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

[2024] SGHC 31

Originating Application No 220 of 2023

In the matter of Section 181(1)(*a*) of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of CST South East Asia Pte Ltd (in members' voluntary liquidation)

Between

(1) Lin Yueh Hung
as Liquidators of CST South East Asia Pte Ltd (in Members' Voluntary Liquidation)
(2) Ng Kian Kiat
as Liquidators of CST South East Asia Pte Ltd (in Members' Voluntary Liquidation)

… *Applicants*

And

(1) Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP
(2) Andreas Vogel Pte Ltd
(3) Andreas Vogel

… *Defendants*

JUDGMENT

[Civil Procedure — Jurisdiction — Inherent]
[Contract — Ratification]
[Insolvency Law — Winding up — Proof of debt]
[Limitation of Actions — Particular causes of action — Contract]

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v
Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP and others

[2024] SGHC 31

General Division of the High Court — Originating Application No 220 of 2023
Goh Yihan J
1 November 2023, 29 January 2024

2 February 2024 Judgment reserved.

Goh Yihan J:

1 HC/OA 220/2023 ("OA 220") is an application by liquidators of CST South East Asia Pte Ltd (the "Company"), for the court to determine whether their decisions to reject the proofs of debt by the defendants are valid and correct, pursuant to s 181 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA"). More specifically, the applicants are applying for the determination of the following question:

> Whether the Liquidators' decisions to reject in their entirety all three of the claims, all dated 13 August 2021, each filed by (i) M/s Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP …, [(ii)] M/s Andreas Vogel Pte Ltd … and (iii) Mr. Andreas Vogel … respectively … are valid and correct.

2 The applicants have brought this application because the defendants did not apply under s 190 of the IRDA as an "aggrieved person" to challenge their decision. Because there is seemingly no prescribed deadline for the defendants to file such a challenge in a members' voluntary winding up (as this case is concerned with), that would have left open the possibility of the defendants bringing such a challenge even after the dissolution of the Company. The applicants therefore bring the present application to preclude that possibility.

3 I first heard the parties on 1 November 2023, at which the parties had made detailed submissions on the merits of OA 220. Mr Andreas Vogel ("AV"), who appeared in person as the third defendant, and on behalf of the first and second defendants, said at the time that he wished to tender further translated documents for the applicants' consideration. While the applicants were not obliged to do so, they agreed to receive and consider these documents. I therefore adjourned the hearing to give the defendants until 1 December 2023 to translate and provide these documents.

4 However, even by the time the subsequent hearing took place on 29 January 2024, the defendants never provided the documents. At the hearing on 29 January 2024, AV explained that he could not translate the documents in time to meet the 1 December 2023 deadline and sought a further extension of time. In fact, AV said that he only managed to translate 15% of the documents concerned by 1 December 2023. I rejected AV's request for more time because: (a) the applicants were not obliged to consider these documents in the first place as the defendants had not provided them previously before their claims were rejected; and (b) the defendants did not write into court or to the applicants to ask for an extension of time despite knowing that the deadline was 1 December 2023. Indeed, as Mr Lim Yee Ming ("Mr Lim"), who appeared for the

applicants, suggested, AV could have tendered the 15% of the documents first but did not do so. As a result of my disallowing the defendants further time to submit the documents, the parties' submissions, as well as the evidence before the court, remain the same now as at the last hearing on 1 November 2023.

5 While I therefore could have given my decision at the end of the hearing of 29 January 2024, AV requested for some time to negotiate with the applicants. In this regard, I note from Mr Lin Yueh Hing's affidavit filed in support of this application that the applicants had made without prejudice offers to the defendants, but these were not accepted.[1] Notwithstanding this, but considering that the matter has been going on for some time, I informed AV that unless I hear from the parties by 4pm on 2 February 2024 that they have reached a settlement, I will proceed to give my decision on OA 220. I only received an email from AV at 3.09pm on 2 February 2024 that the defendants have sent a proposal to the applicants for their consideration. But this is not, as I had said to the parties, an indication of any settlement or even that the parties are actively engaged in negotiations with a request for the court to withhold judgment. I therefore issue this judgment now at 5.30pm on 2 February 2024. There needs to be a resolution to the matter, especially since it is the defendants who have not complied with timelines asked of them by either the applicants or the court.

6 After considering the parties' submissions and the evidence, I allow OA 220 for the reasons below. In summary, my conclusions are as follows:

(a) First, some of the debts are time barred under s 6(1)(*a*) of the Limitation Act 1959 (2020 Rev Ed) (the "LA"), because the services provided in the invoices occurred on or before 6 June 2015.

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[1] 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at para 53.

(b) Second, some of the debts are pursuant to a Letter of Engagement dated 19 May 2010, which the Company is not bound by, pursuant to s 41 of the Companies Act 1967 (2020 Rev Ed) (the "CA"), because: (i) the contract was not entered into by the Company or by any other person on its behalf before incorporation; and (ii) the Company did not ratify the contract after its formation.

(c) Third, some of the debts lack contractual basis, because there is no evidence that the Company agreed to the rendering of services by the defendants.

(d) Finally, although the defendants submit that they have a claim in *quantum meruit*, regardless of whether contractual *quantum meruit* or restitutionary *quantum meruit* is applied, the analysis of the above does not change.

The upshot of these findings is that I determine that the applicants' decisions to reject all of the defendants' claims were correctly made.

7 I turn now to the background facts.

Background facts

Parties to the dispute

8 The first and second applicants, Mr Lin Yueh Hung and Mr Ng Kian Kiat, respectively, are the liquidators of the Company. The Company was incorporated in Singapore on 28 December 2010. The Company's sole shareholder was CST GmbH, but it transferred all of its shares in the Company to DS GmbH on 26 June 2020. The Company was placed under members'

voluntary liquidation on 7 June 2021. On the same day, the applicants were appointed as the joint and several liquidators.[2]

9 The first and second defendants, Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP ("AVPLLP") and Andreas Vogel Pte Ltd ("AVPL"), are creditors of the Company. The third defendant, AV, is a partner of AVPLLP and the sole shareholder of AVPL.[3]

Events leading to the dispute

10 On 14 June 2021, about a week after the Company had been placed under members' voluntary liquidation, the applicants advertised a notice on *The Business Times* and in *The Gazette*, requesting creditors to submit their claims against the Company by 13 July 2021.[4] Furthermore, on 22 June 2021, the applicants wrote to the defendants requesting them to submit their claims against the Company. On 13 August 2021, the applicants received the defendants' proofs of debt with the accompanying invoices.[5] However, the defendants did not submit any other supporting documents evidencing the work that was allegedly done under their claims. In short, the defendants' claims against the Company are as follows:[6]

(a) AVPLLP claims a sum of $517,279.68;

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2 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at paras 1, 4, 5, and 7.

