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

[2024] SGHC 32

Originating Application No 633 of 2023

Between

Hang Huo Investment Pte Ltd

… *Applicant*

And

Wong Pheng Cheong Martin

… *Respondent*

JUDGMENT

[Companies — Receiver and manager — Remuneration of]
[Statutory Interpretation — Construction of statute — Sections 78(2) and 78(3) of the Insolvency, Restructuring and Dissolution Act 2018]

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Hang Huo Investment Pte Ltd
v
Wong Pheng Cheong Martin

[2024] SGHC 32

General Division of the High Court — Originating Application No 633 of 2023
Kristy Tan JC
24 October 2023, 29 January 2024

2 February 2024 Judgment reserved.

Kristy Tan JC:

Introduction

1 HC/OA 633/2023 ("OA 633") is an application by Hang Huo Investment Pte Ltd ("Applicant") under s 78(1)(*a*) of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA") for the court to fix the amount to be paid by way of remuneration to Mr Wong Pheng Cheong Martin ("Respondent"), who was appointed by the Applicant's lender, DBS Bank Ltd ("DBS"), as receiver and manager of the Applicant's property on 11 April 2023 and discharged from those appointments on 26 June 2023.

2 By an invoice dated 20 June 2023 issued by the Respondent's firm FTI Consulting (Singapore) Pte Ltd ("FTI"), the Respondent charged for professional services in the amount of $1,358,142.50 plus other charges for

expenses and goods and services tax ("FTI Invoice").[1] The Applicant filed OA 633 on 23 June 2023 without serving the application on the Respondent.[2] On 26 June 2023, as part of a redemption exercise where the Applicant was required to repay all sums due to DBS, the Applicant made full payment of the FTI Invoice.[3] OA 633 thus includes a prayer for an order that the Respondent account for any amount he was paid in excess of the remuneration fixed by the court. The Applicant served OA 633 on the Respondent on 31 July 2023 after obtaining and being dissatisfied with the breakdown of the FTI Invoice provided by the Respondent.[4]

3 The central issues in OA 633 concern the fixing of the remuneration of privately-appointed receivers / managers; and when they should be ordered to account (after being paid) for any amount in excess of the remuneration fixed.

Background

The parties

4 The Applicant is a company incorporated in Singapore. Its only business is the ownership of a hotel known as Link Hotel Singapore ("Link Hotel") which is sited at 50 Tiong Bahru Road, Singapore 158794 and 51 Tiong Bahru Road, Singapore 158795 ("50 and 51 Tiong Bahru Road"). The Applicant is the registered and beneficial owner of the properties at, and the link bridge ("Link

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1 Affidavit of Mr He Dingding ("Mr He") dated 28 July 2023 and filed on behalf of the Applicant on 31 July 2023 ("Applicant's Affidavit") at p 34.

2 Applicant's Affidavit at para 12; Affidavit of the Respondent dated and filed on 21 August 2023 ("Respondent's 1st Affidavit") at paras 12 and 22.

3 Applicant's Affidavit at para 13.

4 Applicant's Affidavit at paras 15 to 16.

Bridge") connecting, 50 and 51 Tiong Bahru Road.[5] The Applicant is wholly owned by Silverine Pacific Ltd ("Silverine"), a British Virgin Islands company, which is in turn wholly owned by Link Holdings Limited ("Link Holdings"), a Hong Kong-listed company.[6]

5 The Respondent is a Senior Managing Director of the Corporate Finance and Restructuring department of FTI.[7]

Appointment of the Respondent

6 In consideration of DBS granting banking facilities to the Applicant, the Applicant mortgaged its interest in 50 and 51 Tiong Bahru Road and the Link Bridge ("Mortgaged Properties") to DBS pursuant to two mortgages dated 8 August 2008[8] and 24 January 2018[9] respectively ("Mortgages"). The Mortgages are in similar terms and incorporate certain provisions of DBS' Memorandum of Mortgage MM/23.[10]

7 To secure credit facilities granted to it by DBS, the Applicant and DBS executed a debenture dated 30 September 2005 ("Debenture")[11] under which the Applicant charged in favour of DBS all its property (including real property situated in Singapore), assets, undertakings and income ("Charged Property").

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5 Applicant's Affidavit at para 4.

6 Affidavit of the Respondent dated and filed on 14 November 2023 (Respondent's 2nd Affidavit") at p 3076.

7 Respondent's 1st Affidavit at para 1.

8 Affidavit of the Respondent dated and filed on 29 November 2023 ("Respondent's 3rd Affidavit) at pp 4 to 18.

9 Respondent's 3rd Affidavit at pp 19 to 32.

10 Respondent's 2nd Affidavit at pp 56 to 62.

11 Respondent's 2nd Affidavit at pp 66 to 109.

Under cl 2(A)(2), the Applicant covenanted to pay "on a full indemnity basis" and "on demand" all costs, charges and expenses incurred by, and remuneration payable to, any receiver appointed by DBS pursuant to the Debenture.[12]

8 Following the Applicant's default on the payment of sums due under the facilities granted by DBS, DBS and the Respondent executed two Deeds of Appointment dated 11 April 2023. Under one Deed of Appointment, DBS appointed the Respondent as the receiver ("Receiver") of the Mortgaged Properties ("DOA (Mortgage)").[13] Under the other Deed of Appointment, DBS appointed the Respondent as the receiver and manager ("R&M") of the Charged Property ("DOA (Debenture)").[14]

9 It is undisputed that the Respondent's main task during his appointment was to organise a sale of 50 and 51 Tiong Bahru Road and the Link Bridge by public tender.[15] It is also undisputed that the Respondent's appointment did *not* entail *operating* Link Hotel.[16] Link Hotel was operated, both before and during the Respondent's appointment, by Link Hotels International Pte Ltd ("LHI"),[17] a company separate from (albeit related to) the Applicant.[18]

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12 Respondent's 2nd Affidavit at p 71 (Debenture at cl 2(A)(2)).

13 Respondent's 1st Affidavit at pp 51 to 54 (DOA (Mortgage)).

14 Respondent's 1st Affidavit at pp 55 to 58 (DOA (Debenture)).

15 Respondent's written submissions dated 17 October 2023 ("RWS") at para 45; Applicant's Affidavit at para 25.

16 Applicant's Affidavit at para 30; Notes of Arguments ("NOA") for hearing on 24 October 2023 ("1st OA 633 hearing") at p 16 lines 27 to 29.

17 Respondent's 1st Affidavit at para 40.

18 Respondent's 2nd Affidavit at p 3076.

Filing of OA 633 and payment of the Respondent's fees by the Applicant

10 The tender exercise began on or around 26 May 2023.[19] Sometime in early June 2023, the Applicant informed DBS that it intended to make full repayment of all sums due to DBS, thereby redeeming the Mortgaged Properties and discharging the Charged Property.[20] DBS informed the Applicant that (a) as the tender would close on 16 June 2023 and (b) an indication had been given to bidders that the accepted bid would be announced by 20 June 2023, the latest dates the Applicant could serve its redemption notice and complete the redemption were 16 June 2023 and 27 June 2023 respectively.[21]

11 On 15 June 2023, the Applicant's solicitors, Dentons Rodyk & Davidson LLP ("DR") served the Applicant's redemption notice dated 15 June 2023 on DBS.[22]

12 On 20 June 2023, Shook Lin & Bok LLP ("SLB"), who had been appointed as solicitors for both DBS and the Respondent,[23] provided DBS' Redemption Statement dated 20 June 2023[24] ("Redemption Statement") to DR together with copies of the FTI Invoice and SLB's invoice.[25] The Redemption Statement set out the amounts due and payable by the Applicant to DBS at the expected date of redemption on 26 June 2023. These amounts included fees due

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19 Respondent's 2nd Affidavit at p 3083.

20 Applicant's Affidavit at para 6.

21 Applicant's Affidavit at para 7.

22 Respondent's 1st Affidavit at p 74; Applicant's Affidavit at pp 26 to 27.

23 Applicant's Affidavit at para 9; Respondent's 1st Affidavit at p 6 and para 51.

24 Applicant's Affidavit at p 28 (Redemption Statement).

25 Respondent's 1st Affidavit at p 70.

to FTI in the total amount of $1,477,546.80, and fees due to SLB in the amount of $253,592.31.

13 According to the Applicant, it was shocked at the fees imposed by the Respondent / FTI but felt that it had no choice but to make full payment of all the sums set out in the Redemption Statement because the Respondent intended to announce the accepted bid pursuant to the tender exercise imminently, and the latest date the Applicant could complete its redemption was 27 June 2023 (see [10] above).[26] The Applicant felt compelled not to question the fees at that stage in case doing so jeopardised its redemption.[27]

14 However, the Applicant decided to file OA 633 on 23 June 2023 before making full payment of the sums stated in the Redemption Statement. The Applicant thought that so long as it filed the application prior to paying the Respondent's fees, it could subsequently seek an account from the Respondent of any excess moneys paid. In the Applicant's words:

> in order to preserve [the Applicant's] rights under s 78(2)(c) and s 78(3) of the [IRDA] (and in particular, to request that the Court require the Respondent to account for any excess monies which the Applicant would be paying to DBS), the Applicant filed OA 633 on 23 June 2023, prior to making payment on 26 June 2023 to DBS of the sums required under the Redemption Statement.[28]

15 The Applicant did not file a supporting affidavit, serve the originating application for OA 633 ("Originating Application") or notify the Respondent of OA 633 at the time.

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26 Applicant's Affidavit at para 10.

27 Applicant's Affidavit at para 11.

28 Applicant's Affidavit at para 12.

16 On 26 June 2023, the Applicant made full payment of the sums set out in the Redemption Statement including the FTI Invoice. On the same day, DBS removed and discharged the Respondent from his appointments as Receiver of the Mortgaged Properties and R&M of the Charged Property.[29]

17 According to the Applicant, it subsequently reviewed the various documents accompanying the Redemption Statement, including the FTI Invoice, and noticed that the Respondent's fees for "Total Professional Services" were in the sum of $1,358,142.50. No breakdown of this figure was provided in the FTI Invoice. This led the Applicant to request a breakdown from the Respondent (see [20] below).[30]

18 For completeness, the total bill of $1,477,546.80 in the FTI Invoice comprises charges for:

(a) professional services in the amount of $1,358,142.50. It is this amount of remuneration that the Applicant challenges as being "manifestly excessive" and "unreasonable";[31]

(b) expenses totalling $9,956.39; and

(c) goods and services tax ("GST") of $109,447.91.[32]

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29 Applicant's Affidavit at para 13 and pp 30 to 31.

30 Applicant's Affidavit at paras 14 to 15.

31 Applicant's written submissions dated 19 October 2023 ("AWS") at paras 8 and 46.

32 Applicant's Affidavit at pp 33 to 34 (FTI Invoice).

Procedural history

19 OA 633 was first fixed for a case conference on 11 July 2023 before the Registrar. On 30 June 2023, the court re-fixed the case conference to 13 July 2023.

20 On 10 July 2023, DR took two steps. At 1.35 pm, DR sent SLB a letter dated 10 July 2023, requesting an itemised bill from the Respondent by 13 July 2023. DR's letter explained that the breakdown was necessary to enable the Applicant to make an informed decision on the reasonableness of the Respondent's fees:

> 1. … [The FTI Invoice] does not contain sufficient material … as to the nature of the said "Professional services" to enable [the Applicant] to judge the reasonableness of the charges of S$1,358,142.50, which our client notes were incurred in just over two months.
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> 2. In order for [the Applicant] to make an informed decision as [to] whether the professional charges … are reasonable, we are instructed by [the Applicant] to request that the professional charges … be itemised, including a breakdown of the time and costs incurred by each insolvency practitioner on each task, …[33]

21 At 3.26 pm, DR filed a Request for the case conference to be re-fixed to the week of 24 July 2023. DR's Request explained that OA 633 had been filed to "preserve the Applicant's rights under section 78, in particular, sections 78(2)(c) and 78(3) of the [IRDA]", and that the Originating Application had not been served yet as the Applicant was "liaising with the Respondent on the issue of the Respondent's professional fees with a view to resolving the issues in [OA 633] amicably".[34]

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[33] Respondent's 1st Affidavit at pp 124 to 125.

[34] Respondent's 1st Affidavit at para 14; AWS at para 21(a).

22 On 10 July 2023, the court replied to DR's Request, re-fixing the case conference to 27 July 2023 and directing that: "Applicant to write in by 24 July 2023 to provide an update on whether this matter has been resolved amicabl[y]. Solicitor to inform other party of the court's directions."[35]

23 On 13 July 2023, SLB provided DR with a breakdown of the FTI Invoice.[36] This breakdown was less detailed than the spreadsheet later filed by the Respondent in OA 633 ("FTI Spreadsheet").[37]

24 On 24 July 2023, DR filed a Request for the case conference to be re-fixed to the week of 28 August 2023. DR explained that the Respondent had provided a breakdown of his fees, with which the Applicant did not agree. The Applicant thus wished to proceed with OA 633. DR indicated that it expected to be able to file the supporting affidavit for the application within a week, and would serve the necessary papers on the Respondent thereafter.[38]

25 On 24 July 2023, the court replied to DR's Request, directing that the supporting affidavit was to be filed and served on the Respondent by 31 July 2023 and re-fixing the case conference to 31 August 2023.[39]

26 On 31 July 2023, DR filed and served the Applicant's Affidavit, with the Originating Application, on SLB.[40]

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35 Respondent's 1st Affidavit at para 14.

36 Respondent's 1st Affidavit at p 126; Applicant's Affidavit at para 16 and pp 38 to 40.

37 Respondent's 1st Affidavit at p 128.

38 Respondent's 1st Affidavit at para 14.

39 Respondent's 1st Affidavit at para 14.

40 Respondent's 1st Affidavit at para 14.

The parties' cases

27 I set out the broad strokes of the parties' cases, to be elaborated at the relevant junctures.

The Applicant's case

28 First, the Applicant submitted that it is not required to show special circumstances under s 78(3) of the IRDA for the court to order the Respondent to account for any amount of paid remuneration in excess of that fixed ("excess paid remuneration"). This is because OA 633 was filed before the Applicant made payment of the Respondent's fees.[41] In the alternative, if special circumstances must be shown, these are present: (a) the Applicant could not jeopardise the redemption of the Mortgaged Properties by querying or disputing the Respondent's fees reflected in the Redemption Statement; (b) no breakdown of the Respondent's fees was provided at the time of payment; and (c) the Respondent's fees are *prima facie* excessive, given that his tenure of receivership and management was only 53 working days.[42]

29 Second, the Applicant argued that the burden of proof is on the Respondent to satisfy the court that his remuneration is justified.[43]

30 Third, the Applicant contended that the Respondent's fees are manifestly excessive and unreasonable because: (a) the receivership was not complex. The Respondent did not operate Link Hotel and undertook standard, straightforward and/or administrative tasks in a receivership. There was no need

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41 AWS at paras 27 to 29.

42 AWS at paras 28 and 30.

43 AWS at para 35(a).

to staff the matter with ten people;[44] (b) the hourly rates for the Respondent and his team were arbitrary and/or excessive;[45] and (c) numerous work items were administrative, secretarial or legal in nature for which no or reduced costs should be allowed.[46] The Applicant submitted that, disallowing costs for administrative, secretarial or legal work, a figure of $388,287.25 should be deducted from the Respondent's fees.[47] This leaves $969,855.25, to which an overall 75% discount should be applied, resulting in a proposed final amount of $242,463.82.[48] In the alternative, the Applicant proposed specific substitute amounts of fees to be awarded for the work items described in the FTI Spreadsheet in lieu of the amounts charged by the Respondent, which total $287,000.[49] The Applicant submitted that, on either approach, the proposed quantum is in line with cited precedent cases involving far greater complexity than the present case.[50]

The Respondent's case

31 The Respondent raised four preliminary objections. First, the Applicant's Affidavit should be disregarded by the court as the deponent, Mr He, was allegedly not authorised to make the affidavit on behalf of the Applicant.[51] Second, the Applicant failed to comply with the requirements of

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44 AWS at paras 37 to 40 and 48(a).

45 AWS at paras 41 to 45.

46 AWS at para 46.

47 AWS at para 46.

48 AWS at para 48.

49 AWS at para 49 and Annex C.

50 AWS at para 50.

51 RWS at paras 23 to 27.

the Rules of Court 2021 ("ROC 2021") for service of the Originating Application and supporting affidavit.[52] Third, OA 633 was filed by the Applicant "maliciously and in bad faith".[53] Fourth, the Applicant is estopped from taking issue with the Respondent's fees "at this belated juncture".[54]

32 Next, the Respondent submitted that the Applicant is required to show special circumstances under s 78(3) of the IRDA before the court may order him to account for any excess paid remuneration.[55] The "special circumstances" requirement means that there must be "some compelling and exceptional reasons" for the court to exercise its power.[56] The requirement is to ensure that a receiver / manager is treated fairly and equitably as an applicant is asking the court to order the receiver / manager to account for fees which have already been paid to the receiver / manager.[57] The Applicant has not shown any special circumstances save for bare and unsubstantiated assertions that the Respondent's fees are excessive.[58]

33 The Respondent also argued that the burden is not on him to justify his fees since he was neither a court-appointed receiver / manager nor the applicant in the present case.[59]

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52 RWS at para 19.

