is necessary exclusively for –
>
> (i) the payment of reasonable professional fees and the reimbursement of any expenses incurred in connection with the provision of legal services; or
>
> (ii) the payment of fees or service charges imposed for the routine holding or maintenance of the property which the person is prevented from dealing in;
>
> *(c)* such release is necessary for the payment of any extraordinary expenses;
>
> *(d)* the property is the subject of any judicial, administrative or arbitral lien or judgment, in which case the property may be used to satisfy the lien or judgment, provided that the lien or judgment arose or was entered before the order was made under subsection (2)*(b)*; or
>
> *(e)* such release is necessary, where the person is a company incorporated in Singapore, for any day-to-day operations of the company.

32 On a plain reading of s 35(2) of the CPC, it is clear that the CAD Order merely prohibits the disposal of or dealings with the property in question. The seizure pursuant to s 35(2) of the CPC allows the police to conduct its investigation without fear that the property connected with a suspected offence would be disposed or dealt with. In my view, a seizure under s 35(2) of the CPC is not intended to and does not change the legal or beneficial ownership of the property, or to alter the existing legal relationship between the financial institution and the account holder. It merely prohibits the said property from being disposed of or dealt with temporarily for the duration of the CAD order.

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33 On this note, I found it helpful to refer to the astute observations made by the late Professor Tan Yock Lin, citing s 35 of the CPC and the corresponding provision governing the procedure relating to seizure of property (s 370 of the CPC) in his footnotes, that:

> Possession may also be acquired by distress, execution and as a result of public necessity or for public purposes. Taking by distress for instance is provided as a remedy to a lessor who is owed accrued rent. He may in order to recover the rent in arrears distrain on the goods of his lessee, sell them and pay himself the rent that is owing out of the proceeds of sale. Taking by execution is a common step in the enforcement of a judgment against a defendant. If the judgment debtor will not or cannot satisfy the judgment out of his other funds, the plaintiff may sue out of a writ of seizure and thereby execute judgment against any of the assets of the defendant that he can seize. Taking may also be justified by public necessity or for public purposes. Thus, police officers are empowered to seize property suspected of having been involved in the commission of an offence or of being stolen or appropriated by a thief or criminal appropriator. In some cases, it is not only possession that is authorised but also ownership may be acquired. So it must be determined whether only possession or ownership is acquired and with it, the right to possession. Thus, in the event of a person's bankruptcy, legal title of ownership vests in his trustee in bankruptcy by operation of law. This is taking of ownership, and not merely possession. But in the case of seizure of objects of a crime by the police, there is a taking only of possession. This taking moreover serves the purposes of criminal investigation and will not justify what is not necessary for those purposes.
>
> (emphasis added in underline)

(Tan Yock Lin, *Personal Property Law* (SAL Academy Publishing: 2014) at [03.061])

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34 Given that the effect of the CAD Order is merely to temporarily prohibit the monies in the Account from being disposed of or dealt with and not to alter the existing legal relationship between DBS and Neptun, notwithstanding the CAD Order, the monies in the Account continue to be owned by Neptun (i.e. Neptun and DBS remain in a creditor-debtor relationship). While it would be an offence for the monies in the Account to be paid out while the CAD Order was in force pursuant to s 35(6) of the CPC, as things stood, the monies continued to belong to Neptun and were payable at some point in the future.

35 Relying on the test that a debt must be an actionable debt for the debt to be attachable (i.e. due or accruing due) as mentioned at [22] above, DBS also argued that there was no actionable debt that Neptun could immediately and effectively sue DBS in view of the CAD Order. DBS referred to *Vintage Bullion* (at [23] above) and argued that for there to be a debt accruing due to Neptun, Neptun had to be legally entitled to, and there had to be no 'legal impediments' to Neptun's right to the monies in the Account. DBS's position was that the CAD Order gave rise to such 'legal impediments'.