3 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at para 9.

4 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at para 8.

5 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at paras 9–10.

6 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at para 10 and Tab 5.

(b) AVPL claims a sum of $127,949.58, comprising an initial sum of $96,540.15 and a late charge of $31,409.43; and

(c) AV claims a sum of $645,229.26, comprising an initial sum of $613,819.83 and a late charge of $$31,409.43.

11 On 27 August 2021, after reviewing the claims, the applicants wrote to the defendants requesting further documents in support of their claims. In the applicants' view, although the invoices underlying the claims were dated between 2018 and 2021, the alleged services invoiced for dated back to 2008. On 8 and 9 September 2021, AVPL and AVPLLP, respectively, wrote back to clarify the scope and type of documents that the applicants needed. On 15 September 2021, the applicants responded, stating that AVPLLP and AVPL should include any information that could substantiate their claims.[7]

12 On 17 November 2021, AVPLLP and AVPL provided the applicants with further supporting documents. These comprised roughly 4,200 pages that were largely in German. In order to ascertain the nature of AVPLLP's and AVPL's claims, the applicants reached out to the former and current directors of the Company in December 2021 to January 2022 to inquire if they were able to provide any additional information.[8]

13 After reviewing the documents, on 1 April 2022, the applicants informed the defendants by letter that they had rejected the claims. Because the defendants did not acknowledge nor respond to the letter, the applicants wrote

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7 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at paras 12–13.

8 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at paras 15–20.

to AV again on 10 May 2022 to reiterate the decision.[9] Thereafter, on 2 June 2022, AV, in his capacity as a partner of AVPLLP, sent an email to the applicants objecting to the decision. He did not provide further information in support. On the same day, one Mr Loh Kong Hon, in his capacity as a director of AVPL, sent an email to the applicants objecting to the decision and highlighted that the claims were not time-barred.[10]

14 On 14 June 2022, the applicants responded by letter to AVPLLP, requesting the detailed reasons behind its objection and supporting documents thereof, by 28 June 2022. In the same letter, the applicants explained that they took the position that the invoices tendered, though issued between 2018 and 2021, were time-barred since much of the work done and services on the invoices were provided more than six years prior to the winding up of the Company. As of 13 March 2023, AVPLLP has not responded. The applicants also explained that AVPL did not provide evidence of any agreement with the Company for the provision of the claimed services. The applicants further informed AVPLLP and AVPL that if they failed to submit extra information, the applicants would proceed with the liquidation of the Company.[11]

15 Separately, on 28 June 2022, the applicants were informed that AVPLLP had requested directors of the Company, Mr Marko Walter ("Mr Walter") and Mr Bernhard Winfried Wagner ("Mr Wagner"), to provide confirmation that the services in the invoices had been performed by AVPLLP and AVPL for the Company. However, to date, the applicants have not received

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9 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at para 38.

10 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at paras 39–40.

11 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at paras 42–45.

any further documents or evidence to substantiate the defendants' claims or any detailed reasons for their objections.

16 On 13 March 2023, the applicants brought OA 220 for the court to determine whether their decisions to reject the proofs of debt by the defendants are valid and correct. In this connection, on 2 August 2023, the High Court granted the first and second defendants' applications in HC/SUM 1510/2023 ("SUM 1510") and HC/SUM 1511/2023 ("SUM 1511") for permission to be self-represented (see *Lin Yueh Hung (as liquidators of CST South East Asia Pte Ltd (in members' voluntary liquidation)) and another v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP and others* [2023] SGHC 208).

The parties' cases

The applicants' case

17 As a preliminary point, the applicants submit that many of the documents filed in support of the defendants' affidavits do not satisfy the requirements in O 3 r 7(2) of the Rules of Court 2021 (the "ROC 2021"). The court should therefore reject the use of those documents (see the High Court decision of *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another* [2005] 4 SLR(R) 417 ("*Jet Holding*") at [55]). In this regard, O 3 r 7 provides as follows:

> **Language of documents (O. 3, r. 7)**
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> **7.**—(1) All documents filed or used in Court must be in the English language.
>
> (2) A document which is not in the English language must be accompanied by a translation in the English language certified

> by a court interpreter or verified by an affidavit of a person qualified to translate the document.

18 Beyond this preliminary point, the applicants raise the following four points in their submissions. First, there is no time bar preventing a creditor from appealing against the liquidator's rejection of a proof of debt because r 132 of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 (the "CIR Rules") does not apply to a company under members' voluntary liquidation. Therefore, generally, the defendants would only be prevented from claiming against the applicants after two years of the dissolution of the Company.[12] However, many of the defendants' claims regarding services allegedly rendered on or before 6 June 2015 are time barred under s 6(1)(*a*) of the LA, because they occurred more than six years prior to the commencement of the members' voluntary liquidation on 7 June 2021.[13]

19 Second, the defendants have failed to discharge their burden of proving their debts. The defendants bear this burden on a balance of probabilities (see the Court of Appeal decision of *Fustar Chemicals Ltd (Hong Kong) v Liquidator of Fustar Chemicals Pte Ltd* [2009] 4 SLR(R) 458 ("*Fustar*") at [13]). This is because: (a) the defendants submitted documents that did not support their alleged debts; (b) the defendants made little to no effort in translating the voluminous documents; (c) the applicants had no ability to translate the documents; (d) the defendants failed to submit further documents despite the applicants' repeated requests; and (e) the defendants had been given sufficient time to prepare and submit further documents.[14]

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12 Applicants' Written Submissions dated 16 October 2023 ("AWS") at paras 28–44.