53 RWS at paras 7 to 22.

54 RWS at paras 35 to 39.

55 RWS at para 30.

56 RWS at para 31.

57 RWS at para 32.

58 RWS at paras 33 and 40.

59 NOA for 1st OA 633 hearing at p 14 lines 28 to 30 and p 15 lines 2 to 14.

34 Finally, the Respondent submitted that his fees were "fair, reasonable and proportionate" to the work carried out given the complexity of the receivership.[60] The Respondent explained that $1,358,142.50 was incurred based on 1,881.20 hours spent by a ten-person team from FTI (including himself).[61] He provided the FTI Spreadsheet showing a breakdown of work items and time spent by each person. The date "03-Jun-23" stated at the bottom of the spreadsheet is a typographical error and should read 3 August 2023 instead.[62] A copy of the FTI Spreadsheet, with edits made by me in red font to (a) anonymise the names of the Respondent's team members and (b) insert row numbers for ease of reference, is placed in an annex ("Annex") to this judgment.

35 A summary table reflecting the ten persons' respective designations, years of experience, hourly charge-out rates, time spent,[63] and fees billed by dollar amount[64] and as a percentage of the total fees is set out below:

Personnel, designation and years of experience	Hourly charge-out rate	Hours spent	% of total time spent	Fees billed	% of total fees billed
1) Respondent, Senior Managing Director, 25 years	$1,400	330.00	17.54%	$462,000	34.01%

60 RWS at para 41.

61 Respondent's 1st Affidavit at para 38.

62 NOA for 1st OA 633 hearing at p 21 lines 30 to 32.

63 Respondent's 1st Affidavit at para 38.

64 Annex, row 72.

Personnel, designation and years of experience	Hourly charge-out rate	Hours spent	% of total time spent	Fees billed	% of total fees billed
2) Ms [A], Managing Director, 17 years	$1,050	119.00	6.32%	$124,950	9.2%
3) Ms [B], Senior Director, 11 years	$975	272.70	14.5%	$265,882.50	19.58%
4) Ms [C], Director, 8 years	$850	124.30	6.61%	$105,655	7.78%
5) Ms [D], Director, 6 years	$550	10.30	0.55%	$5,665	0.42%
6) Mr [E], Senior Consultant I, 4 years	$480	408.70	21.73%	$88,608	6.52%
7) Mr [F], Senior Consultant I, 4 years				$107,568	7.92%
8) Mr [G], Consultant II, 3 years	$350	417.80	22.2%	$54,600	4.02%
9) Ms [H], Consultant II, 4 years				$91,630	6.75%
10) Ms [I], Consultant I, 4 years	$260	198.40	10.55%	$51,584	3.8%
Total	**-**	**1,881.20**	**100%**	**$1,358,142.50**	**100%**

36 As observed by the Respondent, 45% of the total time spent on the matter was spent by the more senior members of the team (Director-level and above) and 55% of the total time was spent by the more junior members.[65] According to the Respondent, the time was spent across four categories of work:

(a) "Administrative and Planning": 205.30 hours (10.91%);

(b) "Legal matters": 80.20 hours (4.26%);

(c) "Realisation of Assets": 1,572.20 hours (83.58%); and

(d) "Trading – Employee Issues": 23.50 hours (1.25%).[66]

Issues to be determined

37 The preliminary issues for determination are:

(a) whether the Applicant's Affidavit should be disregarded;

(b) whether the Applicant breached procedural rules for service of the Originating Application and the Applicant's Affidavit;

(c) whether OA 633 was brought maliciously or in bad faith; and

(d) whether the Applicant is estopped from bringing OA 633.

38 Assuming OA 633 should not be dismissed on any of the above grounds, the further issues for determination are:

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65 Respondent's 1st Affidavit at para 39.

66 Respondent's 1st Affidavit at para 38; RWS at para 44.

(a) whether s 78(1)(*a*) of the IRDA applies to the Respondent's fees billed under the FTI Invoice; and if so,

(b) whether special circumstances under s 78(3) of the IRDA must be shown for the court to order the Respondent to account for any excess paid remuneration; and if so,

(c) whether special circumstances under s 78(3) of the IRDA are present; and if so,

(d) turning to the fixing of the Respondent's remuneration:

(i) whether the Respondent bears the burden of justifying his fees; and

(ii) how the Respondent's remuneration should be fixed.

Whether the Applicant's Affidavit should be disregarded

The Respondent's arguments

39 The Respondent submitted that the court should disregard the Applicant's Affidavit as Mr He lacked authority to depose to it on the Applicant's behalf. Mr He was not a director, shareholder or employee of the Applicant. He was a director of Silverine, the Applicant's sole shareholder. Without express authorisation from the Applicant's board, he had no legal standing to make representations on the Applicant's behalf. Mr He has not exhibited documents to show that he was authorised, nor explained why he and not the Applicant's directors was deposing to the affidavit.[67]

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67 RWS at paras 23 to 27.

The Applicant's arguments

40 In response, the Applicant pointed out that Mr He stated in the Applicant's Affidavit that he was authorised to depose to the affidavit on the Applicant's behalf.[68] The Respondent has not referred to any legal requirement that every witness who deposes to an affidavit on behalf of a company must exhibit an authorisation.[69] Rule 18(2) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 ("CIR Rules"), which apply to OA 633, states that an affidavit may be sworn by a person "possessing direct knowledge of the subject matter of the application".[70] As a director of the Applicant's sole shareholder, Mr He possessed direct knowledge of the subject matter of the application and was in a position to depose to the affidavit.[71] The Respondent himself exhibited numerous emails on which Mr He was copied in the course of the Respondent's receivership. This shows that the Respondent and DBS accept that Mr He has the requisite authority to act on the Applicant's behalf.[72]

Decision

41 I find no reason to disregard the Applicant's Affidavit. The Applicant is not confined to having only its directors depose to its affidavit. I am not persuaded by the Respondent's insinuations of Mr He's lack of authority. First, as a director of the Applicant's sole shareholder, Mr He's ties to the Applicant are close enough not to engender disbelief that the Applicant authorised him to

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68 AWS at para 10; Applicant's Affidavit at para 1.

69 AWS at para 12.

70 AWS at para 12.

71 AWS at para 13.

72 AWS at para 14.

file its affidavit. Second, Mr He was involved in the contemporaneous email correspondence on the redemption exercise,[73] suggesting that he had direct knowledge of the subject matter of OA 633 and that he was authorised to depose the Applicant's Affidavit. Third, Mr He affirmed that he was authorised to depose to the affidavit on the Applicant's behalf and DR was obviously satisfied to proceed with its conduct of OA 633 on this basis. In the absence of the Respondent establishing a *prima facie* case that Mr He lacked authorisation to depose the Applicant's Affidavit, the Applicant and Mr He are not obliged to explain the choice of deponent or exhibit proof of Mr He's authorisation.

Whether the Applicant breached the rules for service of documents

The Respondent's arguments

42 The Originating Application and the Applicant's Affidavit were served on the Respondent on 31 July 2023, 38 days after OA 633 was filed on 23 June 2023. The Respondent submitted that this contravened O 6 r 11(4) of the ROC 2021 which provides that reasonable steps to serve an originating application and the supporting affidavit on a defendant must be made as soon as possible and in any event within 14 days after the originating application is issued.[74] The Respondent averred that the court has the power to dismiss OA 633 given "the Applicant's blatant disregard of the Rules of Court 2021".[75]

43 In oral submissions, the Respondent's counsel further argued that the ROC 2021 (and not the CIR Rules) applied to OA 633 as: (a) the Originating

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73 Respondent's 1st Affidavit at exh "WPCM-3".

74 RWS at para 19.

75 Respondent's 1st Affidavit at para 33.

Application was "in the [Rules of Court] format" and contained a statement that the affidavit in reply was to be filed within 21 days of service of the Applicant's supporting affidavit, which is the timeline under O 6 r 12(1) of the ROC 2021; and (b) a case conference, which is "a creature of" the Rules of Court, would otherwise not have been scheduled.[76] In any event, under r 14 of the CIR Rules, the Applicant should have served the Originating Application by 4 July 2023.[77]

The Applicant's arguments

44 The Applicant submitted that the Respondent's reliance on the ROC 2021 is misconceived because the CIR Rules apply to OA 633. OA 633 is commenced under Part 6, and specifically, s 78(1)(*a*), of the IRDA. Paragraph 1 of the table at O 1 r 2(11) of the ROC 2021 makes clear that the ROC 2021 does not generally apply to proceedings under the IRDA. Instead, under s 448 of the IRDA, the Rules Committee appointed under s 80(3) of the Supreme Court of Judicature Act 1969 may make Rules of Court to regulate and prescribe proceedings and the practice and procedure of the court under the IRDA. The enacting formula of the CIR Rules states that the Rules Committee has made the CIR Rules in exercise of the powers conferred by s 448 of the IRDA.[78]

45 Given that the CIR Rules apply, the applicable provisions are:

(a) Rule 14, which provides that, unless the court gives permission to the contrary, an application must be served on every person affected

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76 NOA for 1st OA 633 hearing at p 12 line 29 to p 13 line 7.

77 NOA for 1st OA 633 hearing at p 12 lines 11 to 13 and p 13 lines 16 to 17.

78 AWS at paras 18(a) to 18(b).

by the application not less than seven days before the date of the hearing of the application; and

(b) Rule 19, which provides that a party who intends to rely on affidavit evidence at the hearing of the application must file and serve their affidavit at least five days before the date fixed for the hearing.[79]

46 The Applicant duly served the Originating Application and the Applicant's Affidavit within the time prescribed by the CIR Rules and as directed by the court on 24 July 2023 (see [25] above).[80]

Decision

47 In my judgment, the Applicant has not failed to comply with the relevant procedural rules for service. I agree with the Applicant, for the reasons it provided, that the CIR Rules apply to OA 633. I add that r 3 of the CIR Rules states that the CIR Rules apply to the proceedings, practice and procedure of the General Division of the High Court under Parts 3 to 12 and 22 of the IRDA and matters incidental or relating thereto. This includes OA 633, which is made under s 78(1)(*a*) in Part 6 of the IRDA. The CIR Rules do not provide for a particular originating application form to be used. There is thus nothing untoward in the Applicant's use of the form provided in the Supreme Court Practice Directions 2021 for originating applications, referred to in O 6 r 11(2) of the ROC 2021. It is not logical for the Respondent to reason backwards from this and surmise that the ROC 2021 applies to the exclusion of the CIR Rules. The Respondent's submission that case conferences are convened only for

79 AWS at para 18(c).

80 AWS at para 19.

matters to which the Rules of Court apply is unsupported by authority and does not reflect practice. In sum, service of the Originating Application and the Applicant's Affidavit is governed by rr 14 and 19 of the CIR Rules respectively.

48 The Applicant did not breach r 14 of the CIR Rules. Rule 14 states:

> Unless the Court gives permission to the contrary or otherwise provided in Parts 3 to 12 or Part 22 of the Act or these Rules, an application must be served on every person affected by the application not less than 7 days before the date of *the hearing of the application*.
>
> [emphasis added in italics]

49 When the sealed copy of the Originating Application was returned by the court, it indicated "Hearing Date: 11-July-2023", "Hearing Type: Case Conference (OA)" and "Attend Before: Registrar". The Respondent's submission that, under r 14 of the CIR Rules, the Applicant should have served the Originating Application by 4 July 2023 appears premised on interpreting the phrase "the hearing of the application" in r 14 as referring to (or at least including) a case conference in the matter.

50 In my view, having regard to the text, context and purpose of r 14 of the CIR Rules, the phrase "the hearing of the application" means the substantive or merits hearing of the application and not a case conference. The ordinary meaning of "the hearing of the application" is a hearing where the application is substantively heard, *ie*, on the merits. An application is not substantively heard at a case conference, and it would not be meaningful to say that there is a "hearing" "of the application" at a case conference. Further support for this interpretation is found in the related r 19 of the CIR Rules, which provides:

> Unless the provisions of Parts 3 to 12 or Part 22 of the Act, these Rules or the regulations under which an application is made provide otherwise, or the Court otherwise allows, a party

> to an application who intends ***to rely on affidavit evidence*** *at* ***the hearing of the application*** must do both of the following at least 5 days before the date fixed for the hearing:
>
> (*a*) file the party's affidavit or affidavits (if more than one) in Court;
>
> (*b*) serve a copy of the party's affidavit or of each of the party's affidavits (if more than one) on every other party to the application and any other person who may appear and be heard.
>
> [emphasis added in italics and bold italics]

51 As a case conference is not a substantive hearing of the application, it is not usual to say that parties "rely on affidavit evidence" at a case conference. The phrase "the hearing of the application" in r 19 must therefore mean the substantive or merits hearing of the application, at which affidavit evidence will be relied on. Given that r 14 pertains to service of the application and r 19 pertains to filing and service of affidavits for the application, the phrase "the hearing of the application" must be given the same meaning in both provisions.

52 Further, in my view, the purpose of both provisions is to ensure fairness to affected persons by providing them with notice of the application and supporting affidavit(s) before the court is addressed on the substance and merits of the application. The interpretation of "the hearing of the application" as referring to the substantive or merits hearing of the application promotes this purpose. There is no concern that unfairness may result if longer timelines than those stipulated under rr 14 and 19 are required in certain instances because the court has power under both rules to adjust the timelines.

53 Thus, the Applicant was not required to serve the Originating Application or the Applicant's Affidavit prior to the case conference originally fixed for 11 July 2023. When the court directed on 24 July 2023 that service be

effected by 31 July 2023 (before the substantive hearing of OA 633 was even fixed), the Applicant duly complied (see [25]–[26] above). The Applicant therefore did not breach r 14 (or r 19) of the CIR Rules.

54 Even if I am wrong on the interpretation of r 14 of the CIR Rules and the Applicant was required to serve the Originating Application on the Respondent by 4 July 2023, the Applicant's non-compliance with that timeline would not invalidate OA 633. Under s 264(2) of the IRDA, a proceeding under Parts 4 to 11 of the IRDA is not invalidated by reason of any procedural irregularity (which includes, under s 264(1)(*b*), a defect, irregularity or deficiency of notice or time) unless the court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the court and by order declares the proceeding to be invalid. Here, the Respondent was not prejudiced by the Originating Application and the Applicant's Affidavit being served on him on 31 July 2023. He had ample time to file his reply affidavit on 21 August 2023, with the first hearing of OA 633 taking place on 24 October 2023. There was no substantial injustice caused to the Respondent and no reason to declare OA 633 invalid.

Whether the Applicant brought OA 633 maliciously or in bad faith

The Respondent's arguments

55 The Respondent submitted that the Applicant had filed OA 633 "maliciously and in bad faith". First, prior to serving OA 633 on the Respondent on 31 July 2023, the Applicant did not raise any issues with the Respondent's fees.[81] There was no indication or any reservation of rights by the Applicant that

[81] RWS at para 11.

it was not agreeable to make payment of the Respondent's fees or that it was making payment under protest.[82] On 24 June 2023, one day after OA 633 had been filed, Mr He sent an email to all parties involved in the redemption, including the Respondent, stating: "On behalf of Link Holdings I'd like to take this opportunity to thank all for the hard work to make this happen under such a tight timetable. Much appreciated!" ("Mr He's 24 June 2023 Email").[83]

56 Second, the Applicant never had any intention to amicably resolve issues over the Respondent's fees. The Applicant had decided, from the outset, that the Respondent's fees were excessive after receiving the Redemption Statement on 20 June 2023 and was content to file OA 633 on 23 June 2023 without even asking for a breakdown of the time and costs incurred by FTI.[84] DR's statement to the court in its Request of 10 July 2023 – that the Applicant had not served OA 633 on the Respondent as the Applicant was liaising with the Respondent on the issue of the Respondent's fees with a view to resolving the issues in OA 633 amicably (see [21] above) – was a "blatant lie". The Applicant had not liaised with the Respondent at any time on the issue of the Respondent's fees with a view to resolving the issues in OA 633 amicably.[85] SLB did not receive any response from DR after the Respondent provided a breakdown of the FTI Invoice; nor did DR inform SLB that the Applicant had found the breakdown unsatisfactory.[86] The Applicant did not inform the Respondent of the court's

82 RWS at para 12.

83 RWS at para 13; Respondent's 1st Affidavit at p 98.

84 RWS at para 21.

85 RWS at paras 9 to 11.

86 RWS at para 18.

direction of 10 July 2023 that the Applicant was to update the court by 24 July 2023 on whether the matter had been resolved amicably (see [22] above).[87]

The Applicant's arguments

57 The Applicant's explanation of its thought process and conduct in filing OA 633 and making payment of the Respondent's fees is set out in [13] and [17] above. The Applicant further rejected the allegation that a "blatant lie" was conveyed in DR's 10 July 2023 Request filed in court. DR sent its letter dated 10 July 2023 to SLB requesting for the breakdown of FTI's Invoice at 1.35 pm, before filing its Request at 3.26 pm (see [20]–[21] above). The Applicant acted through DR in requesting for the breakdown.[88] DR's letter to SLB states that the breakdown was requested to enable the Applicant to judge the reasonableness of the charges in the FTI Invoice. This shows that the Applicant did not think that the fees were reasonable.[89] Nonetheless, had the breakdown shown that the fees were, in fact, reasonable, the matter would have been resolved and the Applicant would not have continued with OA 633.[90]

Decision

58 I find that the Respondent has not established that the Applicant brought OA 633 maliciously or in bad faith. First, I accept that the Applicant has given an honest account of its rationale and motivations for filing OA 633 and paying the Respondent's fees without giving any notice to the Respondent that the Applicant would challenge his fees – in short, that the Applicant felt compelled

87 RWS at para 15.

88 AWS at paras 20 to 21(b).

89 AWS at para 21(c).

90 AWS at para 21(c).

to make full payment and not question the fees at that stage for fear of jeopardising the redemption of the Mortgaged Properties. That being so, the Applicant's conduct in the lead-up to filing OA 633 and paying the Respondent's fees did not stem from malice or bad faith. It also cannot be said that Mr He's 24 June 2023 Email strung the Respondent along in any way. Mr He's 24 June 2023 Email was sent in response to a lawyer's email of 23 June 2023 confirming, among others, that completion of the redemption would take place on 26 June 2023 at an agreed venue.[91] Read in its proper context, Mr He was expressing appreciation for the work done in ensuring that the *redemption* would take place within a tight timeframe (from DR's service of the Notice of Redemption on 15 June 2023) and not any sentiment towards the Respondent's work as Receiver and R&M. Mr He's 24 June 2023 Email simply did not indicate that the Applicant had no issues with the Respondent's fees.