36 I disagreed.

37 In *Vintage Bullion* at [23] above, a company had entered into certain leveraged foreign exchange and leveraged commodity transactions ("**Transactions**") with its customers. The Transactions were all speculative contracts that traded on differences. During the initial stage of the Transactions, the customer would take a position in the market known as the "open position". As long as the customer's position remained open, the customer would still be speculating and exposed to movements in the market. If the movement of the underlying currency or reference bullion favoured the customer, the customer would have "Unrealised Profits" corresponding to the value of the open position

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for that particular day. If the movement of the market was against the customer's bet, the customer would have "Unrealised Losses". The customer could choose to close his position, and when he did so, he would no longer be speculating. At that point, his profits or losses from the Transactions would be realised or crystallised. If the position was closed at a profit to the customer, this would give rise to a sum reflected as the "Forward Value" in the customer's statement. When the position is closed, the company would also issue a trade confirmation stating a "Value Date". On the "Value Date", the sum reflected as the "Forward Value" would be credited to the customer's ledger balance. The customer would then be able to request a withdrawal of a sum amounting to the value of the ledger balance which includes the "Forward Value". One of the issues that arose was whether the "Forward Value" were sums that were "accruing" to the customers under the Commodity Trading Regulations 2001 ("**CTR**").

38 The Court of Appeal, having considered the various other legal contexts in which the words "accrue" or "accruing due" were used, including the term "debt due or *accruing due*" used in O 49 of the ROC 2014, held that the sums representing the "Forward Value" did accrue to the customers: at [41] and [46]. In doing so, the Court held that sums could be said to be "accruing to" a customer within the meaning of reg 21(1)(a) of the CTR when the customer concerned was *legally entitled* to the sum in question: at [37]. In this regard, the Court was of the view that for the customer to be *legally entitled* to the sum concerned, there must be no 'legal impediments' which may put the customer's legal right to the sum in question (e.g. the sum representing the "Forward Value" had not been eroded by crystallised losses, or the customer had not occasioned some breach of contract): at [46]. The Court was of the view that the customers were *legally entitled* to the sums representing the "Forward Value" as the underlying transaction had already been closed or concluded. This was

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notwithstanding the fact that the customers could not withdraw the sums until the "Value Date" had arrived. The Court drew a distinction between the customer's *legal entitlement* and the concept of *payment* and stated at [46] as follows:

> [W]e are of the view that the sums that represent the Forward Value do indeed "accru[e] to" the Customers notwithstanding the fact that the Value Date has not yet arrived. This is because, as just stated, the Customers had ***already*** *become legally entitled* to the sums that represent the Forward Value, ***notwithstanding*** *the fact that they could not withdraw the sums until the Value Date had arrived.* With respect, the Judge ***conflated*** the concept of "accrual" with that of "payment". "Accrual" within the meaning of the Regulations means that which the customer concerned is *legally entitled* to and is distinct from the concept of "payment" (as we have noted above at [37]). These are quite different concepts and, in the present context, the former precedes the latter but does not cease to lose its quality (of legal entitlement or "accrual") simply because the Customers cannot (physically) draw down on or receive the sums that represent the Forward Value until the Value Date has arrived.
>
> (emphasis above are the Court's in *Vintage Bullion*)

39 In my view, the 'legal impediment' that the Court in *Vintage Bullion* referred to was the impediment that would extinguish the legal entitlement of a party to the sum of money. It did not refer to the impediment to the ability to (physically) withdraw the sum (i.e. actual payment). In the present case and applying the distinction drawn in *Vintage Bullion*, the effect of the CAD Order merely created an impediment to Neptun's ability to have the monies paid to it now but it did not extinguish Neptun's legal entitlement to the monies in the Account. It could well be that Neptun's legal entitlement might be affected depending on the outcome of any subsequent disposal inquiry or proceedings. However, as things stood, and on the basis of the CAD Order alone, there was nothing that extinguished or altered this legal entitlement.

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40 Following from the above, I was of the view that the CAD Order in the present case would not preclude Neptun from being able to sue for the return of the monies as the ability to do so concerned Neptun's legal entitlement, which has not been extinguished by the CAD Order. Having said that, practically speaking, if such proceedings were indeed commenced despite the CAD Order, an application that the proceedings be stayed pending further order would likely be taken out. However, as this was not an issue I had to consider, I did not express any comment on the merits of such an application.

41 Accordingly, I did not accept DBS's argument that there was no property belonging to Neptun with DBS that was available for attachment.

No contingent debt

42 DBS's next argument was that the ongoing investigations rendered the monies in the Account owed by DBS to Neptun a contingent debt. DBS said that the debt was contingent upon (i) the lifting of the CAD Order and/or (ii) the outcome of any disposal inquiry. DBS argued that until and unless those conditions are fulfilled, the debt owed to Neptun had not crystallised especially if it turns out subsequently that the monies are to be paid to third parties.