13 AWS at paras 73–86.

14 AWS at paras 45–54.

20 More specifically, the applicants submit that the defendants have not proven their debts, for the following reasons:

(a) AVPLLP's claim of $517,279.68 is premised on 37 invoices, which may be further divided into: (i) 11 invoices that are time barred; (ii) nine invoices that contain claims pursuant to a Letter of Engagement dated 19 May 2010 (the "LOE"); (iii) one invoice that is time barred and lack a contractual basis; and (iv) 16 invoices that are not time barred but lack any contractual basis.[15]

(b) AVPL's claim of $127,949.58 is premised on 31 invoices, which again may be further divided into: (i) two invoices that are time barred; (ii) one invoice that is time barred and contains claims that, although are not time barred, lack a contractual basis; and (iii) 28 invoices that are not time barred but lack a contractual basis.[16]

(c) AV's claim of $645,229.26 was based on an explanatory letter dated 13 August 2021 and a "Contract for Nominee Director Services" dated 10 November 2010 between AV and CST GmBH. However, AV has been paid his directors' fees. Further, insofar as AV's claims do not appear to be for directors' fees, there is no basis for them. In any event, the proper party that AV should recover payment from is CST GmBH and not the applicants.[17]

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15 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at paras 23–27.

16 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at paras 28–30.

17 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at paras 30–36.

21 Third, the Company is not bound by the LOE, because the Company was not a party to that contract. The contracting parties were CST GmbH and AVPLLP. Further, the Company did not ratify the contract pursuant to s 41 of the CA.[18]

22 Fourth, the defendants' claims regarding *quantum meruit* are without merit. Assuming that the defendants are referring to contractual *quantum meruit*, the claims would be time-barred under s 6(1)(*a*) of the LA. However, assuming in the alternative that the defendants are referring to restitutionary *quantum meruit*, the underlying cause of action is the breach of contract, and s 6(1)(*a*) of the LA would apply equally (see the Court of Appeal decision of *Esben Finance Ltd and others v Wong Hou-Liang Neil* [2022] 1 SLR 136 ("*Esben Finance*") at [73]).[19]

The defendants' case

23 As a preliminary point, the defendants submit that the applicants cannot rely on s 181(1)(*a*) of the IRDA for the court to give the directions that it has sought. Further, the defendants also argue that Mr Lim had acted for the Company and its holding companies before it was wound up. The defendants submit that this gives rise to a conflict of interest, which undermines the independence of the applicants as the liquidators of the Company.[20]

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18 AWS at paras 55–72.

19 AWS at paras 87–100.

20 2nd Affidavit of Andreas Dieter Vogel dated 18 May 2023 for OA 220 at para 26; 1st Affidavit of Loh Kong Hon dated 18 May 2023 for OA 220 at para 17

24 Beyond this preliminary point, the defendants make the primary submission that they had provided services to the Company, which the Company knew of and requested.

(a) The defendants sent letters in 2010 to the Company detailing the applicable legal fees. The defendants also sent a list of services to Mr Walter on 13 June 2017 upon his request.[21]

(b) Between 2011 and 2018, the Company had paid in full all invoices issued by AVPL.[22]

(c) The Company acknowledged the services rendered by the defendants in an email dated 14 January 2019.[23]

(d) In Mr Wagner's letter dated 22 December 2022, he acknowledged that the defendants had rendered services to the Company.[24]

25 Further, with respect to the applicants' submission that the documents are in a foreign language, the defendants submit that the applicants did not indicate to them that translation to the English language was necessary.[25]

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21 2nd Affidavit of Andreas Dieter Vogel dated 18 May 2023 for OA 220 at paras 8–16; 1st Affidavit of Loh Kong Hon dated 18 May 2023 for OA 220 at paras 12–13.

22 1st Affidavit of Loh Kong Hon dated 18 May 2023 for OA 220 at para 5.

23 2nd Affidavit of Andreas Dieter Vogel for OA 220 dated 18 May 2023 at paras 21–22.

24 2nd Affidavit of Andreas Dieter Vogel dated 18 May 2023 for OA 220 at para 25; 1st Affidavit of Loh Kong Hon dated 18 May 2023 for OA 220 at para 16; 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at p 233 s/n 7.

25 2nd Affidavit of Andreas Dieter Vogel dated 18 May 2023 for OA 220 at para 28; 1st Affidavit of Loh Kong Hon dated 18 May 2023 for OA 220 at para 19.

The issues before this court

26 Having considered the parties' submissions, there are, in my view, the following preliminary and substantive issues before the court.

27 In terms of preliminary issues, there are the following three for determination:

(a) whether the applicants can rely on s 181(1)(*a*) of the IRDA for the court to give the directions that it has sought;

(b) whether Mr Lim can act for the applicants; and

(c) whether the defendants can rely on the documents exhibited in their affidavits.

28 In terms of the substantive issues, there are the following four for determination:

(a) whether there is a time bar for: (i) appealing against the liquidators' rejection of a proof of debt; and (ii) any of the claims by the defendants;

(b) whether the Company is bound by the LOE;

(c) whether the defendants have discharged their burden of proving their debts; and

(d) whether the defendants have a claim in *quantum meruit*.

The preliminary issues

Whether the applicants can rely on s 181(1)(a) of the IRDA for the court to give the directions that they have sought

29 I begin with the preliminary issues. The first concerns whether the applicants can rely on s 181(1)(*a*) of the IRDA for the court to give the directions they have sought. In this regard, s 181 of the IRDA provides as follows:

> **Application to Court to have questions determined or powers exercised**
>
> **181.**—(1) The liquidator or any creditor or contributory may apply to the Court —
>
> (*a*) to determine any question arising in the winding up of a company; or
>
> …
>
> (2) The Court, if satisfied that the determination of the question … is just and beneficial, may —
>
> (*a*) accede wholly or partially to any such application on such terms and conditions as the Court thinks fit; or
>
> (*b*) make such other order on the application as the Court thinks just.