59 Second, although the remark in DR's 10 July 2023 Request that "the Applicant is liaising with the Respondent on the issue of the Respondent's professional fees with a view to resolving the issues in [OA 633] amicably" may have conveyed the impression of ongoing discussions between the parties, the remark was, strictly, accurate since (a) a precursor to considering an amicable resolution entailed the Applicant considering the reasonableness of the Respondent's fees in light of the breakdown of the FTI Invoice to be provided, and (b) DR had liaised with SLB on obtaining the breakdown prior to filing its Request. On balance, I do not consider the remark an untruth, much less a "blatant lie". I also accept that the Applicant formed the view that the matter could not be resolved after the breakdown of the FTI Invoice, in their view,

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[91] Respondent's 1st Affidavit at p 98.

failed to demonstrate that the Respondent's fees were reasonable.[92] While the Applicant has not explained its non-compliance with the court's direction of 10 July 2023, this might be due to the Applicant's view, after receiving the breakdown on 13 July 2023, that it would proceed with OA 633. I do not suggest that this excuses non-compliance with a court direction. However, in respect of the present analysis, the short point is that these matters do not evidence that the Applicant brought OA 633 maliciously or in bad faith.

Whether the Applicant is estopped from bringing OA 633

The Respondent's arguments

60 The Respondent's written submissions on estoppel comprise a mere three paragraphs.[93] In the first paragraph, the Respondent reproduced quotes from *Tan Yong San v Neo Kok Eng and others* [2011] SGHC 30 at [112] (which cited from *Genelabs Diagnostics Pte Ltd v Institut Pasteur* [2000] 3 SLR(R) 530 at [76]) and [114] on what the term "acquiescence" means.[94] In the next paragraph, the Respondent submitted that "[c]onsequently … the Applicant is estopped from taking issue with the Respondent's professional fees at this belated juncture", citing: (a) the contents of Mr He's 24 June 2023 Email; (b) the Applicant not raising any issues with the Respondent's fees prior to the completion of redemption on 26 June 2023; (c) the Applicant not informing DBS or the Respondent that it had already filed OA 633 on 23 June 2023; and (d) the Applicant making full payment of the amounts stated in the Redemption Statement, including the FTI Invoice, on

92 AWS at para 21(c).

93 RWS at paras 37 to 39.

94 RWS at para 37.

completion on 26 June 2023 "unconditionally without any protest or reservation of its rights". This payment was made by the Applicant in exchange for DBS' discharge of the Mortgages and the Debenture.[95] In the third and last paragraph of its submissions on this point, the Respondent concluded that the Applicant is estopped from objecting to the Respondent's fees "bearing in mind that DBS had discharged the Mortgages and the Debenture in exchange for the Respondent's payment of the Redemption Sum, which included FTI's professional fees, on completion".[96]

Decision

61 I find that the Respondent has not established his case on estoppel. The Respondent did not, in his written or oral submissions, explain the nature of the estoppel relied on, much less demonstrate how, in law, the specific elements of that estoppel are established. It is necessary for the Respondent to do so. While acquiescence may found an estoppel, it still behoves the Respondent to identify the estoppel on which he relies.

62 For example, if the Respondent was asserting that an equitable or promissory estoppel had arisen, he was required to establish an unequivocal representation by the Applicant that it would not insist on its legal rights against him, and that he had relied on that representation: *Salaya Kalairani (legal representative of the estate of Tey Siew Choon, deceased) and another v Appangam Govindhasamy (legal representative of the estate of T Govindasamy, deceased) and others and another appeal* [2023] SGHC(A) 40 at [59] and [65].

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95 RWS at para 38.

96 RWS at para 39.

63 In my judgment, no equitable or promissory estoppel arises. I have explained at [58] above that Mr He's 24 June 2023 Email did not indicate that the Applicant had no issues with the Respondent's fees. I disagree that, by paying the full redemption sum on 26 June 2023 without raising any issues with the Respondent's fees or reserving its rights, the Applicant *unequivocally* represented that it would not dispute the Respondent's fees. The Applicant did not close off the possibility that it would seek to have the Respondent's remuneration *retrospectively* fixed by the court (under s 78(1)(*a*) read with s 78(2)(*a*) of the IRDA) and to have the Respondent account for excess *paid* remuneration (under s 78(2)(*c*) read with s 78(3) of the IRDA). Further, the Respondent has not established the requirement of reliance. The Respondent did not aver (much less demonstrate) that it issued, maintained or collected on the FTI Invoice only in reliance on the Applicant's lack of prior objection to the Respondent's fees.

64 If the Respondent was relying on estoppel by acquiescence, the requirements are stated in *Halsbury's Laws of Singapore* vol 10 (LexisNexis, 2006 Reissue) at para 120.203 as being:

> a mistaken belief in the party for whose benefit the estoppel will operate that he had, or had acquired, *rights* against the other party which he exercised in a manner contradictory to the rights in fact of the other party, where the latter, knowing his rights and the contrary assertion of those rights by the mistaken party, expended no effort to disabuse him of his mistaken belief, so that the latter can be said to have encouraged the mistaken party in the mistake or to have acquiesced in the mistaken enjoyment and assumption of rights *to his detriment*.
>
> [emphasis added]

65 However, the Respondent has not identified, among others, what "rights" he mistakenly believed he had acquired against the Applicant or how

any such mistaken enjoyment and assumption of rights had been to his detriment. That the Applicant obtained consideration for its payment of the redemption sum (which included the Respondent's fees) in the form of DBS discharging the Mortgages and Debenture does not translate to a detriment suffered *by the Respondent*.

66 Having dismissed the Respondent's preliminary objections to OA 633, I turn now to the substantive issues engaged in this application.

Whether s 78(1)(*a*) of the IRDA applies to the fees in the FTI Invoice

67 Pursuant to s 78(1)(*a*) of the IRDA, the court may, on the application of a company, by order fix the amount to be paid by way of remuneration to any person who has been appointed as receiver or manager of the property of the company. Section 78(2)(*a*) extends this power to retrospectively fixing the remuneration for any period before the making of or the application for the order. Section 73(1)(*a*) provides that Part 6 of the IRDA (in which s 78 falls) applies to every person who is appointed as receiver or manager of the property of a company. It is undisputed, and rightly so, that s 78(1)(*a*) of the IRDA applies to privately-appointed receivers and managers.

68 In the present case, the parties also assumed that s 78(1)(*a*) of the IRDA applies in relation to both the Respondent's appointments as Receiver of the Mortgaged Properties and R&M of the Charged Property. In this regard, however, the parties did not consider the anterior issue of whether s 78(1)(*a*) of the IRDA would apply in relation to the Respondent's remuneration as Receiver of the Mortgaged Properties when his appointment as such was made by DBS pursuant to the statutory power conferred by ss 24(1) and 29(1) of the Conveyancing and Law of Property Act 1886 ("CLPA").

69 Sections 24(1) and 29(1) of the CLPA confer on mortgagees a statutory power to appoint a receiver of the income of mortgaged property. Where a receiver has been appointed pursuant to such statutory power, s 29(6) pertaining to the receiver's remuneration applies. Section 29(6) of the CLPA states:

> The receiver out of any money received by him may retain for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate, not exceeding 5% on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of 5% on that gross amount.

70 In *Vedalease Ltd v Averti Developments Ltd and another* [2007] 2 EGLR 125 ("*Vedalease*") at [99]–[100], the court held that where a receiver was appointed under the statutory power conferred by the Law of Property Act 1925 (c 20) (UK) ("1925 Act"), only the statutory remuneration under s 109(6) of the 1925 Act (which is reproduced in *Vedalease* at [85] and is materially similar to s 29(6) of the CLPA) could be imposed:

> [99] … *there is nothing to suggest that section 109(6) is intended to be only part of the remuneration of a receiver appointed solely under the statute, and plenty to suggest that it was the totality.* A receiver appointed solely under the statute would know and accept that it did the job on that basis; otherwise, it would not accept the appointment. …
>
> [100] … the basis of any obligation on the mortgagor to defray a receiver's costs, charges and expenses lies in the contract by which the mortgagor authorises the mortgagee to appoint a receiver, that is, to make a contract with the receiver that the mortgagor accepts will bind the mortgagor to pay those costs, charges and expenses. *Where there is no such express authorisation to the mortgagee because only the statutory power to appoint a receiver is included, it is only, in my judgment, the statutory rate of remuneration that can be imposed on the assets that are otherwise the subject of a mortgagor's equity of redemption.* …
>
> [emphasis added]

71 In my view, where a mortgagee appoints a receiver pursuant to the statutory power under ss 24(1) and 29(1) of the CLPA, the provision in s 29(6) of the CLPA for the receiver's remuneration applies, and there is no room for the court to separately fix such remuneration (including under s 78(1)(*a*) of the IRDA) independent of what s 29(6) of the CLPA provides.

The Respondent's appointment as Receiver of the Mortgaged Properties

72 In the present case, I find that the Respondent was appointed as Receiver of the Mortgaged Properties pursuant to ss 24(1) and 29(1) of the CLPA:

(a) The terms of the Mortgages do not confer any power on DBS to appoint a receiver. Instead cl 10(1) of the Mortgages refers to DBS appointing a receiver "in the exercise of its statutory power",[97] which must mean the power under ss 24(1) and 29(1) of the CLPA.

(b) Recital 3 of the DOA (Mortgage) cites s 24(1) of the CLPA; Recital 5 cites s 29(1) of the CLPA; and Recital 8 concludes that the power of appointing a receiver conferred by s 24 of the CLPA has become exercisable by DBS and DBS wishes to appoint the Respondent to act as Receiver of the Mortgaged Properties.[98] Clause 1 then states:

> [DBS] *pursuant to the powers* and provisions contained in the Mortgages or *conferred upon it by statute* or by law or otherwise *hereby appoints [the Respondent] to act as the Receiver of the Mortgaged Properties* upon the terms and subject to the powers and provisions contained in the Mortgages.[99]
>
> [emphasis added]

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97 Respondent's 3rd Affidavit at pp 8 and 27.

98 Respondent's 1st Affidavit at pp 51 and 52.

99 Respondent's 1st Affidavit at p 52.

> While cl 1 is framed widely and mentions provisions in the Mortgages, there are no provisions in the Mortgages containing a power of appointment of a receiver. The relevant power of appointment referred to in cl 1 must be that under ss 24(1) and 29(1) of the CLPA.

73 The Mortgages and the DOA (Mortgage) are also silent on the remuneration of an appointed receiver. In these circumstances, s 29(6) of the CLPA applies. I therefore find that there is no basis for the court to fix the remuneration of the Respondent *qua* Receiver of the Mortgaged Properties under s 78(1)(*a*) of the IRDA.

The Respondent's appointment as R&M of the Charged Property

74 However, the court may fix the Respondent's remuneration *qua* R&M of the Charged Property under s 78(1)(*a*) of the IRDA since his appointment as such was made by DBS pursuant to its right of appointment under cl 12(A) of the Debenture.[100] Recitals 3 and 7 of the DOA (Debenture) also refer to the power conferred by the terms of the Debenture on DBS to appoint a receiver and manager of the Charged Property.[101] Further and pertinently, cl 12(G) of the Debenture provides for the appointed receiver's remuneration to be agreed between DBS and the receiver.[102]

The singular FTI Invoice

75 The question then arises whether it would be apposite to fix the Respondent's remuneration as R&M of the Charged Property having regard to

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100 Respondent's 2nd Affidavit at p 95.

101 Respondent's 1st Affidavit at pp 55 and 56.

102 Respondent's 2nd Affidavit at p 100.

the FTI Invoice since it is a singular invoice that does not split up work done by the Respondent *qua* Receiver of the Mortgaged Properties and *qua* R&M of the Charged Property. On balance, I find that there is no impediment to doing so.

76 First, in my view, all of the work performed by the Respondent would have fallen under the scope of his role as R&M, which is arguably wider than that of his role as Receiver. Historically, "receivers" were confined to collecting and securing rents, income and profits, whereas "managers" were empowered to also buy, sell and manage the business as a going concern: *Kao Chai-Chau Linda v Fong Wai Lyn Carolyn and others* [2016] 1 SLR 21 ("*Linda Kao*") at [19]. Although this distinction is not often drawn today (*Linda Kao* at [19]), it coheres with the narrower powers of the Receiver under the Mortgages as compared to those of the R&M under the Debenture. For example, cl 12(D)(3) of the Debenture expressly confers power on the R&M to sell the Charged Property (of which the Mortgaged Properties are a subset), whereas cl 10(1) of the Mortgages is silent regarding any power of sale on the part of the Receiver.[103]

77 Second, in all likelihood, the Respondent did not differentiate in his mind which role he was playing (or he considered that he was playing both roles) when carrying out his tasks. This is evident from how the Respondent held himself out as undertaking his main task of organising the tender sale of 50 and 51 Tiong Bahru Road and the Link Bridge in *both* his capacities as R&M and Receiver. For example, an email from the Respondent's team member to an interested party dated 21 April 2023 states:[104]

> For your information, Mr Wong Pheng Cheong Martin of FTI Consulting (Singapore) Pte Ltd (the "Receiver and Manager") has

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103 Respondent's 2nd Affidavit at p 97; Respondent's 3rd Affidavit at pp 8 and 27 to 28.

104 Respondent's 2nd Affidavit pp 4055 to 4056.

> on 11 April 2023 been *appointed by DBS Bank Limited as Receiver and Manager* pursuant to the legal mortgages and the Debenture dated 30 September 2005 consisting of a first fixed and floating charge over all property and assets of [the Applicant], including and not limited to the mortgaged properties as follows:
>
> - 50 Tiong Bahru Road, Singapore 158794
> - 51 Tiong Bahru Road, Singapore 158795
> - Link Bridge connecting 50 Tiong Bahru Road and 51 Tiong Bahru Road
>
> …
>
> As part of the [Expression of Interest] process, *the Receiver and Manager* wishes to highlight some of the main terms on which the potential sale of the Property will proceed: …
>
> [emphasis added]

78 The Information Memorandum dated 26 May 2023 for the proposed sale of 50 and 51 Tiong Bahru Road and the Link Bridge ("IM"), prepared by the Respondent's team, states:[105]

> - Mr Wong Pheng Cheong Martin of FTI Consulting (Singapore) Pte Ltd, has on 11 April 2023 been *appointed by DBS Bank Limited as Receiver and Manager* pursuant to the legal mortgages and the Debenture dated 30 September 2005 consisting of a first fixed and floating charge over all property and assets of [the Applicant], including and not limited to the mortgaged properties as follows:
>
> - 50 Tiong Bahru Road, Singapore 158794
> - 51 Tiong Bahru Road, Singapore 158795
> - Link Bridge connecting 50 Tiong Bahru Road and 51 Tiong Bahru Road
>
> …
>
> - … *The Receiver and Manager* shall not be personally liable whatsoever in respect of any information or any matter in connection with this IM and will not be able to facilitate any

105 Respondent's 2nd Affidavit at p 3059.

> due diligence on any historical or future financial performance of the Property.
>
> [emphasis added]

79 Third, it is obvious that the Respondent has not charged the fees in the FTI Invoice based on s 29(6) of the CLPA, but rather, based on the terms of the Debenture, for the entirety of the work undertaken. There is no evidence of what, if any, money he received as Receiver, much less that he billed based on the rate of 5% of the gross amount of all money received (as stipulated in s 29(6) of the CLPA).