43 I disagreed and explain by discussing the cases that have considered the concept of a contingent debt.

44 I first discuss *Vintage Bullion*, the facts of which have been set out at [37] above. In that case, another issue that the Court had to consider was whether the "Unrealised Profits" were sums that were "accruing" to the customers under the CTR.

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45 The Court held that the "Unrealised Profits" were not sums "accruing to" the customers but were contingent debt obligations: *Vintage Bullion* at [45]. In arriving at its decision, the Court noted that the Transactions were structured such that, until the customer closes his or her position, any profits that were recorded in the form of "Unrealised Profits" were nothing more than a hypothetical position of what would be the profit if the position had been closed out: *Vintage Bullion* at [45]. As long as the customer's position remained open, the customer was still speculating and it was impossible to tell if he or she would eventually make a profit or a loss: *Vintage Bullion* at [45]. Accordingly, until and unless the customer closes out his position, his or her profits would remain uncrystallised (i.e. a contingent debt) and could not be said to have "accrued to" him or her: *Vintage Bullion* at [45].

46 *O'Laughlin* was another case which involved a contingent debt. In that case, the first and fifth defendants were ex-spouses and had entered into a consent order in the interim judgment for divorce ("**IJ**"). The IJ provided *inter alia* that the first defendant's 30% share in the matrimonial property shall be sold by the first defendant to the fifth defendant. The plaintiffs then filed a garnishee application against the fifth defendant seeking to attach the sum of money that would arise out of the sale of the first defendant's share in the matrimonial property to the fifth defendant. One of the issues that arose was whether there was an attachable debt arising out of the IJ that could be the subject matter of the garnishee order.

47 The Court held that there was no attachable debt as the debt that arose from the IJ was a contingent debt: *O'Laughlin* at [21]. The Court was of the view that while the IJ contemplated a sale of the first defendant's share in the matrimonial property to the fifth defendant, until and unless there is a sale, there

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was no obligation of payment. Accordingly, the Court discharged the provisional garnishee order.

48 From the above cases, it is clear that a contingent debt is a debt that has not yet crystallised or come into existence until the contingency happens. Until and unless the contingency happens, there is no obligation for the debtor to pay over the debt. Without an existing obligation, there is nothing that an attachment order can attach to. This is the reason contingent debts are not available for attachment.

49 However, the present case is different and presents a reverse scenario. Here, a debt is already in existence. While the outcome of any disposal inquiry or other separate proceedings may lead to the monies eventually being paid to someone else, the fact is that an obligation exists *now* and unlike the case of *Vintage Bullion*, the monies standing in Neptun's Account are not merely hypothetical.

50 A contingent debt is one where the contingency must happen for there to *be* a debt. It is not one where the contingency happens for there *not to be* a debt. Until and unless it is determined that the debt is *not* owed to Neptun, the obligation continues to exist, which remains available for attachment.

51 The impact of DBS' argument is that when the CAD Order was made, it had the effect of destroying the creditor-debtor relationship which was already in existence between DBS and Neptun. However, for the reasons that I have set out earlier above at [28] to [34] that the CAD Order did not change or alter the creditor-debtor relationship between DBS and Neptun but merely suspended Neptun's right to dispose of or deal with the monies in the Account, I did not accept DBS' argument.

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Attachment vs Release

52 Having come to the view that the monies in the Account were available for attachment, I turned to the order sought by Mitsui, which was to hold the attachment in abeyance pending the lifting of the CAD Order and/or the outcome of any potential disposal inquiry.

53 Generally, garnishee or attachment orders are viewed as a single enforcement process. The purpose is to have monies that are owed by third parties to the judgment debtor paid to the judgment creditor instead. However, at a conceptual level, it may be broken down into two stages:

(a) Stage 1: Attachment. This refers to the capture of the obligation that is owed to the judgment debtor. At this stage, the Court considers whether there is a "debt due or accruing due" (under O 49 of the ROC 2014) / debts due "immediately or at some future date or at certain intervals in the future" (under O 22 of the ROC 2021) or if the debt is a "contingent debt". In other words, at this stage, the Court is concerned with determining whether there is an existing obligation owed to the judgment debtor. If there is, the debt or obligation will be attached.