30 In this regard, it is helpful to note that Black J had observed in the New South Wales Supreme Court decision of *Re MF Global Australia Ltd (in liq)* [2012] NSWSC 994 in relation to s 511 of the Corporations Act 2001 (Cth), being the Australian equivalent of s 181 of the IRDA, as follows (at [8]):

> Section 511 of the Corporations Act provides an alternative source of power to give such a direction and the Liquidators also rely on that section. The principles applicable to an application under that section were recently reviewed by Ward J in *Re Purchas (as liquidator of Astarra Asset Management Pty Ltd (in liq))* [2011] NSWSC 91 … Applications made under this section in a voluntary winding up are determined in a similar manner to applications in a Court

> ordered winding up under s 479(3) of the Corporations Act notwithstanding that section does not expressly require that it be "just and beneficial" to give the relevant direction. ***The court may give such a direction where it will be "of advantage in the liquidation***": *Dean-Willcocks v Soluble Solution Hydroponics Pty Ltd* (1997) 42 NSWLR 209 at 212; *Handberg (in his capacity as liquidator of S&D International Pty Ltd) v MIG Property Services Pty Ltd* [2010] VSC 336; (2010) 79 ACSR 373 at [7]. The effect of a determination under the section is to sanction a course of conduct on the part of the liquidator so that he or she may adopt that course free from the risk of personal liability for breach of duty: *S&D International* at [7].
>
> [emphasis added in bold italics]

31 Accordingly, it would be appropriate for the applicants to bring the present application if they can show that it will be "of advantage in the liquidation". In my judgment, the applicants have shown this, because this application will avert any uncertainty to the liquidation that can potentially arise from the defendants' challenge of the rejection of their proofs of debt in the indetermined future.

32 I turn then to whether the application under s 181(1)(*a*) of the IRDA is "of advantage in the liquidation". This raises the question of whether the defendants can indeed challenge the rejection of their proofs of debt in the indetermined future. In this regard, s 218(1)(*a*)(i) of the IRDA states that where a company, other than an insolvent company, is being wound up, any debt or liability to which the company is subject at the commencement of the winding up is provable. Therefore, potential creditors of a company wound up through a members' voluntary winding up are able to submit their proofs of debt to the liquidator to be proved. The liquidator is then empowered by s 218(4) of the IRDA to provide an estimate of the value of the debt or liability submitted under s 218(1)(*a*)(i) of the IRDA and the reasons as to why the debt does not

bear a certain value. If the potential creditor is not satisfied with the liquidator's estimate, he can appeal to the court by s 218(5) of the IRDA.

33 More specifically, rule 132(1) of the CIR Rules provides that a creditor who is dissatisfied with the decision of the liquidator of the company in rejecting a proof may appeal to the court to reverse or vary the decision of the liquidator. Rule 132(2) provides that this appeal must be made within 21 days after the rejection of the proof. However, r 132 must be read with r 130(1), which provides that rr 130–133 "applies to every winding up by the [c]ourt and every creditors' voluntary winding up". This does not include a *members'* voluntary winding up. Yet, the subsidiary legislation to the IRDA distinguishes between a creditors' voluntary winding up and a members' voluntary winding up. For instance, r 2(2) of the Insolvency, Restructuring and Dissolution (Voluntary Winding Up) Regulations 2020 distinguishes between the two types of voluntary winding up. Therefore, given that Parliament does not legislate in vain (see the Court of Appeal decision of *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [38]), the omission to state a members' voluntary winding up in r 130(1) of the CIR Rules suggests that r 132 does not apply to a members' voluntary winding up.

34 Accordingly, given the apparent lack of a time bar against the defendants' right to appeal against the liquidators' rejection of their proofs of debt, it is understandable and correct that the applicants seek a determination under s 181(1)(*a*) of the IRDA. If the applicants prevail, they would be able to distribute $476,199.83 worth of cash deposits to the sole shareholder of the Company without concern of a potential "clawback" by the defendants.

35 Indeed, as I mentioned at the outset, the defendants have not appealed against the applicants' decision under s 190 of the IRDA. While the defendants now complain that this application appears "as if the [applicants] intend to direct the matter to the Court to approve their decision and seal it with the official authority of the Court to overcome their uncertainty of the appropriateness of their action",[26] the point remains that if the defendants do not challenge the applicants' decision, the defendants will not be able to claim in any case. And if the defendants challenge the decision, the matter will end up in court for its determination anyway. As such, there is some irony in the defendants arguing against the applicants' reliance on s 181(1)(*a*) now, when it is their inaction that prompted this application in the first place.

36 For these reasons, I conclude that the applicants can rely on s 181(1)(*a*) of the IRDA for the court to give the directions they have sought. This is because the applicants' application under s 181(1)(*a*) of the IRDA is "of advantage in the liquidation".

Whether Mr Lim can act for the applicants

37 I turn now to consider the defendants' argument that Mr Lim cannot act for the applicants. To begin with, the court has a supervisory jurisdiction to regulate the conduct of its officers (see the High Court decision of *Harsha Rajkumar Mirpuri (Mrs) née Subita Shewakram Samtani v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 ("*Harsha*") at [73]). As such, the breaches of the Legal Profession (Professional Conduct) Rules 2015 (the "PCR") are a possible "analytical tool" in deciding whether the court should exercise its supervisory jurisdiction to restrain a lawyer from acting, in order to

[26] Defendant's Written Submissions dated 23 October 2023 ("DWS") at p 5.

prevent confidence in the administration of justice from being undermined (see *Harsha* at [78] and [81]). For instance, r 21 of the PCR provides that a legal practitioner owes duties of loyalty and confidentiality to his current client and former client and must act prudently to avoid any compromise of the lawyer-client relationship by reason of a conflict or potential conflict between the interests of his current client and his former client.

38 In determining whether the court should exercise its supervisory jurisdiction, the applicable test is "whether a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice requires that the legal practitioner be restrained from acting, in the interests of the protection of the integrity of the judicial process including the appearance of justice" (see the Court of Appeal decision of *Lim Oon Kuin and others v Rajah & Tann Singapore LLP and another appeal* [2022] 2 SLR 280 ("*Lim Oon Kuin*") at [65]). The relevant cases where the court has considered exercising its supervisory jurisdiction to regulate the conduct of a lawyer are as follows:

(a) In *Williamson and another v Nilant* [2002] WASC 225 ("*Williamson*"), the Supreme Court of Western Australia granted an injunction to restrain solicitors from acting for the liquidators of a company, because one of the shareholders of the company was also a client of the same solicitors. The court held (at [26]) that the "conflict which may arise between the interests of [the shareholder], which the solicitor must legitimately advance, and the necessity to give impartial advice and representation to the liquidator of [the company] is such that the interests of justice require the solicitor be restrained from acting for the liquidator". However, the court acknowledged (at [22]) that "[c]ases

will differ" and "not every case where a solicitor acts for a liquidator and a party interested in the liquidation will there be a conflict".