80 I will therefore proceed to consider only the part of the Applicant's OA 633 application pertaining to the remuneration of the Respondent as R&M of the Charged Property, but with reference to the entirety of the professional fees charged in the FTI Invoice.

Whether special circumstances under s 78(3) of the IRDA must be shown

81 To frame the discussion that follows, I first set out the relevant provisions in s 78 of the IRDA:

> **Power of Court to fix remuneration of receivers or managers**
>
> **78.** —(1) The Court may, on application of —
>
> (*a*) a company or corporation;
>
> (*b*) the liquidator of a company or a corporation; or
>
> (*c*) the person who appointed the receiver or manager,
>
> by order fix the amount to be paid by way of remuneration to any person who has been appointed as receiver or manager of the property of the company or of the property in Singapore of the corporation.
>
> (2) The power of the Court, where no previous order has been made with respect to that matter —

> (*a*) extends to *fixing the remuneration* ***for any period before the making of the order or the application*** *for the order*;
>
> …
>
> (*c*) where the receiver or manager *has been paid, or has retained for the remuneration* of the receiver or manager, ***for any period before the making of the order***, *any amount in excess of that* ***fixed for that period*** — extends to requiring the receiver or manager, or the personal representatives of the receiver or manager, *to account for the excess* or such part of the excess as may be specified in the order.
>
> (3) *The power conferred by subsection (2)(c) must not be exercised* ***in respect of any period before the making of the application*** *for the order*, unless in the opinion of the Court there are *special circumstances* making it proper for the power to be so exercised.
>
> [emphasis added in italics, bold italics and underlined italics]

82 The parties join issue on whether, the Applicant having paid the FTI Invoice, the court must find that there are "special circumstances" under s 78(3) of the IRDA before it may order the Respondent to account for any amount of paid remuneration in excess of that which the court may fix, *ie*, to account for excess paid remuneration. Parties' submissions on this issue were brief.

The Applicant's arguments

83 The Applicant's position was that so long as *the filing of the s 78(1) application preceded payment*, "special circumstances" *need not* be shown for the court to order the receiver / manager to account for any excess paid remuneration. The Applicant's written submissions state:

> Based on a literal reading of sections 78(2)(c) and 78(3) of the IRDA, it is clear that (a) the court does have the power to order the Respondent to account for any excess remuneration paid to the Respondent and (b) [the Applicant] does not need to show any special circumstances for the court to exercise its power unless payment had been made *before* the making of the

> application for the order. In other words, [the Applicant] will need to show special circumstances only *if* the application was made after the remuneration was paid to the Respondent, which is not the case here.[106]
>
> [emphasis in original in italics and underline]

The Respondent's arguments

84 The Respondent's position was that in respect of *the work period preceding the s 78(1) application, for which payment has been made, regardless of when payment was made*, "special circumstances" *must* be shown for the court to order the account of any excess paid remuneration for that period. The Respondent's written submissions state:

> In a situation where the receiver or manager has been paid for any period before the making of the order, Section 78(3) of IRDA expressly provides that the Court's power under Section 78(2)(c) of IRDA to require the receiver or manager to account for any amount in excess of that fixed for that period, *must not be exercised* in respect of any period before the making of the application for the order, unless in the opinion of the Court there are *special circumstances* making it proper for the power to be so exercised.[107]
>
> [emphasis in original]

Decision

85 The difference in the parties' positions turns on the interpretation of the phrase "in respect of any period before the making of the application" in s 78(3) of the IRDA. The central question is whether that phrase refers to:

(a) the timeframe *when* payment was made ("interpretation (a)"); or

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106 AWS at para 27.

107 RWS at para 30.

(b) the timeframe *for which* payment was made ("interpretation (b)").

The Applicant's position was premised on interpretation (a), while the Respondent's position was premised on interpretation (b).

86 In the purposive approach to statutory interpretation, the court applies the three steps set out in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [37]–[53]. The principles particularly relevant to the present case are: (a) first, ascertain the possible interpretations of the provision, having regard not just to its text but also the context of that provision within the written law as a whole; (b) second, ascertain the legislative purpose or object of the provision. The purpose should ordinarily be gleaned from the text itself; and (c) third, compare the possible interpretations of the text against the purposes or objects of the statute and prefer the interpretation that advances those purposes or objects over one that does not. Extraneous material can be used to confirm the ordinary meaning of the provision.

87 In my judgment, the natural and ordinary meaning of the phrase "in respect of any period before the making of the application" in s 78(3) of the IRDA refers to the timeframe or work period *for which* payment was made (*ie*, interpretation (b)). In similar vein, the natural and ordinary meaning of s 78(3) read with s 78(2)(*c*) is that, in respect of remuneration paid for *work done in the period preceding the s 78(1) application*, special circumstances must be shown for the court to order an account of excess paid remuneration *regardless of when payment was made*. This is clear from the text and context of s 78(3).

88 Section 78(3), being in the nature of a proviso to s 78(2)(*c*), must be interpreted contextually with reference to s 78(2). The starting point is s 78(2)(*a*) which extends the court's power under s 78(1) to fix "remuneration for any period before the making of the order or the application". The phrase "for any period" is tied to "remuneration" and must refer to the work period for which remuneration is to be fixed. Section 78(2)(*a*) thus empowers the court to retrospectively fix remuneration for work done prior to the application or order.

89 Section 78(2)(*c*) then addresses the situation where the receiver / manager has been "paid … for any period before the making of the order" or has "retained for [his] remuneration … for any period before the making of the order" an amount in excess of the remuneration "fixed for that period". Cohering with s 78(2)(*a*), the period referred to in s 78(2)(*c*) means the work period for which remuneration has been paid or retained by the receiver / manager *and* fixed by the court (at a lower amount, such that the situation of excess paid remuneration arises). Therefore, the power under s 78(2)(*c*) to order an account for excess paid remuneration relates to any situation in which remuneration has been paid (or retained) for work done before the making of the order, with no distinction drawn in respect of *when* payment was made.

90 This leads to s 78(3), which states that the power in s 78(2)(*c*) to order an account for excess paid remuneration must not be exercised "in respect of any period before the making of the application" unless the court is of the opinion that special circumstances make it proper to exercise such power. Given the link between ss 78(2)(a), 78(2)(*c*) and 78(3), interpretive consistency dictates that the "period" referred to in s 78(3) must be conceptually the same as the "period" referred to in ss 78(2)(*a*) and 78(2)(*c*). This means that the court should not order an account of excess paid remuneration where such

remuneration was for work done before the making of the application, unless special circumstances are shown.

91 The purpose of s 78(3), as gleaned from its text and context, is to ensure fairness to the receiver / manager who, having been paid his remuneration for work done before the application, is now faced with the prospect of some part of it being refunded to the applicant. This purpose is advanced by the interpretation of s 78(3) that requires special circumstances to be shown for such refund to be permitted regardless of when payment was made (*ie*, interpretation (b)). In essence, the requirement to show special circumstances whenever an applicant seeks a refund of payment for work done before the application would be the default, not the exception. The mere fact that payment was made after the making of the application would not exempt an applicant from having to show special circumstances for the court to order an account of excess paid remuneration.

92 In oral submissions, the Applicant's counsel submitted that such an interpretation would result in absurdity as s 78 applications are usually made in respect of retrospective and not prospective periods of work. As I understood her submission, if, in the absence of special circumstances being shown, the court could order an account of excess paid remuneration only for periods of work following the filing of a s 78 application, that would not be "meaningful" since little if any work (involving only a "small sum") would be done after such an application was filed. It would be "impracticable" if the court could only address "a meaningful sum" when the application was brought at the commencement of the receivership.[108]

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[108] NOA for 1st OA 633 hearing at p 5 lines 11 to 22.

93 However, this argument conflates (a) the court's power to fix remuneration retrospectively with (b) the court's power to order an account of excess paid remuneration. The court's extended powers under s 78(2) are distinct. Section 78(2)(*a*) extends the court's power to *fixing* remuneration *retrospectively*. Section 78(2)(*c*) extends the court's power to ordering an *account* for excess *paid* remuneration. This means that so long as an applicant has not made payment and is thus not seeking an account for excess paid remuneration, the applicant can rely solely on s 78(2)(*a*) to seek a retrospective fixing of remuneration and then pay only the fixed amount. Such an application can be brought at the end of the receivership and the impracticality asserted by the Applicant does not arise. It is only where an applicant has made payment before the court fixes the amount of remuneration that ss 78(2)(*c*) and 78(3) are engaged, and there is nothing impractical or unfair about that.

94 The relevant extraneous material confirms that the ordinary meaning of s 78(3) deduced at [87] above is the correct and intended meaning. The predecessor provision to s 78 of the IRDA was s 219 of the Companies Act (Cap 50, 2006 Rev Ed) ("CA"). Section 219 of the CA gave only the liquidator of a company (and no other person) the right to apply for the court to fix the remuneration of a receiver / manager appointed under the powers contained in an instrument. The provision was otherwise in similar terms as s 78 of the IRDA. Section 219 of the CA was repealed by s 451(21) of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) with effect from 30 July 2020. Section 78 of the IRDA was enacted in its place. There is no Parliamentary material touching on s 78 of the IRDA or s 219 of the CA. However, the annotations to s 219 of the CA read "*[UK, 1948, s. 371; Aust., 1961, s. 189]*", indicating that the provision was derived from s 371 of the

Companies Act 1948 (c 38) (UK) ("1948 Act") and s 189 of the Companies Act 1961 (NSW). The English authorities shed some light.

95 Prior to the enactment of s 371 of the 1948 Act, s 309 of the Companies Act 1929 (c 23) (UK) ("1929 Act") only allowed the court to fix the remuneration of receivers as from the date of its order: *Re Greycaine, Ltd.* [1946] 2 All ER 30 at 35G–H, 36A–C. Section 371 of the 1948 Act was then enacted and stated in its material parts:

> (1) The court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.
>
> (2) The power of the court under the foregoing subsection shall, where no previous order has been made with respect thereto under that subsection,—
>
> (*a*) extend to fixing the remuneration for any period before the making of the order or the application therefor; and
>
> …
>
> (*c*) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order:
>
> Provided that the power conferred by paragraph (*c*) of this subsection shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the court there are special circumstances making it proper for the power to be so exercised.
>
> …

96 In *In re Potters Oils Ltd* [1986] 1 WLR 201, it was held that the effect of s 371 of the 1948 Act was to give the court power to interfere retrospectively with the contractual rights of the receiver and mortgagee; in its original form as

s 309 of the 1929 Act, the power applied only to remuneration earned after the date of the order (at 207A–C).

97 At present, the English courts' power to fix a private receiver's remuneration is governed by s 36 of the Insolvency Act 1986 (c 45) (UK) ("1986 Act"), which is in almost exactly the same terms as s 371 of the 1948 Act. In Hubert Picarda, *The Law Relating to Receivers, Managers and Administrators* (Tottel Publishing Ltd, 4th Ed, 2006) ("*The Law Relating to Receivers, Managers and Administrators*"), the learned author observes that the court's power in s 36(2) of the 1986 Act (which is *in pari materia* with s 78(2) of the IRDA) can be exercised to require the receiver or manager to account for any remuneration in excess of the amount fixed by the court for any period before the making of the order (at p 310). However, in relation to s 36(2)(c) of the 1986 Act and its proviso (which are *in pari materia* with ss 78(2)(*c*) and 78(3) of the IRDA), "the court *will not exact* ***any excess for any period prior to the application*** unless special circumstances justify such a course" [emphasis added in italics and bold italics] (at p 310 and n 35). In other words, the "period before the making of the application" in the proviso to s 36(2)(c) of the 1986 Act refers to the *work period* prior to the application *for which payment has been made*, and not to the *timing* of when payment was made.

98 These authorities support the view that the natural and ordinary meaning of the similarly worded ss 78(2)(*c*) and 78(3) of the IRDA is as deduced at [87] above, *viz*, the court may only order an account of excess paid remuneration for a work period before the application (regardless of when payment was made) if there are special circumstances making it proper to so order. Therefore, in the present case, notwithstanding that the Applicant filed OA 633 before paying the Respondent's fees, there must exist special circumstances making it proper for

the court to order the Respondent to account for any amount in excess of the remuneration that may be fixed by the court.

Whether special circumstances under s 78(3) of the IRDA are present

The Applicant's arguments

99 The Applicant relies on the following as special circumstances:[109]

(a) It was critical that the Mortgaged Properties be redeemed by 27 June 2023. The Applicant could not afford to jeopardise this in any way, such as by querying or disputing the Respondent's fees at the time.

(b) No breakdown of the Respondent's fees was provided at the time of payment of the Respondent's fees.

(c) The Respondent's fees are *prima facie* excessive, given that his receivership / management was only over 53 working days.

The Respondent's arguments

100 The Respondent's counsel countered that it was not reasonable and contrary to the existence of "special circumstances" for the Applicant to have made payment without objection. He posited there were two possibilities had the Applicant disputed the Respondent's fees when the FTI Invoice was presented: (a) the Applicant's objections may have been acceded to; or (b) the Applicant's objections may have been rejected, but it could put its reservation on record and make payment under protest.[110] The Respondent submitted that,

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109 AWS at para 30.

110 NOA for 1st OA 633 hearing at p 11 line 10 to p 12 line 1.

save for bare assertions that the Respondent's fees are excessive, the Applicant has not shown any special circumstances.[111]

Decision

101 I first consider what the requirement for special circumstances to be shown under s 78(3) of the IRDA entails. In this regard, a similar regime to s 78(3) read with s 78(2)(*c*) of the IRDA features in s 122 of the Legal Profession Act 1966 ("LPA") in relation to the taxation of a solicitor's bill of costs. Section 122 of the LPA provides, *inter alia*, that:

> … *after payment of [a] bill [of costs]*, no order shall be made *for taxation* of a solicitor's bill of costs, *except* upon notice to the solicitor and under *special circumstances* to be proved to the satisfaction of the court.
>
> [emphasis added]

It is useful to survey how the Singapore courts have applied the requirement for special circumstances to be shown under s 122 of the LPA ("s 122").

102 In *Sports Connection Pte Ltd v Asia Law Corp and another* [2010] 4 SLR 590, the court held that an allegation of overcharging by reference to the quantum of the total fees was generally not sufficient to amount to special circumstances *per se*, since a client seeking an order for taxation would typically believe he had been overcharged and this approach would almost invariably lead to an order for taxation rendering the s 122 restriction otiose (at [37]). However, the court did not rule out that a specific allegation of overcharging could constitute special circumstances where the inference of overcharging could be clearly drawn (at [37] and [38]).

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111 RWS at paras 33 and 40.

103 In *Kosui Singapore Pte Ltd v Thangavelu* [2015] 5 SLR 722 ("*Kosui*"), the court held that special circumstances must, in some rational way, address the fundamental question posed by s 122, *viz*, why it was right to refer the solicitor's bill for taxation even though the client had allowed a disqualifying event under s 122 to be triggered (at [62]). The requirement that the client apply to tax the bill before paying served to discourage the client from approbating and reprobating and upheld the solicitor's interest in security of receipt for his fees (at [64]). The client ought to advance special circumstances which explained or excused his decision to pay the bill. These could be circumstances which showed why the client was not, in fact, approbating or reprobating or why the solicitor was not entitled to security of receipt for his fees (at [65]). If the client was relying on a lack of particulars in the bill as a special circumstance for why the bill was paid, the client could show that the lack of detail led the client to pay the bill in ignorance of what work it actually covered (at [90]).

104 In *Koh Kim Teck v Shook Lin & Bok LLP* [2021] 1 SLR 596 at [66], the Court of Appeal held that there was no rigid rule as to what kind of circumstances were sufficiently special to justify taxation of a solicitor's bill. Where it was apparent that there had been overcharging, this would be a factor in favour of granting an order for taxation. Similarly, if the bills delivered were so lacking in particulars that the client was unable to make an informed decision as to whether to apply for taxation, the court may lean in favour of ordering taxation if this was appropriate in all the circumstances.

105 In *Loganathan Ravishankar v ACIES Law Corp* [2022] SGHC 135 at [6], one of the special circumstances found by the court was that given the quantum of the bills and the nature of the work done, the bills appeared excessive unless explained.

106 In *Marisol Llenos Foley v Harry Elias Partnership LLP* [2022] 3 SLR 585, the court found that the following special circumstances warranted taxation even after bills were paid: (a) the client did not know of her right to tax them – "[i]f one does not know of a right, one can hardly be faulted for not exercising it" (at [44]); (b) the client, a layperson, was in an anxious state of mind, and, being concerned about being left in the lurch by her solicitors should she not pay the bills within the stipulated period of 14 days, paid them in haste (at [46(b)]); and (c) the bills were lacking in particulars (at [46(c)]).