(b) Stage 2: Release. After the debt has been attached, the monies need to be released. At this stage, the judgment creditor is able to realise the obligation that has been captured or attached into actual monies by having the monies that were attached being paid or released to him.

(see *Société Eram Shipping Co Ltd v Cie Internationale de Navigation* [2004] 1 AC 260 at [62] (cited in *O'Laughlin Industries* at [18]))

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54 The distinction between the attachment and release stages finds support in the ROC 2021. In this regard, O 22 r 13 of the ROC 2021 envisages that upon the application of a party liable under any Court order (e.g. the judgment debtor), the Court may make an order maintaining an attachment of a debt while directing the Sheriff not to take further action on the enforcement order and provides as follows:

> **Application for stay of enforcement (O. 22, r. 13)**
>
> (1) The party who is liable under any Court order may apply for stay of enforcement or stay of any enforcement order or any part of the order if there is a special case making it inappropriate to enforce the Court order immediately.
>
> (2) The Court may order a stay of enforcement or stay of an enforcement order, for a specified period or until the occurrence of a specified event.
>
> (3) Where the Sheriff has seized properties or attached a debt under the enforcement order before the Court orders a stay, the order may give directions to the Sheriff to withdraw the seizure or attachment or to maintain the seizure or attachment without taking further action on the enforcement order.
>
> (emphasis added in underline)

55 Clearly, it is possible for an attachment of a debt to be maintained while not being released.

56 In the present case, I was of the view that the CAD Order affected only the second stage (i.e. the release of the monies).

57 As discussed at [28] to [51] above, the CAD Order does not render the monies in the Account unattachable. The CAD Order merely prohibited the disposal of or any dealings with the monies which included prohibiting DBS from releasing the monies to Mitsui under the Enforcement Order. While the CAD Order remains in force, the monies may only be released on a court order made pursuant to ss 35(7) and (8) of the CPC. Put simply, while the CAD Order

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that is in force does not prevent the attachment, the monies cannot be released until a further court order is made.

58 DBS referred me to a recent decision of the Magistrates' Court in *Chng Zhun Teck Jackson v Public Prosecutor* [2023] SGMC 87 ("***Jackson Chng***") for the proposition that the CAD Order prevents the attachment of debts. In that case, customers of two companies, Tradenation Pte Ltd and Tradeluxury Pte Ltd had obtained default judgment against *inter alia* those two companies. The customers wanted to enforce the judgment against the companies and brought an application for the release of funds that have been seized by the CAD pursuant to section 35(7) and 35(8)(*d*) of the CPC. The Court dismissed the application and refused to order the release of the seized properties. In doing so and in the context of explaining the differences between a seizure under ss 35(2)(*a*) and 35(2)(*b*), the Court made a passing remark that:

> Under both the ROC 2014 and ROC 2021, the judgment creditor (or enforcement applicant) such as the applicants in this case would be able to attach a debt which is due from a non-party – like a financial institution- to the judgment debtor for the amount in the latter's bank account. This enforcement mechanism would have been available to the judgment creditor but for the order prohibiting disposal under s 35(2)*(b),* made after the judgment was obtained. In such a situation, a release may be allowed to avoid undue hardship to the judgment creditor.

59 In my view, this did not assist DBS. *Jackson Chng* was a case involving an application for the "release" of monies under the CPC. It did not involve garnishee or attachment proceedings and the court most certainly did not have to deal with the issue of whether the debt could be attached. Seen in that context, the court was simply referring to the "enforcement mechanism" at the release stage. Unlike the case of *Jackson Chng*, Mitsui was not seeking a release of the monies at this stage. Instead, it sought to merely attach the monies that were standing in Neptun's account with any release to be made only after the CAD

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Order is lifted or pending the outcome of any disposal inquiry. I see no reason why this cannot be done.

Fair and Practical Outcome

60 Finally, I was of the view that allowing the attachment to be maintained or held in abeyance would be in line with the Ideals in the ROC 2021. In particular, I was of the view that such an order would achieve a fair and practical outcome that suited the needs of the parties: O 3 r 1(e) of the ROC 2021.