(b) In *Then Khek Khoon and another v Arjun Permanand Samtani and another* [2012] 2 SLR 451 ("*Then Khek Khoon*"), the High Court held (at [22]) that where only breaches of the PCR are concerned, which do not trigger any concurrent breach of legal obligations owed by the counsel to the court or the client at common law, the proper forum for investigation and determination of the breach is the Law Society rather than the court, unless the court's supervisory jurisdiction is engaged. The court's intervention is required, *eg*, where "matters impinge on the proper administration of justice, due process and wider public interest issues". The court cited (at [21]) the House of Lords decision of *Prince Jefri Bolkiah v KPMG (a firm)* [1999] 2 AC 222 (at 234–235) as one such instance. The House of Lords emphasised that an injunction will be granted to restrain lawyers from acting in the limited situation where: (i) the lawyer acted against a present client; and (ii) if there is potential or possible misuse of confidential information obtained by a lawyer from a former client.

(c) In *Lim Oon Kuin*, the Court of Appeal considered (at [70]) that although the application for injunctions to restrain the lawyers from acting for the applicants' judicial managers was based on the law of confidence, there may have been "a broader case engaging the supervisory jurisdiction of the court". The relevant facts are that: (i) the lawyers had acted for the applicants since the 1990s and accumulated knowledge about them and the companies in which they had interests; and (ii) the spectacle that the lawyers may have "changed sides" during

the course of restructuring of the companies may undermine the appearance that justice is being done (at [71]–[72]). Nevertheless, it is important to note that the court emphasised (at [74]) that:

> … we are not holding that the court's supervisory jurisdiction should be invoked in this case but only that the circumstances disclosed thus far indicate that the [applicants'] ground to invoke this jurisdiction is not wholly unsustainable or devoid of basis.

39 Although a liquidator must act independently and fairly in a voluntary liquidation, such that he cannot be open to influence from the appointing directors (see *Fustar* at [22]), the present case is not one where the court should exercise its supervisory jurisdiction to regulate the conduct of Mr Lim in acting for the applicants. First, the facts of the present application do not fall within the situations envisioned in *Then Khek Khoon*. Although the defendants are right that Mr Lim had previously acted for the Company and is now acting for the applicants, who are the liquidators of the Company, there is no evidence that Mr Lim had acted against the applicants, or misused confidential information provided to him by the Company previously.

40 Second, in applying the test set out in *Lim Oon Kuin*, the threshold for the court to exercise its supervisory jurisdiction has not been engaged. At first glance, the facts of the present application appear similar to *Williamson*. However, that case involves a lawyer purporting to simultaneously act for two clients with potentially conflicting interests. In the present application, however, given that Mr Lim has ceased to act for the Company, I do not think there is any evidence of potential or actual conflict of interest that warrants the court to exercise its supervisory jurisdiction.

Whether the defendants can rely on the documents exhibited in their affidavits

41 I turn now to consider if the defendants can rely on the documents exhibited in their affidavits. To begin with, O 3 r 7(2) of the ROC 2021 provides that "[a] document which is not in the English language must be accompanied by a translation in the English language certified by a court interpreter or verified by an affidavit of a person qualified to translate the document". The High Court in *Shi Wen Yue v Shi Minjiu and another* [2016] 4 SLR 911 (at [7]) explained that this procedural requirement makes clear that "[n]either an [Assistant Registrar] nor a judge is in a position to offer his own translation … as he is neither a court interpreter nor a person qualified to translate foreign text".

42 In this regard, in *Jet Holding* (at [55]), the High Court held that some of the documents adduced by one party were in French, and the English translations thereof had not been certified. Because these documents did not comply with O 92 r 1 of the Rules of Court (Cap 322, 2004 Rev Ed), they could not be used in the court proceedings there. Similarly, in the District Court decision of *Universal Success Group Limited v Chung Cheong Weng t/a Sin Intergro* [2022] SGDC 63 (at [14]), the court declined to admit WeChat messages in Chinese because they had not been translated pursuant to O 92 r 1 of the Rules of Court (2014 Rev Ed) (the "ROC 2014"). O 92 r 1 of the ROC 2014 is substantially similar to O 3 r 7(2) of the ROC 2021, as the former provides that "[e]very document if not in the English language must be accompanied by a translation thereof certified by a court interpreter or a translation verified by the affidavit of a person qualified to translate it before it may be received, filed or used in the [c]ourt".

43 However, there are two exceptions to this procedural requirement: (a) where the defendants waived their objection to compliance (see the High Court decision of *Reemtsma Cigarettenfabriken GmbH v Hugo Boss AG* [2003] 3 SLR(R) 469 at [7]); and (b) where the document is predominantly in the English language such that a translation certificate is unnecessary (see the High Court decision of *Solomon Alliance Management Pte Ltd v Pang Chee Kuan* [2019] 4 SLR 577 at [122]).

44 In the present case, I agree with the applicants that the court should decline the use of the documents in the defendants' exhibits that do not comply with O 3 r 7(2) of the ROC 2021. These documents have been translated from the German language to the English language, but they have not been certified by a court interpreter or a person qualified to translate the documents. Further, the applicants have not waived their objection to compliance with O 3 r 7(2), and neither are the documents predominantly in the English language so as to render translation in compliance with O 3 r 7(2) unnecessary.

45 These documents include:[27]

(a) 2nd Affidavit of Andreas Dieter Vogel dated 18 May 2023 for OA 220 at AVP-1 to AVP-8, and AVP-10 to AVP-13; and

(b) 1st Affidavit of Loh Kong Hon dated 18 May 2023 for OA 220 at AVPL-1 and AVPL-4 to AVPL-6.

Accordingly, I do not allow the defendants to rely on these documents in the present proceedings.