107 In my view, the common thread running through the inquiry in the above cases is whether circumstances exist which show that it is fair for a solicitor to have to refund fees he has already received upon taxation of his bill which has been paid. A similar inquiry should apply under s 78(3) of the IRDA given its purpose (see [91] above). The core question is whether it would be fair for a receiver / manager to have to refund part of the fees he has been paid. The dimensions of this consideration of fairness include, taking a leaf from *Kosui*, whether the applicant was approbating and reprobating, and whether the receiver / manager should be ensured security of receipt for his fees. In turn, the special circumstances relied on by an applicant to show that it would be fair for the receiver / manager to refund part of the fees he has been paid may include:

(a) the circumstances in which the receiver / manager's bill was presented and paid, if these indicate that the applicant was not approbating and reprobating; and

(b) obvious excessiveness of the receiver / manager's bill that indicates overcharging. It is not unfair to deny the receiver / manager security of receipt for fees not reasonably due to him in the first place.

108 In the present case, I find that there are special circumstances making it proper to order the Respondent to account for excess paid remuneration pursuant to s 78(2)(*c*) read with s 78(3) of the IRDA.

109 First, I do not think the Applicant was approbating and reprobating by making payment of the FTI Invoice and pursuing this application. These are the circumstances in which the FTI Invoice was presented and paid:

(a) The Applicant was provided the Redemption Statement (which included the amount due under the FTI Invoice) on 20 June 2023 and was expected to make full payment of the redemption sum by 26 June 2023 (see [12] above).

(b) The Applicant has explained that it was shocked by the quantum of fees imposed by the Respondent / FTI but felt compelled to make full payment without questioning the fees at that stage to avoid jeopardising the redemption due for completion on 27 June 2023 (see [13] above). Compounding this, there was also no breakdown of the FTI Invoice provided at the time, and the Applicant could not make an informed judgment on the reasonableness of the Respondent's fees (see [20] above). I accept that the Applicant has given an honest account of its thought process. Further, the Respondent has no evidence to show that, had the Applicant raised objections to the Respondent's fees at the time, the consequences on the redemption exercise would have been as sanguine as his counsel posited (see [100] above).

(c) Faced with the provisions in ss 78(2)(*c*) and 78(3) of the IRDA which have hitherto not been interpreted, the Applicant formed the erroneous (as I have found) view that so long as it filed a s 78(1)

application before paying the Respondent's fees, it would "preserve" its right to seek an account of any excess paid remuneration from the Respondent as a matter of course. The Applicant thus filed OA 633 on 23 June 2023 as a (perceived) protective step before making full payment of the redemption sum on 26 June 2023 (see [14] and [21] above). In my view, it cannot be said that the Applicant was *consciously* taking inconsistent courses when it decided to make payment. To the contrary, the Applicant thought at the time that it *was* acting consistently with its rights under s 78 of the IRDA when it made payment only after filing OA 633.

The totality of the above circumstances under which the Applicant paid the FTI Invoice does not indicate that the Applicant is approbating and reprobating by now pursuing OA 633. Viewed another way, it is not unfair for the Respondent's fees to now be challenged given that the FTI Invoice was paid after being presented in an opaque manner and in pressing circumstances.

110 Second, it is my view that the Respondent's fees of $1,358,142.50 are obviously excessive given that the nature of the matter and work undertaken by the Respondent was not complex:

(a) The Respondent's main task was to organise a sale by public tender of Link Hotel and the property it stood on. The property was being sold on an as-is-where-is basis.[112] The value involved was fairly modest. Link Hotel comprises two four-storey blocks connected by a link bridge, with 274 guest rooms and was valued at $137m (or a forced

112 Respondent's 2nd Affidavit at p 3059.

sale value of $109.6m) as at 31 May 2023.[113] The contemplated transaction was not in a particularly technical or specialised field.

(b) The Respondent's appointment was terminated before any tender bid was accepted. The Respondent's counsel conceded that the bulk of the work had been done by 16 June 2023, when the tender closed. After 16 June 2023, not much work was done because the Applicant had served the Notice of Redemption on 15 June 2023. There was still some work in respect of opening up tender bids, but that was not much work. In any event, he pointed out that FTI's Invoice was dated 20 June 2023, so the work covered by the invoice was only until 20 June 2023.[114] This means the Respondent's appointment lasted only about two months (or about 49 working days).

(c) It is undisputed that the Respondent did not operate Link Hotel during the period of his appointment. In any event, the hotel had only eight tenanted shop units at the time.[115]

(d) This was simply not a case where the insolvency practitioner ran extensive or multi-faceted business operations; investigated suspicious major transactions; dealt with cross-border issues; managed multiple creditors; and/or undertook corporate or debt restructuring that brought value-add to the company.

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113 Respondent's 1st Affidavit at pp 148, 152 and 155.

114 NOA for 1st OA 633 hearing at p 21 lines 21 to 28.

115 Respondent's 2nd Affidavit at p 3073.

Given the excessiveness of the fees, it is fair to order the Respondent to account for excess paid remuneration. There is no reason to guarantee the Respondent security of receipt for his fees when he would simply be accounting for what was not reasonably due to him in the first place.

111 In this connection, I reiterate my observation that the court's powers under ss 78(2)(*a*) and 78(2)(*c*) of the IRDA are distinct. Section 78(2)(*a*) concerns the court's power to fix remuneration retrospectively; the exercise of such power is not tied to whether or when payment was made. Section 78(2)(*c*) concerns the court's power to order an account in situations where payment has been made. The requirement for special circumstances to be shown under s 78(3) applies only to s 78(2)(*c*) and not s 78(2)(*a*). Strictly speaking, this means that, even where payment has been made, the court may fix remuneration (under s 78(2)(*a*)) before deciding whether special circumstances exist to warrant ordering an account for excess paid remuneration (under ss 78(2)(*c*) and 78(3)). In my view, however, where an account for excess paid remuneration is an applicant's main object, it would be more productive for the court to first determine whether special circumstances exist for an account to be ordered before fixing the amount of remuneration. Otherwise, the latter exercise risks being academic. That said, if the court decides that special circumstances exist to warrant ordering an account, and thereafter proceeds to fix the amount of remuneration, it is open to the court to consider the *extent or degree* to which the fees are found to be excessive upon fixing, as *further affirmation* of the court's prior determination that an order for an account is warranted. In this regard, the finding I reach on the appropriate level of remuneration for the Respondent at [167] below, which entails a significant reduction from the fees charged in the FTI Invoice, fortifies my view that special circumstances under s 78(3) of the IRDA, by reason of excessiveness of the Respondent's fees, exist.

112 I now turn to the fixing of the Respondent's remuneration.

Whether the Respondent bears the burden of justifying his remuneration

The Applicant's arguments

113 The Applicant submitted that the burden of proof is on the Respondent, as the insolvency practitioner, to satisfy the court that his remuneration is justifiable, citing *Re Econ Corp Ltd (in provisional liquidation)* [2004] 2 SLR(R) 264 ("*Re Econ*") at [49].[116]

The Respondent's arguments

114 The Respondent's counsel argued that the Respondent does not bear the burden of justifying his remuneration because: (a) *Linda Kao* and *Re Econ* may be distinguished. In those cases, the insolvency professionals were held to bear the burden of proof as they were appointed by the court. In contrast, the Respondent was privately appointed;[117] and (b) the Applicant should bear the burden of proof as an applicant usually would.[118] However, when asked who would bear the burden of proof had DBS applied to fix the Respondent's remuneration, the Respondent's counsel stated that the Respondent would bear the burden. This was because there was a fiduciary relationship between the appointer and appointee and the situation would be akin to a client applying to tax his lawyer's fees. The Respondent's counsel submitted that the Respondent

116 AWS at para 35(a).

117 NOA for 1st OA 633 hearing at p 15 lines 2 to 21.

118 NOA for 1st OA 633 hearing at p 14 lines 28 to 30.

only owed a duty to DBS, not the Applicant, as there was a conflict of interests between DBS and the Applicant.[119]

Decision

115 In my judgment, the Respondent bears the burden of justifying his remuneration in this application. This stems from the Respondent owing a duty to account to the Applicant, which arises from his appointment as agent of the Applicant under cl 12(F) of the Debenture. I elaborate.

116 In curial receivership, receivers act as officers of the court. As office-holders, they are fiduciaries with a duty to account. It is part of their duty to account that receivers must explain and, if necessary, account for any reduction in the value of the subject matter of the appointment. This includes sums paid out to them as remuneration, which will necessarily be taken out of the assets of the company they are managing. The implication, which flows as a corollary of the duty to account, is that the burden of proof falls on the receiver to justify the quantum of his fees and any element of doubt as to propriety of remuneration should be resolved against the receiver: *Linda Kao* at [24]–[26] and [30].

117 Where private receivers are appointed as agents of the company, they owe a similar duty to account to the company. Modern debentures and mortgages almost invariably provide that any receiver appointed by the debenture holder or mortgagee shall be the agent of the company: *The Law Relating to Receivers, Managers and Administrators* at p 10; Saheran Suhendran bin Abdullah, Lim Tian Huat & Edwin Chew, *Corporate Receivership: The Law and Practice in Malaysia and Singapore* (Butterworths

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119 NOA for 1st OA 633 hearing at p 15 line 26 to p 16 line 14.

Asia, 1997) ("*Corporate Receivership*") at pp 100 and 102. This serves to reduce the potential liability of the debenture holder or mortgagee for any damaging consequences of the use of the receivership procedure: Gavin Lightman *et al*, *Lightman & Moss on the Law of Administrators and Receivers of Companies* (Sweet & Maxwell, 6th Ed, 2017) at para 1-002. The receiver's agency must be qualified by the purpose of his appointment, *viz*, the realisation of the assets of the company primarily for the benefit of the debenture holder or mortgagee. The duties of the receiver towards the company would thus include all the ordinary duties of an agent save for those that are inconsistent with the purpose of his appointment and his primary duty to the debenture holder or mortgagee: *Corporate Receivership* at p 108. The fiduciary duty of an agent to account to the company ought to remain, as such a duty does not derogate from the receiver's duty to the debenture holder or mortgagee: *Corporate Receivership* at p 114.

118 In *Smiths Ltd v Middleton* [1979] 3 All ER 842, a company executed a debenture in favour of a bank. Under the debenture, the bank was given power to appoint a receiver and manager who was deemed the company's agent. The bank appointed the defendant as receiver. The defendant sent to the company two abstracts of his receipts and payments for the period he was receiver, as required under s 372(2) of the 1948 Act. The company was dissatisfied with the figures supplied in the abstracts and required more information. The defendant refused to elaborate on the figures in the abstracts on the ground that he had done all that was required of him under s 372(2) of the 1948 Act. The company brought proceedings against him claiming, *inter alia*, an account of how the claim by the defendant for fees in respect of professional services rendered was calculated. The defendant's remuneration had been stated in the abstract as simply a lump sum of £30,000 odd. The preliminary issue of whether the

defendant was an accounting party to the company arose for determination. The court found that the receiver was accountable to the company. One reason was that under both s 109(2) of the 1925 Act (which is materially similar to s 29(2) of the CLPA) and the terms of the debenture, the receiver was deemed to be the company's agent, "a peculiar sort of agent of course, but nevertheless an agent, and an agent is prima facie an accountable party" (at 846a–b).

119 Similarly, in *Expo International Pty Ltd (in liq) & Anor v Chant & Ors* [1979] 4 ACLR 679 at 689, the court held that a receiver appointed under deed as the mortgagor's agent has certain duties towards the mortgagor, including to account to the mortgagor after the mortgagee's security has been discharged, not only for the surplus assets but also for his conduct of the receivership. In my view, accounting for conduct of the receivership encompasses accounting for remuneration for work done during the receivership.

120 The Respondent's counsel pointed to the court's comment in *Linda Kao* at [A.36] that there was "less of a fiduciary character" to the office of privately-appointed insolvency practitioners.[120] However, the Respondent's reliance on this comment is misplaced. The court was explaining why out-of-court appointments of insolvency practitioners fell outside the ambit of the costs schedule regime. The court was not suggesting that a private receiver appointed as an agent of the company owed no duty to account to the company.

121 In the present case, cl 12(F) of the Debenture provides that every receiver appointed by the Lender (*ie*, DBS) "shall be deemed at all times and for all purposes to be the agent of the Borrower [*ie*, the Applicant] which shall

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120 NOA for 1st OA 633 hearing at p 15 lines 8 to 11.

be solely responsible for … the payment of [the receiver's] remuneration".[121] The Respondent thus has a duty to account to the Applicant for his remuneration, notwithstanding that the Respondent was appointed by DBS. Such a duty does not conflict with the Respondent's primary duty to DBS as the debenture holder. The implication of such a duty to account is that the burden is on the Respondent to justify his remuneration in this application and any doubts in this regard would be resolved against him.

122 The above conclusion does not turn on which party is the applicant in OA 633. As the applicant in OA 633, what the Applicant must show is that the applicable requirements under s 78 of the IRDA are satisfied. This is a separate matter from the Respondent having to justify his fees during the fixing of his remuneration. Indeed, the Respondent's counsel conceded that, if DBS applied to fix the Respondent's remuneration, the burden would be on the Respondent to justify his fees.[122] It is no different here where the Applicant has applied to fix the Respondent's remuneration because the Respondent is the Applicant's agent and owes a duty to account to the Applicant.

How the Respondent's remuneration should be fixed

The court's approach to fixing remuneration

123 The principles and approach the court will apply in determining the appropriate level of remuneration of insolvency practitioners have been comprehensively covered in the trilogy of cases *Re Econ*, *Liquidators of Dovechem Holdings Pte Ltd v Dovechem Holdings Pte Ltd (in compulsory*

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121 Respondent's 2nd Affidavit at p 99.

122 NOA for 1st OA 633 hearing at p 15 lines 26 to 31.

liquidation) [2015] 4 SLR 955 ("*Dovechem*") and *Linda Kao*. At this juncture, I emphasise three points:

(a) The same principles ought to apply to both court- and privately-appointed insolvency practitioners where the court's determination of the appropriate level of remuneration is sought: *Re Econ* at [44].

(b) The benchmark in the assessment process is fairness, reasonableness and proportionality: *Re Econ* at [49]; *Linda Kao* at [31]. In essence, the remuneration awarded must be commensurate with the nature, complexity and extent of work which had to be undertaken: *Linda Kao* at [38]. The parties agree that this is the relevant inquiry.[123]

(c) The court need not accept what is submitted at face value but will carefully scrutinise the facts placed before it, in deciding what aspect of the remuneration claimed is reasonable or justifiable: *Re Econ* at [49]. The court's inquiry is not limited only to matters over which queries have been raised: *Linda Kao* at [42].

124 In terms of the approach to assessment, the court in *Dovechem* applied a two-stage approach to determine the level of remuneration allowed. The liquidators had claimed $1,464,097 for work done for approximately 18 months, and in the course of hearing, voluntarily reduced their fees to $1,213,961.

(a) In the first stage, the court deducted or discounted fees for specific work items based on principled objections such as unnecessary work and impermissible charging for work done by administrative and support staff (at [79]–[80]). Where it was not possible to determine a

[123] RWS at para 41; AWS at para 35(a).

precise figure that could be taxed off, the court took "a somewhat rough and ready approach" in deciding on the discount to apply to reduce the amount charged for a specific work item (at [80]).

(b) Following the deductions made in the first stage and the liquidators' voluntary discount, the bill stood at $1,071,122. In the second stage, the court considered whether this remaining amount of fees was as a whole fair and reasonable having regard to the nature and complexity of the matter and work involved (at [83]). As the figure still seemed too high for the work required to be done, the court used the usual broad brush to further discount the fees and awarded $750,000. The court "was cognisant that the liquidators, and perhaps others, may consider this figure to be arbitrary but, since the law does not provide or support a mathematical formula for the calculation of a liquidator's fees, any award made would be open to the same criticism" (at [84]).

125 A similar approach was taken in *Linda Kao*. There, receivers and managers sought approval of professional fees of $2.9m for work done over 12 months. They had offered a discount of 30% on their professional fees, which was not accepted by the respondents.

(a) The court noted that the receivers and managers' bill had derived from a calculation of respective time spent multiplied by charge-out rates. The court observed that there had been a general upward lift in the charge-out rates applied by the practitioners (at [85]). However, it was not the role of the court to prescribe, in intimate detail, the appropriate charge-out rates for each practitioner (at [86]). Thus, the court used the discounted figure of $2m supplied by the receivers and managers as a

working figure for analysis (at [86]). The court disallowed a claim for $47,250 for an administrative staff's time costs *in toto* (at [87]).

(b) This left about $1.95m. The court then considered the impact of its views on issues such as unnecessary use of the receivers and managers' time on certain lawsuits; concerns of over-management; and the fact that many tasks could and ought to have been performed more cost-efficiently (perhaps by administrative staff instead of insolvency practitioners) (at [87]). In this light, a further adjustment was warranted and the court reduced the quantum of remuneration to $1.8m, such that overall, there was a 40% reduction from the original figure claimed (at [87]–[88]). The court acknowledged that the additional discount "may be viewed as being "*arbitrary*"" [emphasis in original] (at [4]).