61 There was no dispute that Neptun has monies in its account with DBS, and but for the CAD Order, DBS would have been obligated to release the same to Neptun if it decided to withdraw the monies. The CAD Order did not extinguish the debt owed by DBS to Neptun but merely prohibited the release of the monies. Insofar as DBS was concerned, an order allowing attachment pending the lifting of the CAD Order and/or the outcome of any disposal inquiry would achieve the result – to not allow the monies to be released. If it subsequently turns out that the monies do not actually belong to Neptun, there will be nothing for the Enforcement Order to attach to and the monies may be released from attachment.

62 DBS argued that such an order would put it at risk of having to pay the monies twice – once to third party victims (assuming that a subsequent Court determines that the monies belong to third party victims), and the second to Mitsui as a result of the Enforcement Order which attaches the same set of monies. I disagreed. In view of the CAD Order, conditions could be imposed on the enforcement against the monies in the Account. The conditions would make it clear that the Enforcement Order merely attached to the monies at this point and is subject to *inter alia*, further order. If it turns out to be the case that the

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monies are determined by a subsequent Court to belong to third party victims, the monies can be released from attachment. DBS would not be at risk of having to pay the monies twice or to dip into its own pockets to make the necessary payment.

63 DBS also argued that Mitsui was free to apply for another enforcement order once the investigations are complete and that it is determined by the courts that the monies do belong to Neptun. In my view, that missed the point. While that may be an available and possibly the option with the least resistance, if Mitsui is legally entitled to attach the monies now (which in my view, it was), why should it not do so at this stage? From Mitsui's perspective, there were good practical reasons for it to attach the monies as soon as possible. For example, while Mitsui could do its best to monitor the outcome of the police investigations or criminal proceedings (if brought), there was always the risk that if the investigations revealed that the monies did belong to Neptun, Neptun knowing that there are judgment creditors coming after it, may instruct DBS to allow it to withdraw all the monies and empty out its bank account. Without an attachment order, DBS would be obligated to honour Neptun's instructions, leaving Mitsui without recourse. Seen in this light, allowing Mitsui to attach the monies pending investigations and outcome of any criminal proceedings would be the fair and practical outcome for the parties involved.

Conclusion

64 For the foregoing reasons, I dismissed DBS's application.

65 However, in view of the CAD Order, I ordered that the monies that have been attached shall not be paid by DBS to the Sheriff or Mitsui, until and unless:

(a) the CAD Order has been lifted or has expired; or

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(b) the outcome of any disposal inquiry concerning the monies in the Account has been determined, including any appeals therefrom ("**Disposal Inquiry Proceedings**"), and the Court finds that the monies in the Account are to be paid to Mitsui or Neptun. For the avoidance of doubt, in such event, payment shall be made only after the CAD Order has been lifted or expired.

(collectively, the "**Conditions**")

66 To facilitate the above, it was further ordered that:

(a) Within 3 working days of the Conditions being satisfied, Mitsui is to inform DBS in writing that the Conditions are satisfied, with the relevant supporting documents;

(b) Where DBS is informed that the Conditions are satisfied (before Mitsui informs DBS), DBS shall inform Mitsui of the same;

(c) Within 21 days from the date either party notifies the other that the Conditions are satisfied, DBS shall transfer the monies in the Account up to the maximum sum stated in the Enforcement Order to:

(i) the Sheriff for any commission due;

(ii) Mitsui the balance amount due from DBS to Neptun;

save that DBS shall not be required to transfer any sums to the Sheriff or Mitsui if:

(A) there is disagreement between DBS and Mitsui on whether the Conditions have been satisfied;

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(B) there are pending Disposal Inquiry Proceedings; or

(C) DBS is ordered to pay any monies in the Account to any party other than the Sheriff, Neptun or Mitsui.

(d) In the event that Mitsui or DBS is notified in the final determination of the Disposal Inquiry Proceedings that DBS is to pay the monies in the Account to any party other than the Sheriff, Neptun or Mitsui, Mitsui shall apply for the monies in the Account to be released from attachment as soon as practicable but in any case within 21 days from the date Mitsui or DBS is so notified.

(e) Either Mitsui or DBS shall have liberty to apply for the necessary directions or orders.

67 Finally, it leaves me to thank both counsel for Mitsui and DBS for their able assistance and helpful submissions.

Victor Choy
Assistant Registrar

Veronica Teo, Genesa Tan (Focus Law Asia LLC) for the Claimant;
Priscilla Soh (Rajah & Tann Singapore LLP) for the Non-Party.

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