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[27] AWS at p 6.

The substantive issues

46 Having dealt with the preliminary issues, I turn now to deal with the substantive issues which the applicants say justify their rejection of the defendants' proofs of debt. As the defendants' proofs of debts straddle across all the substantive issues, I will deal with these issues collectively for now. I will thereafter deal with each defendant's specific claims. I begin with the time bar issue.

Whether there is a time bar for any of the claims by the defendants

47 In relation to this issue, s 6(1)(*a*) of the LA provides that actions founded on a contract or on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued. The applicants submit that the limitation period stops running on the date of the members' voluntary winding up, *ie*, 7 June 2021, instead of the date the present application was brought, *ie*, 13 March 2023. The applicants rely on the English decision of *In re Art Reproduction Co Ltd* [1952] Ch 89 ("*Art Reproduction*") in support. Therefore, notwithstanding the dates of the invoices, all claims by the defendants for work done before or on 6 June 2015 will be time barred.[28]

48 I agree with the applicants' reliance on *Art Reproduction*, where Wynn-Parry J (at 94) extended the rule in the English Court of Appeal decision of *In re General Rolling Stock Company* [1872] LR 7 Ch App 646 ("*General Rolling Stock*") to a voluntary winding up. The rule in *General Rolling Stock* is that the "assets [of a company] should be applied in satisfaction of all the liabilities which existed at the time of the winding-up order" (see *General*

[28] AWS at paras 73–77.

Rolling Stock at 649). Similarly, the English Court of Appeal in *Financial Services Compensation Scheme Ltd v Larnell (Insurances) Ltd (in liquidation)* [2006] QB 808 at [57], in applying the former two cases, held that "`the rights of a person who seeks to enforce a claim against the assets of the company in the liquidation are to be ascertained as at the date of the commencement of the liquidation", "provided his claim is not time-barred at the date of the winding up". This rule implies that the limitation period stops running on the date of the winding up order.

49 Accordingly, all of the contracts between the Company and the defendants that were entered into six years before 7 June 2021, *ie*, on or before 6 June 2015, will be time barred.

Whether the Company is bound by the LOE

50 The next issue is whether the Company is bound by the LOE. Section 41(1) of the CA provides that any contract purporting to be entered into by a company prior to its formation may be ratified by the company after its formation. The High Court in *Leong Hin Chuee v Citra Group Pte Ltd and others* [2015] 2 SLR 603 ("*Leong Hin Chuee*") (at [69]) held that two requirements must be satisfied for s 41(1) to apply: (a) the contract must purportedly have been entered into by the company or by any other person on its behalf before incorporation; and (b) the company must ratify the contract after its formation. In the present application, the LOE had been entered into on 19 May 2010, before the Company was incorporated on 28 December 2010.

51 I agree with the applicants that the two requirements set out in *Leong Hin Chuee* have not been satisfied. First, the LOE was not entered into by the Company or by any other person on the Company's behalf. The LOE was

entered into between Mr Walter, AV, and the managing director of CST AG, one Mr Michael Bartsch, "regarding the Singapore company incorporation," which presumably refers to the Company.[29] I leave aside the issue of translation and assume that the court can rely on this LOE. Even then, the services "regarding the Singapore company incorporation" were to be provided to CST GmbH, and not the Company. Further, there is no evidence that CST GmbH entered into the LOE on behalf of the Company. Not only is the Company not expressly named anywhere in the LOE, but there is also no extrinsic evidence demonstrating as such. In the Privy Council decision of *Cosmic Insurance Corp Ltd v Khoo Chiang Poh* [1979-1980] SLR(R) 703, the court found that there was a letter showing that the parties' intention was for the company to be bound by the contract after its incorporation and there was a company resolution passed to bind the company to the pre-incorporation contract. In contrast, there is no indicia of any such intention in the present application.

52 Second, the LOE was not ratified by the Company after its incorporation on 28 December 2010. The defendants have not adduced any evidence of express ratification by the Company. Further, the request for AVPLLP to re-issue the invoices to the Company instead of CST GmBH does not constitute implied ratification. For there to be implied ratification, the company must do an unequivocal act indicating its willingness to be bound by the pre-incorporation contract (see *Leong Hin Chuee* at [73]). In *Leong Hin Chuee*, the High Court held (at [73]) that the payment of salaries by the company did not amount to an unequivocal act, because the conduct may be "interpreted in some other way". Similarly, in the Privy Council decision of *Forman & Co*

[29] 2nd Affidavit of Andreas Dieter Vogel dated 18 May 2023 for OA 220 at pp 60–65.

Proprietary, Ltd v The Ship "Liddesdale" [1900] AC 190 (at 204), the court held that there was no implied ratification by the mere fact that the defendant took the ship and sold it, because this was his own property and he made the best he could of it, which could not give the plaintiffs any additional right. The court contrasted this with the situation where a party accepted goods that were not previously its property, which may amount to implied ratification. In the present application, the request to AVPLLP does not constitute an unequivocal act indicating AVPLLP's (and all of the defendants') willingness to be bound by the LOE.

53 Accordingly, the Company is not bound by the LOE. Therefore, the defendants may not recover its debt based on the LOE.

Whether AVPL has a claim in quantum meruit

54 I turn finally to consider if AVPL has a claim in *quantum meruit*. As the Court of Appeal explained in *Eng Chiet Shoong and others v Cheong Soh Chin and others and another appeal* [2016] 4 SLR 728 (at [37]–[41]), there is a distinction between contractual *quantum meruit* and restitutionary *quantum meruit*, although whether the term "*quantum meruit*" is appropriate for describing a contractual claim remains an unresolved issue. For contractual *quantum meruit*, it is premised on an implied contract or an implied term. For restitutionary *quantum meruit*, it is premised on unjust enrichment.

55 I agree with the applicants' submissions that the claim in *quantum meruit* – whether in contractual *quantum meruit* or restitutionary *quantum meruit* – *does not* change the analysis of AVPL's proof of debt. First, for the claim in contractual *quantum meruit*, I agree with the applicants that AVPL was likely relying on the fee quotations sent to the directors in an email dated 2 June

2022 to suggest that there is an implied contract or an implied term that the Company is obliged to pay AVPL for the services it allegedly rendered. However, because this claim is a contractual one, s 6(1)(*a*) of the LA will apply to bar claims on or before 6 June 2015.