126 In the present case, I will broadly adopt the same approach taken in *Dovechem* and *Linda Kao*. I will consider whether, as a matter of principle, there are issues with the FTI Invoice. Where there are issues with specific work items and deductions or discounts to the fees charged for those items can reasonably be determined, I will apply such deductions or discounts in the first stage. At the second stage, I will then assess whether the reduced bill is fair, reasonable and proportionate in view of (a) the nature and complexity of the matter and the work undertaken, and (b) any concerns of principle which were not addressed by deductions in the first stage. Based on these considerations, I will determine if a further broad-brush discount is warranted.

127 To avoid doubt, I decline to follow the alternative approach proposed by the Applicant of fixing substitute amounts for all respective work items in the FTI Spreadsheet in lieu of the amounts charged by the Respondent (see [30]

above).[124] The Applicant did not provide any authoritative basis for deriving the substitute amount proposed per item. Such a root-and-branch approach to fixing remuneration would be tantamount to the court deciding in respect of each and every task undertaken by the Respondent what he or his team should actually have done and should actually have charged. I do not think it would be judicious to do so. It is not compatible with the role of the court in the assessment exercise (see, *eg*, the caution in *Linda Kao* at [41]) and not consistent with the approach taken in *Dovechem* and *Linda Kao*.

Assessment of the appropriate level of the Respondent's remuneration

Nature of the matter and work undertaken

128 I reiterate my findings at [110] above regarding the lack of complexity of the nature of the matter and the work undertaken. I gave the Respondent the opportunity to adduce, if he wished, documents which in his view evidenced the work undertaken by him and his team. The Respondent took this opportunity to submit seven bundles of documents comprising 46 documents or categories of documents.[125] However, these documents had the contrary effect of impressing on me the lack of complexity of the matter. Three of the seven bundles consisted almost entirely of the Mortgages, Debenture, public announcements of Link Holdings and annual reports / financial statements of the Applicant, Link Holdings and LHI over the years, from which only very select information was the focus of the Respondent. The Applicant's counsel pointed out at the second hearing of OA 633 and I noted too that repeated documents (*eg*, documents in relation to the lease of the Mortgaged Properties from the Singapore Tourism

124 AWS at para 49 and Annex C.

125 Respondent's 2nd Affidavit at p 3.

Board ("STB"),[126] insurance policies,[127] tenancy agreements,[128] a Collaboration Agreement between the Applicant and LHI,[129] an Agreement for Services between LHI and the Singapore Land Authority ("SLA") to use one block as a quarantine facility,[130] and email chains[131]) accounted for a significant volume of the remaining bundles. Overall, the documents were unremarkable and not financially or otherwise complicated.

Charge-out rates

129 The Applicant made two criticisms of the charge-out rates of the Respondent and his team. First, citing *Re Econ* at [53] and [56], the Applicant argued that the Respondent's hourly rate of $1,400 was "high" and "excessive" as "there is no evidence that the Respondent is in the highest echelon of his profession both in terms of experience and standing" and, even if he could prove this, this was not a "truly exceptional case" that warranted him charging $1,400 per hour. The same criticism applied to the next two most senior members of the Respondent's team, Ms [A] and Ms [B], whose hourly rates were $1,050 and $975 respectively.[132] In my view, the larger concern behind these criticisms is that the Respondent charged on a time-costed basis which is not reflective of the value of the service rendered but rather of the cost of rendering it (*Re Econ*

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126 Respondent's 2nd Affidavit at pp 2632 to 2681 and 2693 to 2822, *cf*, pp 3124 to 3303.

127 Respondent's 2nd Affidavit at pp 2493 to 2510, *cf*, pp 2560 to 2577, *cf*, pp 4059 to 4094.

128 Respondent's 2nd Affidavit at pp 2511 to 2530, *cf*, pp 2538 to 2557, *cf*, pp 3469 to 3488.

129 Respondent's 2nd Affidavit at pp 2597 to 2612, *cf*, pp 3430 to 3445.

130 Respondent's 2nd Affidavit at pp 2835 to 2934, *cf*, pp 3329 to 3428.

131 Respondent's 2nd Affidavit at pp 1896 to 1910, *cf*, pp 3731 to 3745; pp 4143 to 4274.

132 AWS at paras 43 to 44.

at [47]). Remuneration should be fixed so as to reward value, not so as to indemnify against cost (*Linda Kao* at [32]). From this perspective, the staffing of the matter with four persons charging above or close to $1,000 per hour – the Respondent of 25 years' experience at $1,400; Ms [A] of 17 years' experience at $1,050; Ms [B] of 11 years' experience at $975; and Ms [C] of eight years' experience at $850 – together accounting for 70.57% ($958,487.50) of the total professional fees billed (see the table at [35] above) is disproportionate to the nature of the matter and the work involved (see the factors cited at [110] and [128] above). I will bear this consideration in mind when determining whether a broad-brush discount is warranted (and if so, in what amount) in the second stage of my assessment. This would be more productive than attempting to dissect the propriety of specific hourly rates since "the court has no basis for gauging if the charge-out rates represent fair market value since there are no fee guidelines issued by local professional bodies against which the rates charged by individual practitioners may be measured" (*Linda Kao* at [50]).

130 Second, the Applicant argued that the charge-out rates were "arbitrary" because the designations held by the junior team members were not consistently based on their years of experience. For example, Mr [E], Mr [F], Ms [H] and Ms [I] all had around four years of experience but Mr [E] and Mr [F] held the designation of Senior Consultant I billing at $480 per hour, while Ms [H] was a Consultant II billing at $350 per hour and Ms [I] was a Consultant I billing at $260 per hour. As another example, Mr [G] was a Consultant II billing at $350 per hour when he had only three years of experience in contrast to Ms [H]'s four years of experience.[133] I do not accept this argument. The charge-out rates were consistently applied based on designation. The Applicant's criticism was that

[133] AWS at para 45.

the designations did always depend on the number of years of experience of the person in question. However, it is logical, as the Respondent's counsel submitted,[134] that job grades and progression depend on other factors, such as performance, and not just on the number of years of experience.

Performance of administrative tasks

131 The court cannot accept that it is proper to be remunerated at several hundred dollars an hour for the performance of administrative tasks (*Linda Kao* at [72]). In this regard, the Respondent's claims for the following work items were problematic.

132 "CorpPass matters": 2.00 hours ($1,236).[135] Based on the Respondent's documents, this pertained to the application for FTI staff to be registered as the Corppass administrator for the Applicant. The application was straightforward but FTI's application was twice rejected for not including simple documents.[136] I assess that FTI's administrative staff could have made the application with minimal supervision by a junior member of the Respondent's team. I would **tax off $1,000** and allow only $236 for this item.

133 "IT related matters": 3.10 hours ($2,736).[137] The Respondent's affidavits do not explain what these matters were. I agree with the Applicant's submission that this is in the nature of administrative work.[138] The Respondent's counsel

134 NOA for 1st OA 633 hearing at p 19 lines 11 to 21.

135 Annex, row 3.

136 Respondent's 2nd Affidavit at pp 10 to 28.

137 Annex, row 4.

138 AWS at p 25.

submitted that the IT matters could not have been done by administrative staff as that was "beyond them".[139] The assertion was not substantiated. I consider that the IT staff of FTI could and should have attended to "IT related matters". I would **tax off the entire sum of $2,736** for this item.

134 "Lodgement of documents with ACRA, such as the Notice of appointment, Deed of Appointment, Change of Registered Address": 4.60 hours ($2,802);[140] and "Discharge of receiverships including the relevant lodgement to ACRA": 14.00 hours ($4,900).[141] I agree with the Applicant's submission that the lodging of documents with the Accounting and Corporate Regulatory Authority ("ACRA") is an administrative and routine task.[142] It could have been handled by FTI's administrative staff with minimal oversight by a junior member of the Respondent's team. It is unclear what else "[d]ischarge of receiverships" may have entailed. I would **tax off $7,000** and allow only $702 for these items.

135 "Set up and management of users for Virtual Data Room": 37.80 hours ($13,806).[143] The data available for download from the virtual data room was stated as tender documents, STB lease agreements, the Collaboration Agreement with LHI, the Services Agreement with SLA, tenancy agreements for shop units in Link Hotel, current vendor contracts for operations, current licences for hotel operations, building and floor plans, and property tax bill for

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139 NOA for 1st OA 633 hearing at p 20 lines 9 to 12.

140 Annex, row 19.

141 Annex, row 20.

142 AWS at p 27.

143 Annex, row 27.

2023.[144] The data does not appear extensive. The Respondent averred that access was granted by "[his] team and the IT team of FTI" to a total of 76 email addresses promptly on receipt of a non-disclosure agreement ("NDA"), on a daily basis.[145] Work done in relation to NDAs was separately charged.[146] Setting up and managing the virtual data room should have been primarily led by FTI's administrative and IT staff with minimal supervision by junior members of the Respondent's team. I would **tax off $12,000** and allow only $1,806 for this item.

136 "Liaise with interested parties and arranging for logistics of site viewings": 69.20 hours ($34,864).[147] This included 4.40 hours ($6,160) incurred by the Respondent at $1,400 per hour, and 8.20 hours ($7,995) incurred by Ms [B] at $975 per hour. However, scheduling and arranging site visits would have been entirely administrative. To further put the charges for this item in context, a separate work item for "Conducting site visits and viewings with interested parties, liaising with hotel management representative etc" totalling 103.70 hours and $61,282.50 in fees was also charged.[148] It is disproportionate that the time spent on (and fees incurred for) arranging site visits was more than half of that in respect of the site visits themselves. Additionally, the latter part of the description "Conducting site visits and viewings with interested parties, *liaising with hotel management representative etc*" [emphasis added] indicates that this other work item *also* included arrangements for site visits. Given these considerations, I would **tax off the entire sum of $34,864** for this item.

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144 Respondent's 2nd Affidavit at p 3079.

145 Respondent's 1st Affidavit at para 83.

146 Annex, row 31.

147 Annex, row 57.

148 Annex, row 58.

Duplication of work

137 "Preliminary information gathering through publicly available information": 17.00 hours ($7,640).[149] To substantiate this work item, the Respondent exhibited the Applicant's financial statements for 2016 to 2021, Link Holdings' financial reports from 2017 to 2022, LHI's financial statements from 2016 to 2021, Link Holdings' announcements on the Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited and a Circular issued by Link Holdings Limited dated 12 April 2023 titled "Response Document Relating to Mandatory Conditional Cash Offers by Octal Capital Limited on behalf of Ace Kingdom Enterprises Corporation to Acquire All of the Issued Shares and All of the Convertible Bonds of Link Holdings Limited (other than those already owned by Ace Kingdom Enterprises Corporation and parties acting in concert with it)". The last is a lengthy document that contains half a paragraph mentioning Link Holdings' prior disclosure of DBS' demand for repayment of some $50m.[150] I do not see why it was relevant or necessary for the Respondent's team to review this document. The Respondent would have already been aware of DBS' demand since it was precisely the Applicant's failure to repay the moneys demanded that led to the Respondent's appointment. Further, there is duplication since Respondent separately billed for the review of "Financials" (as part of another work item taking 37.39 hours),[151] "historical performance of LHI" (as part of another work item taking 39.47 hours),[152] "Announcements made by Link Hotels on HKEX"

149 Annex, row 6.

150 Respondent's 2nd Affidavit at p 1601.

151 Annex, row 45.

152 Annex, row 46.

(13.05 hours)[153] and "audited financial statements" (as part of another work item taking 11.10 hours).[154] I would **tax off the entire sum of $7,640** for this item.

138 "Compiling and consolidating property-related information and technical specifications": 14.00 hours ($9,155.50).[155] There is likely duplication of work done under the separate work items "Property/plan searches e.g. building plans, title, SLA caveats etc" (9.00 hours),[156] reviewing "Lease Agreement with STB" (9.50 hours),[157] reviewing "Building, floor and site plans" (4.80 hours)[158] and "Preparation of property factsheet, summarising the available information of the property to interested parties" (47.21 hours).[159] I would **tax off the entire sum of $9,155.50** for this item.

139 "Legal matters": 80.20 hours ($83,662.50).[160] SLB rendered its own invoice for $253,592.31.[161] Where legal professionals are instructed in the same matter, the onus is on the insolvency practitioner to justify his involvement and that it did not involve duplication of work (*Linda Kao* at [59]). The inquiry is whether he could or would have been able to offer any meaningful contribution to the matters conducted by the lawyers (*Linda Kao* at [74]).

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153 Annex, row 53.

154 Annex, row 43.

155 Annex, row 16.

156 Annex, row 37.

157 Annex, row 47.

158 Annex, row 49.

159 Annex, row 30.

160 Annex, rows 22 and 23.

161 Applicant's Affidavit at para 9 and p 28.

140 The Respondent averred that he and his team had to "consider the legal advice rendered by SLB and the various legal options available to [them] and to weigh the costs and benefits of the legal advice given".[162] The "various legal issues" that they had to "consider and address" included: (a) the Respondent's powers and liabilities under the Mortgages and Debenture, including the types of information and documents he could request from the Applicant's directors; (b) the "legal implications on the Applicant" in respect of the tenancy agreements and various licences issued to LHI; (c) the "legal implications" and amendments to the NDAs to be executed by interested parties; (d) the "legal implications of the tender process including the timelines and documentation in relation to the tender sale of the Mortgaged Properties"; (e) the Applicant's rights in respect of the ownership of the assets in Link Hotel; (f) advice in respect of a caveat lodged against the Mortgaged Properties and the removal of the same; (g) the issuance of a letter of demand to the Applicant's directors requiring them to provide a proper Statement of Affairs ("SOA"); (h) the legal implications of LHI's breach of the Collaboration Agreement and the Respondent's right to terminate the Collaboration Agreement; (i) the legal implications arising from potential breaches and/or termination of the tenancy agreements; (j) meetings with SLB with regard to the tender process; (k) reviewing the tender documents drafted by SLB; and (l) discussions with SLB on the legal implications of the novation of the Agreement for Services between LHI and SLA.[163]

141 To provide more context to the above list of issues, the Collaboration Agreement set out the fixed and variable distributions LHI was to pay the

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162 Respondent's 1st Affidavit at para 51.

163 Respondent's 1st Affidavit at para 52.

Applicant in connection with LHI's operation of Link Hotel, and together with its Addendum totalled only 18 pages.[164] The Tender Document and the draft Confidentiality Agreement were legal documents which would have been prepared by the legal team and, in any event, were only 29 pages[165] and 6 pages[166] respectively. The Respondent also separately billed for work items relating to "Review of debenture/mortgage and deed of appointment documents" (7.40 hours);[167] "Correspondence with tenants/occupiers at property, serving letter of demand, following up for recovery of debts" (5.36 hours)[168] and review of "Tenancy Agreements with occupiers at Link Hotel" (15.10 hours);[169] "Non-Disclosure Agreements with each individual party, review of proposed changes in NDA" (124.15 hours);[170] review of "Fixed asset listings to verify ownership of assets" (4.55 hours);[171] "Matters related to SOA (e.g. following up for SOA …" (21.00 hours);[172] review of "Collaboration Agreement and Addendum with LHI" (11.20 hours);[173] and review of "Services Agreement with SLA" (5.83 hours).[174] This demonstrates that the Respondent and his team separately billed for many of the underlying matters in respect of which they had received legal advice from SLB.

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164 Respondent's 2nd Affidavit at pp 3430 to 3447.

165 Respondent's 2nd Affidavit at pp 3086 to 3114.

166 Respondent's 2nd Affidavit at pp 3117 to 3122.

167 Annex, row 5.

168 Annex, row 42.

169 Annex, row 50.

170 Annex, row 31.

171 Annex, row 51.

172 Annex, row 18.

173 Annex, row 48.

174 Annex, row 52.

142 The Applicant submitted that the list of legal issues falls squarely within SLB's specialist domain and the Respondent and his team would not have been able to value-add in any way. The Applicant found it "inexplicable" that the Respondent "had to expend so much time to "consider" the legal advice rendered by SLB" since a number of the "legal issues" are typical of receivership, *eg*, the type of information and documents that can be requested from the Applicant. The Respondent did not explain why all the work done in respect of legal matters had been undertaken by the four most senior members of his team and not delegated to the more junior staff. The Respondent failed to exhibit a detailed breakdown of SLB's fees showing the work done by them and explaining how the legal work undertaken by the Respondent and his team was distinct from and did not overlap with the work undertaken by SLB.[175] The Applicant submitted that the charges for this item should be disallowed entirely for being duplicative of legal work.[176]

143 The court is well-placed to gauge the complexity of legal matters. In my judgment, none of the "[l]egal matters" indicated by the Respondent were complex. There were no ongoing legal proceedings involving the Applicant or the Respondent. SLB had on its part billed $253,592.31, and there is clear duplication of legal work on the Respondent's part. While I accept that, realistically, the Respondent had to understand the legal parameters within which he operated and it was for the more senior team members to appreciate the legal context, this does not warrant billing $83,662.50 (approximately one third of SLB's bill) just to consider SLB's advice on relatively straightforward

175 AWS at p 28.

176 AWS at para 46 and p 28.

matters. I would **tax off $71,000** for this item (*ie*, a discount of about 85%) and allow only $12,662.50 for this item.

Overmanning and overservicing

144 "Overmanning" refers to instances of more time being taken to perform tasks than should have been taken (*Dovechem* at [76]). "Overservicing" is a compendious concept intended to capture all instances in which work is "unnecessary" in the sense that it ought not to have been incurred, given the size of the company and the benefits which were reaped (*Linda Kao* at [53]). Having reviewed the Respondent's affidavits, I am left with a distinct sense that there was a not insignificant degree of overmanning and/or overservicing in the matter. I elaborate with reference to specific instances.

145 "Issuance of notifications to directors, government authorities, banks, employees, secretary, other relevant bodies": 43.20 hours ($21,283).[177] The appointment notifications each contained one to two pages of text and comprised: (a) five notifications to the Applicant's directors and corporate secretary, in similar terms, requesting for their submission of an SOA;[178] (b) one notification to the General Manager of Link Hotel asking for new purchases and payments on behalf of the Applicant to be halted as these would require the R&M's authorisation;[179] (c) five notifications to government agencies with slight variations in content depending on the agency;[180] (d) one notification to DBS requesting freezing of payment transactions and termination of existing

177 Annex, row 8.

178 Respondent's 2nd Affidavit at pp 1723 to 1733.

179 Respondent's 2nd Affidavit at p 1734.

180 Respondent's 2nd Affidavit at pp 1735, 1741, 1747, 1753 and 1759.

bank token access to the Applicant's accounts;[181] (e) two notifications to insurers asking for redesignation of the insured entity name of insurance policies;[182] (f) one notification to the Applicant's auditor requesting a list of records, audit reports, management accounts, schedules and ledgers;[183] (g) seven notifications to tenants with instructions for remittance of monthly rental payments and requests for outstanding rents;[184] and (h) seven notifications to related companies requesting payment of intercompany balances based on the SOA filed by the Applicant's directors.[185] While some of these letters would have required some prior investigation before issuance, such as ascertaining the bank accounts, insurance policies, outstanding rents and intercompany balances of the Applicant, it could not have been difficult to find these out – for example, the request for payment of intercompany balances was based on the directors' SOA (and work on the SOA was separately and quite heavily billed for). In general, the notifications were similar in format and substantive differences between notifications were not major. The matters underlying certain requests made in the notifications were also separately billed, *eg*, under work items for reviewing "Insurance policies" (6.30 hours);[186] reviewing "Tenancy Agreements with occupiers at Link Hotel" (15.10 hours);[187] and "[R]eview of SOA… queries to directors on details of debts" (11.10 hours).[188] In my

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181 Respondent's 2nd Affidavit at p 1765 to 1766.

182 Respondent's 2nd Affidavit at pp 1777 to 1778 and 1839 to 1840.

183 Respondent's 2nd Affidavit at pp 1789 to 1790.

184 Respondent's 2nd Affidavit at pp 1796 to 1797, 1802 to 1803, 1808 to 1809, 1814 to 1815, 1820 to 1821, 1826 to 1827 and 1832 to 1833.

185 Respondent's 2nd Affidavit at pp 1845 to 1858.

186 Annex, row 54.

187 Annex, row 50.

188 Annex, row 43.

assessment, 43.20 hours spent on the issuance of these notifications is an instance of overmanning.

146 "Discussions, meetings and correspondences with interested parties" and "Responding to queries raised by interested parties in relation to the specifications of the property as well as the tender": 569.95 hours ($595,026.50);[189] and "Updating and maintaining interested parties tracking list based on the calls received, emails sent, EOIs received, NDA": 77.80 hours ($31,468).[190] The bulk of the 569.95 hours for the first item was incurred by the most senior members of the Respondent's team: 249.85 hours ($349,790) by the Respondent; 65.80 hours ($69,090) by Ms [A]; 115.90 hours ($113,002.50) by Ms [B]; and 22.70 hours ($19,295) by Ms [C]. The Respondent stated that he and his team received "a high volume of queries from third parties who enquired on, among others, the building plan, restrictions on future use of the land space, the gross plot ratio and the financials / projections and the latest asset listing of Link Hotel".[191] However, as this information had not been made available to the Respondent and his team by the Applicant's directors, "considerable time had to be spent to gather the necessary information", and this included: (a) reviewing the announcements made on the Hong Kong Stock Exchange by the Applicant's parent company for the background of the Link group; (b) constructing an organisation chart; (c) reviewing the historical financial statements of the Applicant to carry out an analysis on the profitability of the business of Link Hotel; (d) research on the redevelopment potential of the Mortgaged Properties; and (e) research on the industry trends in respect of the

189 Annex, rows 59 and 60.

190 Annex, row 33.

191 Respondent's 1st Affidavit at para 71; RWS at para 46.

hotel business in Singapore.[192] Some of the queries received by the Respondent and his team from potential buyers were also "more complex" and "substantial time and effort" had to be expended in attending to these queries.[193] Enquiries from a total of 109 interested parties were received, and about 72 of these interested parties expressed interest in the tender sale of the Mortgaged Properties.[194] As a result of the "sheer volume of queries", the Respondent's team maintained a "comprehensive tracking list" to "detail the work carried out by [his] team, summarise specific queries put forward by interested parties and the responses provided and to document follow up actions to be taken".[195] There were also numerous queries relating to the contractual terms in the tender documents.[196] The Respondent gave examples of seven meetings / discussions with interested parties.[197] He averred that the senior team members attended the meetings.[198]

147 There are difficulties with this narrative. First, the queries and responses adduced by the Respondent as evidence of the work done do not show that the Respondent and his team were engaged in fielding complex queries. In this regard, I reviewed the "tracking list"[199] as well as a category of documents described by the Respondent as "Third Party Requests in respect of the tender

192 Respondent's 1st Affidavit at para 72; RWS at para 47.

193 Respondent's 1st Affidavit at para 73; RWS at para 48.

194 Respondent's 1st Affidavit at para 75; RWS at para 49.

195 Respondent's 1st Affidavit at para 76.

196 Respondent's 1st Affidavit at para 85; RWS at para 51.

197 Respondent's 1st Affidavit at para 86.

198 Respondent's 1st Affidavit at para 87.

199 Respondent's 1st Affidavit at pp 181 to 187.

sale of the Mortgaged Properties".[200] The Respondent indicated that only samples of correspondence with interested parties were exhibited and that the "tracking list" should be referred to for an exhaustive summary of correspondence with all third parties.[201]

148 The "tracking list" showed that many queries were not complicated, such as queries as to whether there was a guide price and for the property and hotel specifications. FTI's standard response to many queries was that the party should submit an Expression of Interest ("EOI") or await the IM. For example:

(a) FTI's record of its response to a query for information relating to revenue, expenses, breakdown of all tangible assets and inventory to be sold with the hotel was: "Provided teaser and asked [the party] to submit EOI".[202]

(b) FTI's record of its response to a query for historical hotel operational data, valuation report and holding structure was again: "Provided teaser and asked [the party] to submit EOI".[203]

149 In respect of certain queries which might be considered less run-of-the-mill, FTI's responses did not substantively address the queries. For example:

(a) FTI's record of its response to a query about where the plot ratio had been obtained from was: "The asset is being sold on a "as is where is" basis. We make no representation nor undertake to seek to enquire

200 Respondent's 2nd Affidavit at exh "WPCM-10", tab 42.

201 Respondent's 2nd Affidavit at pp 6 to 7 (s/n 42).

202 Respondent's 1st Affidavit at p 182 (s/n 21).

203 Respondent's 1st Affidavit at p 186 (s/n 83).

any relevant and competent authorities as to the queries raised in your e-mail [*sic*]. You may wish to make the necessary effort to seek clarification from the relevant authorities in this regard".[204]

(b) FTI's record of its response to queries about whether topping up of the land tenure was allowed and whether the buildings could be demolished and redeveloped was: "This is for the buyers to find out for themselves" and "Potential buyers will need to perform their own due diligence and evaluate these possibilities. R&M makes no representation whatsoever in connection with queries of this nature".[205]

(c) FTI's record of its response to queries on which company held the public securities, the rough transaction size, whether non-public financials would be disclosed and whether at asset-level or company-wide, and how much revenue the asset generated was: "Questions asked … are irrelevant".[206]

(d) FTI's record of its response to queries on whether Link Hotel was under conservation status and whether refurbishment or changes were allowed for the exterior / façade of Link Hotel was: "refer to the terms of the Tender exercise. The asset is being sold on a "as is where is" basis. We make no representation nor undertake to seek to enquire of any relevant and competent authorities as to the questions raised in

204 Respondent's 1st Affidavit at p 181 (s/n 6).

205 Respondent's 1st Affidavit at p 182 (s/n 18).

206 Respondent's 1st Affidavit at p 186 (s/n 73).

> your e-mail [*sic*]. It will as such do you well to make the necessary effort to seek clarification from the relevant authorities".[207]

150 To be clear, I make no comment on the validity of the responses. The short point is simply that the complexion of the responses does not suggest that significant time was spent on the queries. It is also odd that the Respondent chose to highlight that there were queries from third parties on "restrictions on future use of the land space, the gross plot ratio and the financials / projections"[208] (see [146] above) when, based on their own tracking list, they did not provide substantive responses (see [148]–[149] above). The actual correspondence that the Respondent chose to exhibit also reveals that none of the Respondent's responses to queries from interested parties were lengthy, complicated or materially substantive. There was a standard one-page template email the Respondent's team would use, that set out basic information such as the R&M's appointment; documents to be submitted for the EOI; main terms of the potential sale; and that an IM was being put together – this was sent in response to many of the queries raised.[209] Other common responses involved reiterating that an IM would be sent;[210] stating that the queries were not within the scope of the Respondent's appointment or purview;[211] stating that the party

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207 Respondent's 1st Affidavit at p 187 (s/n 98).

208 Respondent's 1st Affidavit at para 71; RWS at para 46.

209 *Eg*, Respondent's 2nd Affidavit at pp 3982 to 3983, 4016 to 4017, 4024 to 4025, 4028 to 4029, 4032 to 4034, 4040 to 4041, 4050 to 4052 and 4055 to 4056.

210 *Eg*, Respondent's 2nd Affidavit at pp 3981, 3984 to 3985, 4015 and 4036 to 4037.

211 *Eg*, Respondent's 2nd Affidavit at pp 3985 and 3991.

should do its own due diligence or find out the requested information for themselves;[212] and stating that they were not providing a guide price.[213]

151 Second, incurring 77.80 hours ($31,468) just to *maintain* the "tracking list" (*ie*, apart from and on top of actually responding to queries) is excessive.

152 Third, the information-gathering which the Respondent said had to be undertaken in order to respond to the queries was separately billed for under separate work items, *eg*, reviewing "Announcements made by Link Hotels on HKEX" (13.05 hours);[214] reviewing "Financials including management reports, company's internal records, bank statements etc" (37.39 hours);[215] reviewing "Affairs of the property e.g. historical performance of LHI, historical transactions of [the Applicant] for the past 6 months, analysis" (39.47 hours);[216] and "Research for information from publicly available sources" (32.90 hours).[217]

153 Fourth, no evidence was given of the total number of meetings with interested parties, their duration and the specific attendees from the Respondent's team at each meeting. All the foregoing considerations impel the conclusion that these work items were instances of overmanning and overservicing.

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212 *Eg*, Respondent's 2nd Affidavit at pp 3985 and 4039.

213 *Eg*, Respondent's 2nd Affidavit at p 3987.

214 Annex, row 53.

215 Annex, row 45.

216 Annex, row 46.

217 Annex, row 26.

154 "Preparation of Information Memorandum with FAQs": 152.85 hours ($65,842.50).[218] The IM was a simple document in the style of a presentation brochure of 31 pages.[219] The Frequently Asked Questions ("FAQs") document comprised 13 FAQs in two pages.[220] The information in the IM comprised: (a) information on Link Hotel's location and surroundings; (b) three pages on Singapore tourism, with information obtained from open sources including STB; (c) information on Link Hotel's gross floor areas, leasehold tenure, room details, facilities and tenants; (d) a one-page diagram of the group structure of the companies to which the Applicant belonged. One source of this information was stated as "Link Holdings Limited's HKEX Announcements";[221] (e) one page on key terms of the Collaboration Agreement between the Applicant and LHI; (f) one page itemising the information in the virtual data room; (g) three pages of "Financial Highlights" on the room revenue and occupancy rates, and the hotel's revenue and profit performance from 2017 to 2021. The sources of this information were stated to be the Annual Reports of Link Holdings and Financial Statements of LHI from 2017 to 2021 and Annual Report of the Applicant;[222] and (h) the indicative tender timeline.

155 I make three points. First, the IM is a simple document and does not appear difficult to prepare. Second, as previously noted (see, *eg*, [152] above), work done to review the source documents was separately billed. Third, only selective information was required for the IM, which also calls into question the

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218 Annex, row 29.

219 Respondent's 2nd Affidavit at pp 3055 to 3085.

220 Respondent's 2nd Affidavit at pp 3115 to 3116.

221 Respondent's 2nd Affidavit at p 3076.

222 Respondent's 2nd Affidavit at p 3080 to 3082.

proportionality of time spent on the separately billed items for review of documents. All this indicates overmanning and overservicing in these respects.

156 "Non-Disclosure Agreements with each individual party, review of proposed changes in NDA": 124.15 hours ($56,893.50).[223] The Respondent stated that a "standard template NDA" was used for circulation to interested parties,[224] but avers that "a total of 12 interested parties had proposed substantial changes to the NDA" and "quite a bit of time was spent by [his] team in having to review these proposed changes internally and with [their] solicitors".[225] The team would also "follow up" with interested parties who did not respond after receiving comments on their proposed amendments and who may have executed the NDA without providing email addresses for the grant of access to the virtual data room.[226]

157 However, first, the Respondent did not exhibit any amendments to or comments on drafts of the NDAs so the claim that "substantial changes" had been proposed is not substantiated. Second, their claim does not cohere with the approach evidenced in an email exchange between the Respondent's team member and an interested party. In that email exchange adduced by the Respondent, Mr [E] told the interested party that the NDA provided by FTI was "a standard template that is applicable to all interested parties", and FTI was only "prepared to accept minor proposed changes that retain the nature and purpose of the NDA" and were "not in the position to accept any major

223 Annex, row 31.

224 Respondent's 1st Affidavit at para 80(2).

225 Respondent's 1st Affidavit at para 82.

226 Respondent's 2nd Affidavit at para 81.

alterations/additions of clauses".[227] Given that was their guiding principle, I do not see why much time would have been required to deal with 12 interested parties' proposed changes to the NDA. Third, the legal team would have provided guidance on the issue of amendments to the NDAs. Fourth, the "follow up" with interested parties described by the Respondent was, in essence, sending chasers and more administrative in nature. Again, overmanning and overservicing are indicated.

158 "Media matters, including corresponding with advertisement vendors": 25.10 hours ($14,864).[228] The Respondent averred that this item involved "having to prepare and review the advertisements for the tender sale and arranging for publication of the same" and "liaising and corresponding with a various journalists [*sic*] who have reached out to [them] for comments on the tender sale".[229] However, the Respondent's documents show only three pages of emails relating to advertising and five brief advertisements all in similar format.[230] No evidence was provided of the number of queries from journalists or the responses (if any) provided by the Respondent. In my view, this is an instance of overmanning.

Lack of justification

159 Several billed items lacked justification notwithstanding the Respondent's burden to justify his fees.

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227 Respondent's 2nd Affidavit at p 4010.

228 Annex, row 28.

229 Respondent's 1st Affidavit at para 84.

230 Respondent's 2nd Affidavit at pp 2170 to 2179.

160 "Internal discussions on strategy and workstream": 40.00 hours ($26,233).[231] The Respondent did not explain in his affidavits what these discussions entailed or why this amount of time was spent. In oral submissions, the Respondent's counsel argued that the discussions could not be taking place in silos and hence the time costs of every team member (save one) were included in this item.[232] However, this does not explain what the discussions involved, how many discussions were held, or why such extent of discussions was necessary. I agree with the Applicant's submission that the court could not "verify the accuracy and efficiency" of the time spent on this item.[233]

161 "Ancillary administrative work": 5.60 hours ($3,905).[234] The Respondent did not explain what this item was for. The only documents exhibited in this connection were the Applicant's "GST F5 Return" form for January 2023 to March 2023, correspondence on payments made from the Applicant's bank account, and the Applicant's Memorandum of Association.[235] It is unclear to what end the latter document was reviewed.

162 "Review EOIs/tender documents submitted by interested parties": 30.40 hours ($28,040);[236] and "Tender administration, including opening of tenders in presence of witnesses, tender collection, returning of unsuccessful tenders": 41.70 hours ($25,146).[237] First, there appears to be some overlap between these

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231 Annex, row 10.