56 Second, for the claim in restitutionary *quantum meruit*, I agree with the applicants that AVPL's claim is also a contractual one. This is because for claims in unjust enrichment, the court will consider the civil wrong which gave rise to the remedial response in unjust enrichment (see *Esben Finance* at [73]). Indeed, where the underlying cause of action for the claim is the breach of contract, the limitation period as set out in s 6(1)*(a)* of the LA should apply even when a restitutionary remedy is sought (see *Esben Finance* at [73], citing Graham Virgo, *The Principles of the Law of Restitution* (Oxford University Press, 3rd Ed, 2015) at pp 738–739). Therefore, s 6(1)*(a)* of the LA will apply to bar claims on or before 6 June 2015. Accordingly, the analysis regarding the claims that are time barred under s 6(1)(*a*) of the LA (see [47]–[48] above) apply equally here.

Whether the defendants have discharged their burden of proving their debts

57 With the above substantive issues in mind, I turn now to consider if the defendants have discharged *their* burden of proving their debts. As a starting point, since the defendants are "creditors" for the purposes of the disputed debts, they bear the burden of proving their debts on a balance of probabilities (see *Fustar* at [13]). However, this does not mean that the only means by which creditors can prove a proof of debt is through the production of primary documents, because the primary documents may be destroyed or lost due to the effluxion of time (see *Fustar* at [21]).

58 In short, for the reasons that I provide below, I agree with the applicants that the defendants have failed to discharge this burden in the present application. I address the proof of debt of each defendant in turn.

AVPLLP's proof of debt

59 First, for AVPLLP's proof of debt, it claimed that the debt was incurred between 15 November 2018 and 31 May 2021.[30] I accept the applicants' submissions for why they rejected this proof of debt:[31]

(a) For the invoices that contain claims that are time barred, AVPLLP may not recover its debt. These are:[32]

(i) the invoice dated 15 November 2018 for services between 17 January 2008 and 2 March 2009;

(ii) the invoice dated 16 November 2018 for services between 17 January 2008 and 14 July 2009;

(iii) the invoice dated 19 November 2018 for services between 23 August 2008 and 9 April 2009;

(iv) the invoice dated 20 November 2018 for services between 12 February 2010 and 3 April 2010;

(v) the invoice dated 22 November 2018 for services between 14 January 2009 and 5 May 2010;

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30 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at pp 46–47.

31 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at pp 8–11.

32 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at p 248.

(vi) the invoice dated 23 November 2018 for services between 8 July 2009 and 5 May 2010;

(vii) the invoice dated 12 December 2018 for services between 9 March 2010 and 2 January 2011;

(viii) the invoice dated 13 December 2018 for services between 17 February 2011 and 25 April 2011;

(ix) the invoice dated 17 December 2018 for services between 27 May 2011 and 5 July 2011;

(x) the invoice dated 18 December 2018 for services between 29 December 2010 and 14 December 2011; and

(xi) the invoice dated 19 December 2018 for services between 31 December 2010 and 31 December 2011.

(b) For the invoices that are subject to the LOE – all of which are titled "Advice on Post incorporation matters of CST South East Asia Pte Ltd" – they do not bind the Company, so AVPLLP may not recover its debt. These are:[33]

(i) the invoice dated 20 December 2018 for services between 1 January 2012 and 31 December 2012;

(ii) the invoice dated 7 January 2019 for services between 1 January 2013 and 31 December 2013;

(iii) the invoice dated 8 January 2019 for services between 1 January 2014 and 31 December 2014;

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[33] 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at pp 250 and 252.

(iv) the invoice dated 10 January 2019 for services between 1 January 2015 and 31 December 2015;

(v) the invoice dated 11 January 2019 for services between 1 January 2016 and 31 December 2016;

(vi) the invoice dated 15 January 2019 for services between 1 January 2017 and 31 December 2017;

(vii) the invoice dated 21 January 2019 for services between 1 January 2018 and 31 December 2018;

(viii) the invoice dated 31 December 2020 for services between 1 January 2019 and 31 December 2019; and

(ix) the invoice dated 31 May 2021 for services between 1 January 2020 and 31 May 2020.

In any event, even if these invoices bind the Company, the invoices at [59(b)(i)]–[59(b)(iii)] are time barred.

(c) For the invoice dated 2 January 2019 claiming for work done between 12 December 2011 to 24 March 2014, work done more than six years before 2 January 2019, totalling $5,133.33, is time barred. As for the remaining work done, I accept the applicants' submission that: (i) for the sum of $450, there was no description of the work allegedly carried out; and (ii) for the remaining sum of $14,172.70, there was no agreement between the Company and AVPLLP setting out the scope of the work, and in any event,

this occurred more than six years before the winding up of the Company.[34]

(d) For the remaining invoices, there was no agreement between the Company and AVPLLP setting out the scope of the work. These are:[35]

(i) the invoice dated 5 December 2018 for services between 28 April 2014 and 4 July 2014;

(ii) the invoice dated 6 December 2018 for services between 28 April 2016 and 4 July 2016;

(iii) the invoice dated 3 January 2019 for services between 15 May 2013 and 3 November 2014;

(iv) the invoice dated 9 January 2019 for services between 2 April 2014 and 22 August 2014;

(v) the invoice dated 10 January 2019 for services between 12 February 2016 and 8 July 2016;

(vi) the invoice dated 11 January 2019 for services between 4 February 2016 and 21 October 2016;

(vii) the invoice dated 11 January 2019 for services between 28 October 2016 and 15 November 2016;

(viii) the invoice dated 15 January 2019 for services between 11 June 2017 and 21 December 2017;

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34 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at pp 9–10 and at pp 253–260.

35 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at p 262.

(ix) the invoice dated 15 January 2019 for services between 3 November 2016 and 22 May 2017;

(x) the invoice dated 15 January 2019 for services between 29 January 2017 and 26 September 2017;

(xi) the invoice dated 16 January 2019 for services between 25 May 2017 and 26 September 2017;

(xii) the invoice dated 16 January 2019 for services between 27 March 2018 and 5 September 2018;

(xiii) the invoice dated 17 January 2019 for services between 28 April 2018 and 4 July 2018;

(xiv) the invoice dated 17 January 2019 for services between 1 June 2018 and 31 October 2018;

(xv) the invoice dated 18 January 2019 for services between 20 August 2018 and 20 November 2018; and

(xvi) the invoice dated 30 December 2020 for services between 7 February 2019 and 22 February 2019.

In any event, even if these invoices are pursuant to an agreement between the Company and AVPLLP, the invoices at [59(d)(b)(i)], [59(d)(b)(iii)], and [59(d)(iv)] are time barred.

AVPL's proof of debt

60 Second, for AVPL's proof of debt, it claimed that the debt was incurred between 8 January 2018 and 30 Apil 2021, which includes two late charges in

January 2019.[36] I accept the applicants' submissions for why they rejected this proof of debt:[37]

(a) For the invoices that contain claims that are time barred, AVPL may not recover its debt. These are:[38]

(i) the invoice dated 15 November 2018 for services between 22 January 2009 and 31 December 2010;

(ii) the invoice dated 16 November 2018 for services between 1 January 2011 and 31 December 2011;

(iii) the invoice dated 19 November 2018 for services between 1 January 2012 and 31 December 2012;

(iv) the invoice dated 20 November 2018 for services between 1 January 2013 and 31 December 2013;

(v) the invoice dated 21 November 2018 for services between 1 January 2013 and 31 December 2013;

(vi) the invoice dated 22 November 2018 for services between 1 August 2013 and 31 December 2013;

(vii) the invoice dated 23 November 2018 for services between 1 January 2014 and 31 December 2014;

(viii) the invoice dated 26 November 2018 for services between 1 January 2014 and 31 December 2014; and

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36 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at pp 123–124.

37 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at pp 8–11.

38 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at pp 264– 279.

(ix) the invoice dated 27 November 2018 for services between 1 January 2014 and 31 December 2014.

(b) For the invoices that are not time barred, they are either subject to the LOE, which does not bind the Company, or there was no agreement between the Company and AVPL setting out the scope of the work. Therefore, AVPL may not recover its debt. These are:[39]

(i) the invoice dated 8 January 2018 for services between 1 January 2018 and 30 June 2018;

(ii) the invoice dated 29 June 2018 for services between 1 July 2018 and 31 December 2018;

(iii) the invoice dated 27 November 2018 for services between 1 January 2015 and 31 December 2015;

(iv) two invoices dated 28 November 2018 for services between 1 January 2015 and 31 December 2015;

(v) the invoice dated 29 November 2018 for services between 1 January 2015 and 31 December 2015;

(vi) the invoice dated 29 November 2018 for services between 1 January 2016 and 31 December 2016;

(vii) the invoice dated 30 November 2018 for services between 1 January 2016 and 31 December 2016;

[39] 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at pp 277–279.

(viii) the invoice dated 3 December 2018 for services between 1 January 2016 and 31 December 2016;

(ix) the invoice dated 3 December 2018 for services between 1 January 2017 and 31 December 2017;

(x) the invoice dated 5 December 2018 for services between 1 January 2016 and 31 December 2016;

(xi) the invoice dated 6 December 2018 for services between 1 January 2017 and 31 December 2017;

(xii) the invoice dated 7 December 2018 for services between 1 January 2017 and 31 December 2017;

(xiii) the invoice dated 10 December 2018 for services between 1 January 2017 and 31 December 2017;

(xiv) four invoices dated 31 December 2018 for services between 1 January 2018 and 31 December 2018;

(xv) the invoice dated 8 January 2019 for services between 1 January 2019 and 31 December 2019;

(xvi) the invoice dated 30 October 2020 for services between 1 January 2019 and 31 December 2019;

(xvii) the invoice dated 31 December 2020 for services between 1 January 2019 and 31 December 2020; and

(xviii) the invoice dated 30 April 2021 for services between 1 January 2019 and 30 April 2021.

I accept the applicants' submission that the provision of services, such as by the company secretary and nominee director, was part of the scope of work set out in the LOE. Although it is not as clear as compared to the invoices at [59(b)], which are clearly titled "Advice on Post incorporation matters of CST South East Asia Pte Ltd", because the burden of proving the debts lay on the defendants, and having been given multiple opportunities to provide further documents and failing to do so, the defendants have not discharged their burden of proof in this regard. I also accept the applicants' submission that for the other invoices, there was no agreement between the Company and AVPL setting out the scope of the work.

(c) For the two late charges, given that the claims by AVPL have been rejected, AVPL is not entitled to the late charges.

AV's proof of debt

61 Third, for AV's proof of debt, he claimed that the debt was incurred between 8 January 2018 and 31 May 2021, which includes two late charges in January 2019.[40] I accept the applicants' submissions for why they rejected this proof of debt, for the following two reasons.[41]

(a) First, AV's claim does not appear to be for director's fees, and therefore falls outside the scope of the "Contract For Nominee Director Services" dated 10 November 2010 (the "ND Contract") between AV, CST GmbH, and the Company.

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40 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at pp 11–13.

41 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at pp 13–15.

(b) Second, cl C.4 of the ND Contract states that "[CST GmbH] shall indemnify [AV] … of all losses whether directly or indirectly caused by [CST GmbH] or the Company".[42] Further, recitals to the ND Contract provides that "[AV] is offering his services at the request of [CST GmbH] … and to [CST GmbH".[43] Therefore, the proper party that AV should recover payment from is CST GmBH and not the Company.

Conclusion

62 For all of the above reasons, I allow OA 220 and determine that the applicants' decision to reject all of the defendants' claims was correctly made. The applicants have liberty to write it for further consequential directions, if necessary.

63 Unless the parties are able to agree on the costs of this application, they are to write in with their submissions, limited to seven pages each, within seven days of this decision.

Goh Yihan
Judge of the High Court

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42 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at p 192.

43 1st Affidavit of Lin Yueh Hung dated 13 March 2023 for OA 220 at p 191.

Lim Yee Ming and Soh Wing Tim (Kelvin Chia Partnership) for the applicants;
The third defendant in person.