232 NOA for 1st OA 633 hearing at p 20 lines 27 to 28.

233 AWS at p 26.

234 Annex, row 12.

235 Respondent's 2nd Affidavit at p 4 and exh "WPCM-10", tabs 15 to 17.

236 Annex, row 32.

237 Annex, row 34.

items. Second, the Respondent did not provide any sampling of the EOIs (which could have been redacted for confidentiality if necessary) or evidence of the number of tenders collected, the number of unsuccessful tenders and what returning them entailed, so these items are unsubstantiated. Third, the time spent is difficult to reconcile with the Respondent's counsel's statements that, after the tender closed on 16 June 2023, not much work was done, because the Applicant had served the Notice of Redemption on 15 June 2023; there was still some work in respect of opening up tender bids, but that was not much work (at [110(b)] above). Further, 16 June 2023 was a Friday. There were only two more working days thereafter (19 and 20 June 2023) before the FTI Invoice was rendered on 20 June 2023.

Alleged lack of cooperation from the Applicant's directors

163 One of the work items was for "Liaising with directors, representatives of [the Applicant], LHI for details on ownership of assets, distributions payable to [the Applicant], documents" (30.30 hours).[238] The Respondent explained that this amount of time had to be spent as the Applicant's director was "not forthcoming" with the provision of requested documents, provided some documents in a piecemeal fashion after repeated chasers, provided some incomplete documents and the complete documents only after chasers; and the Respondent's team had to seek clarification on the information in documents.[239] To the Applicant's objection that these requests could have been handled by the more junior team members with a more senior member stepping in only after numerous rounds of chasers,[240] the Respondent's counsel submitted that the

238 Annex, row 15.

239 Respondent's 1st Affidavit at paras 42 to 47.

240 AWS at p 27.

junior members could not be left to deal with the Applicant's "difficult" directors.[241] As for the item "Matters related to SOA (e.g. following up for SOA, review of draft SOAs, request for supporting documents/further info[rmation]" (21.00 hours),[242] the Respondent explained that they had faced "great difficulties in obtaining a proper and completed SOA, notarised affidavit and supporting documents" from the Applicant's directors; four drafts of the SOA had to be reviewed before the fifth version was finalised and lodged with ACRA.[243]

164 In light of the personal allegations made against the Applicant's directors, I offered the Applicant the opportunity for its directors to file an affidavit in response to these allegations. The Applicant decided not to take up this opportunity. Instead, at the second hearing of OA 633, the Applicant's counsel pointed to emails showing that one of the Applicant's directors had provided information and documents in response to requests from the Respondent's team.[244] Perusing the communications adduced by the Respondent, I did not get the impression that the Applicant's directors were deliberately uncooperative, but I noted that the Respondent's team did have to make several rounds of inquiries of the Applicant's directors and that the SOA also underwent a few iterations before finalisation. In these circumstances, I have not made adjustments to these amounts. However, these two instances in no way transform the matter into a complex assignment.

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241 NOA for 1st OA 633 hearing at p 20 lines 1 to 2.

242 Annex, row 18.

243 Respondent's 1st Affidavit at para 46.

244 Respondent's 2nd Affidavit at pp 2007 to 2042, 2531, 2613, 2627, 2687, 2823 and 2830.

Decision on amount of remuneration allowed

165 Having dealt with the issues of principle in relation the Respondent's bill, I now apply the two-stage approach to fix the final amount of remuneration.

166 First, a total of $145,395.50 (see [132]–[138] and [143] above) should be deducted from the Respondent's fees of $1,358,142.50, leaving $1,212,747.

167 Second, I have not made specific deductions for the items reflecting overmanning and/or overservicing and insufficient justification as I do not think the court is placed to determine the specific amounts which should have been charged for those items. However, taking these concerns as well as my views on the lack of complexity of this matter (see [110] and [128] above) in the round, I would apply a further broad-brush deduction and fix the remuneration awarded at **$725,000** (*ie*, a broad-brush discount of about 40% from the balance sum of $1,212,747; and an overall discount of about 46.5% from the original billed fees of $1,358,142.50). I consider this to be a fair, reasonable and proportionate amount of fees in all the circumstances of this matter.

168 For completeness, the Applicant also (separate from its alternative approach which I rejected at [127] above) proposed a two-stage approach in which $388,287.25 would be deducted in the first stage for administrative, secretarial and/or legal work, and then a further 75% discount applied to the reduced figure of $969,855.25, arriving at a final figure of $242,463.82 (see [30] above).[245] In the exercise of my discretion, I arrive at a different set of figures at the first and second stages. I find, in general, the reductions proposed by the Applicant too drastic. Where criticisms levied by the Applicant were germane,

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245 AWS at paras 46 and 48.

I have taken them on board in my assessment of the appropriate level of the Respondent's remuneration.

Relevance of precedents

169 The Applicant referred to the following precedents to support its proposed quantum of fees, arguing that these previous cases involved far greater complexity than the present case:

(a) *Dovechem*, where the court fixed the liquidators' remuneration at $750,000 for work done over 1.5 years. The quantum billed was $1,464,097.00 for 3,483 hours of work by a team of 14.

(b) *Linda Kao*, where the court fixed a receiver and manager's remuneration at $1.8m for work done over 12 months. The quantum billed was $3.1m for 5,053.50 hours of work by a team of 14.

(c) BC 67/2021, where the court fixed the liquidators' remuneration at $860,000 for work done over 32 months. The quantum billed was $4,629,654.63 for 7,097 hours of work by a team of about 30.[246]

170 In my view, precedents on quantum should not be the first port of call, much less determinative, when deciding on the appropriate level of remuneration in a given case. At best, a precedent affording relevant comparison to the case at hand might provide a sense-check for the court at the end, after the court has stepped through the process of assessing the appropriate level of remuneration based on the facts and circumstances of the case. In the present case, I do not consider the precedents cited by the Applicant to be on point where

246 AWS at para 50.

quantum is concerned. I have not referred to them in that regard for my assessment.

Conclusion

171 In conclusion, I fix the amount to be paid by way of remuneration by the Applicant to the Respondent in respect of his appointment as R&M from 11 April 2023 to 26 June 2023 at $725,000. I order that the Respondent account to the Applicant for the amount in excess of the remuneration fixed, *viz*, for the amount of $633,142.50 (being $1,358,142.50 less $725,000), as well as the GST paid on that amount.

172 If parties are unable to agree on the costs of this application, they are to file their written submissions on costs, limited to three pages, within one week from the date of this judgment.

Kristy Tan
Judicial Commissioner of the High Court

Audrey Chiang, Alwyn Tan and Santhosh V (Dentons Rodyk & Davidson LLP) for the applicant;
Ng Yeow Khoon, Claudia Khoo and Fiona Tham (Shook Lin & Bok LLP) for the respondent

Annex

Hang Huo Investment Pte Ltd
Professional Services Rendered in relation to our appointment as Receiver and Manager of the Company and the Receiver of 50 and 51 Tiong Bahru Road
Breakdown of FTI Invoice No. 1040000000520 dated 20 June 2023

Sum of Bill Hours	Martin Wong	[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]	Grand Total
Administration and Planning	**15.90**	**2.30**	**43.10**	**14.40**	**1.00**	**38.10**	**33.10**	**13.60**	**27.60**	**16.20**	**205.30**
Administrative set-up	**2.40**	-	**2.60**	-	-	**0.00**	**12.20**	**4.30**	-	-	**29.50**
CorpPass matters	0.00	-	-	-	-	-	1.70	-	-	-	2.00
IT related matters	-	-	2.60	-	-	0.20	-	0.30	-	-	3.10
Review of debenture/mortgage and deed of appointment documents	2.10	-	-	-	-	-	5.30	-	-	-	7.40
Preliminary information gathering through publicly available information	-	-	-	-	-	7.80	5.20	4.00	-	-	17.00
Appointment notification	**2.40**	-	**5.00**	-	-	**8.50**	**4.90**	**6.00**	**2.80**	**13.60**	**43.20**
Issuance of notifications to directors, government authorities, banks, employees, secretary, other relevant bodies	2.40	-	5.00	-	-	8.50	4.90	6.00	2.80	13.60	43.20
Case planning	**3.20**	**2.30**	**9.20**	-	**1.00**	**6.00**	**5.90**	**2.00**	**7.80**	**2.60**	**40.00**
Internal discussions on strategy and workstream	3.20	2.30	9.20	-	1.00	6.00	5.90	2.00	7.80	2.60	40.00
General administration	-	-	**2.00**	-	-	**1.00**	**2.00**	**1.30**	-	-	**8.70**
Ancillary administrative work	-	-	2.00	-	-	1.00	-	1.30	-	-	5.60
Payment of essential invoices required to keep the hotel operations running	-	-	-	-	-	0.00	2.00	-	-	-	3.10
Request for information	**7.90**	-	**22.30**	**5.50**	-	**3.40**	**5.20**	-	-	-	**44.30**
Liaising with directors, representatives of HHI, LHI for details on ownership of assets, distributions payable to HHI, div	7.90	-	16.60	3.60	-	-	-	-	-	-	32.30
Compiling and consolidating property-related information and technical specifications	-	-	5.60	1.90	-	3.40	5.20	-	-	-	14.00
Statutory reporting/compliance matters	-	-	**1.20**	**0.90**	-	**10.40**	**2.10**	-	**17.00**	-	**39.60**
Matters related to SOA (e.g. following up for SOA, review of draft SOAs, request for supporting documents/further info	-	-	-	0.90	-	9.10	-	-	3.00	-	21.00
Lodgement of documents with ACRA, such as the Notice of appointment, Deed of Appointment, Change of Registered	-	-	1.20	-	-	1.30	2.10	-	-	-	4.60
Discharge of receivership including the relevant lodgement to ACRA	-	-	-	-	-	-	-	-	14.00	-	14.00
Case specific matters	**14.80**	**22.20**	**23.30**	**19.90**	-	-	-	-	-	-	**80.20**
Legal matters	**14.80**	**22.20**	**23.30**	**19.90**	-	-	-	-	-	-	**80.20**
Legal advice on matters such as information request from directors, power of receiver and manager pursuant to deben	14.80	22.20	23.30	19.90	-	-	-	-	-	-	80.20
Realisation of Asset(s)	**299.30**	**94.50**	**193.30**	**90.00**	**9.30**	**141.20**	**185.00**	**142.40**	**234.20**	**182.20**	**1,572.20**
EOI/Tender Process	**11.15**	**9.56**	**24.50**	**28.20**	**9.30**	**95.20**	**96.10**	**70.30**	**119.10**	**110.10**	**573.51**
Research for information from publicly available sources	-	-	-	-	-	-	-	-	-	32.80	32.90
Set up and management of users for Virtual Data Room	-	-	-	9.20	-	8.00	5.00	-	-	25.10	27.00
Media matters, including corresponding with advertisement vendors	0.00	0.20	1.60	1.00	9.30	8.50	8.00	-	1.10	-	25.10
Preparation of Information Memorandum with FAQs	0.95	1.20	9.70	2.00	-	20.40	19.60	52.70	30.20	9.60	152.85
Preparation of property factsheet, summarising the available information of the property to interested parties	0.25	0.36	1.70	-	-	7.50	11.50	-	15.50	9.60	47.21
Non-Disclosure Agreements with each individual party, review of proposed changes in NDA	2.05	3.00	3.70	2.30	-	31.00	21.40	-	53.40	7.50	124.15
Review EOI/tender documents submitted by interested parties	3.20	4.80	6.20	12.70	-	0.80	2.70	-	-	-	30.40
Updating and maintaining interested parties tracking list based on the calls received, emails sent, EOIs received, NDA	-	-	1.60	1.40	-	10.90	23.30	10.00	9.40	21.20	77.80
Tender administration, including opening of tenders in presence of witnesses, tender collection, returning of unsuccess	4.00	-	1.60	4.80	-	11.70	11.00	7.60	1.00	-	41.70
Preliminary due diligence works on interested parties, soliciting/reviewing proposals from marketing agents	-	-	-	-	-	-	-	-	-	3.60	3.60
Identifying, securing, insuring assets (e.g. bank account, debtors, properties etc)	**2.34**	-	**7.90**	**8.30**	-	**6.70**	**11.80**	-	-	**17.90**	**54.94**
Property/plan searches e.g. building plans, title, SLA caveats etc	-	-	-	-	-	0.50	4.30	-	-	4.20	9.00
Bank account matters e.g. change of bank mandate, update bank account name, instructions to DBS to allow for withd	1.30	-	6.60	-	-	2.80	3.90	-	-	-	14.40
Valuation matters, including obtaining an updated valuation report, obtaining financial forecasts/information from HHL	0.28	-	1.30	6.30	-	1.00	-	-	-	9.10	18.98
Insurance matters e.g. review of coverage, updating beneficiaries of policies, arranging for renewal of policies, (which	0.76	-	-	-	-	2.60	3.60	-	-	4.60	11.56
Recovery of debt(s)	**0.86**	-	**5.00**	**2.30**	-	**4.80**	**3.50**	-	-	-	**16.46**
Correspondence with tenants/occupiers at property, serving letter of demand, following up for recovery of debts	0.86	-	-	2.30	-	2.20	-	-	-	-	5.36
Including review of SOA, audited financial statements, queries to directors on details of debts	-	-	5.00	-	-	2.60	3.60	-	-	-	11.10
Review of agreements/documents received etc	**9.80**	**6.44**	**16.30**	**15.20**	-	**2.90**	**37.30**	**32.60**	**10.80**	**26.80**	**157.34**
Financials including management reports, company's internal records, bank statements etc	1.85	2.44	8.90	-	-	-	7.20	8.30	7.30	7.20	37.39
Affairs of the property e.g. historical performance of LHI, historical transactions of HHI for the past 6 months, analysis	1.77	2.30	2.80	7.50	-	-	5.20	7.80	-	12.10	39.47
Lease Agreement with STD	1.83	0.40	-	2.90	-	-	4.40	-	-	-	9.60
Collaboration Agreement and Addendum with LHI	1.20	0.80	-	2.70	-	1.10	3.20	2.20	-	-	11.20
Building, floor and site plans	-	-	0.60	-	-	-	4.25	-	-	-	4.80
Tenancy Agreements with occupiers at Link Hotel	0.95	0.50	3.20	-	-	-	3.05	7.50	-	-	15.10
Hotel asset listings to verify ownership of assets	0.45	-	-	2.10	-	-	-	2.00	-	-	4.55
Services Agreement with SLA	0.03	-	1.00	-	-	-	3.20	-	-	-	5.03
Announcements made by Link Hotels on HKEX	0.63	-	1.65	-	-	1.80	3.10	-	3.50	2.40	13.05
Insurance policies	0.65	-	1.35	-	-	-	3.70	0.60	-	-	6.30
Operational contracts, licenses etc	-	-	1.85	-	-	-	-	4.20	-	4.30	10.35
Site visits	**10.00**	**0.90**	**23.70**	**13.30**	-	**19.00**	**23.90**	**25.70**	**28.20**	**28.20**	**172.90**
Liaise with interested parties and arranging for logistics of site viewings	4.40	0.90	8.20	2.20	-	1.50	5.40	11.70	15.70	19.20	69.20
Conducting site visits and viewings with interested parties, liaising with hotel management representative etc	5.60	-	15.50	11.10	-	17.50	18.50	14.00	12.50	9.00	103.70
Discussions, meetings and correspondences with interested parties	**249.85**	**65.80**	**115.90**	**22.70**	-	**12.60**	**13.20**	**13.80**	**76.10**	-	**569.95**
Responding to queries raised by interested parties in relation to the specifications of the property as well as the tender	249.85	65.80	115.90	22.70	-	12.60	13.20	13.80	76.10	-	569.95
Updates, meetings and correspondences with stakeholders	**15.30**	**11.80**	-	-	-	-	-	-	-	-	**27.10**
With the mortgagee bank (OBS), including but not limited to recording of receivership status, interests received, strate	11.60	9.80	-	-	-	-	-	-	-	-	21.40
With the lessor of the property (STB)	3.70	2.00	-	-	-	-	-	-	-	-	5.70
Trading	-	-	**13.00**	-	-	**5.30**	**5.20**	-	-	-	**23.50**
Employee issues	-	-	**13.00**	-	-	**5.30**	**5.20**	-	-	-	**23.50**
Payment request for funding from DBS for employee salaries payment	-	-	6.00	-	-	-	-	-	-	-	6.00
Payment of salaries, including logistics of collecting and distributing cashiers orders to the relevant staff	-	-	2.00	-	-	2.60	3.10	-	-	-	8.40
Tabulation of salaries and statutory contributions	-	-	4.20	-	-	2.60	-	-	-	-	7.00
Review of employment agreements for all the staff	-	-	-	-	-	-	2.10	-	-	-	2.10
Grand Total	**330.00**	**119.00**	**272.70**	**124.30**	**10.30**	**184.60**	**224.10**	**156.00**	**261.80**	**190.40**	**1,081.20**
Hourly rate (SGD)	**1,400.00**	**1,050.00**	**975.00**	**850.00**	**550.00**	**400.00**	**400.00**	**350.00**	**350.00**	**280.00**	
Bill amount (SGD, before GST and disbursements)	**462,000.00**	**124,950.00**	**265,882.50**	**105,655.00**	**5,665.00**	**88,608.00**	**107,568.00**	**54,600.00**	**91,630.00**	**51,584.00**	**1,358,142.50**

03-Jan-23