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

[2025] SGHCR 16

Originating Summons No 207 of 2022 (Summons No 650 of 2025)

Between

Third Eye Capital Corp

… *Plaintiff*

And

(1) Pretty View Shipping SA
(2) Pretty Urban Shopping SA
(3) Parakou Tankers Inc

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Service — Setting aside]
[Civil Procedure — Judgments and orders — Enforcement — Examination of judgment debtor]

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Third Eye Capital Corp
v
Pretty View Shipping SA and others

[2025] SGHCR 16

General Division of the High Court — Originating Summons No 207 of 2022 (Summons No 650 of 2025)
AR Perry Peh
9 April, 2 May 2025

26 May 2025

AR Perry Peh:

Introduction

1 HC/SUM 650/2025 ("SUM 650") was an application by the defendants in HC/OS 207/2022 ("OS 207") to set aside (a) the *service* of an order for examination of judgment debtor ("EJD") ("the 2nd EJD Order") and (b) the 2nd EJD Order *itself*. The defendants are corporate entities, and they are the judgment debtors in OS 207. The named examinee is a director of each of the defendants. A further gloss to the facts is that the 2nd EJD Order is the *second* time the plaintiff-judgment creditor in OS 207 has obtained an order for EJD (or "EJD order") against the same examinee, who had attended examination as required under a previous order for EJD ("the 1st EJD Order"), which was later discharged.

2 The defendants disputed that the 2nd EJD Order had been properly served on them and the examinee. Further, they argued that the plaintiff had obtained the 2nd EJD Order in breach of its duty of full and frank disclosure. On the latter point, the defendants' complaint was that the plaintiff's affidavit filed in support of the *ex parte* application for the 2nd EJD Order failed to disclose that a third party had been involved in a payment made by the first and defendants to another entity, which was the fact the plaintiff had relied on to justify the further EJD proceedings under the 2nd EJD Order. In the alternative, the defendants asked that the 2nd EJD Order be varied to limit the scope of permissible questions in the EJD process.

3 SUM 650 raised two key issues. The first is whether the electronic service of the 2nd EJD Order (through e-Litigation) by the plaintiffs' solicitors on the defendants' solicitors, where both sets of solicitors had previously communicated with each other on matters involving the defendants as well as the examinee in relation to proceedings in OS 207, constituted effective service for the purposes of O 48 r 1(2) of the Rules of Court (2014 Rev Ed) ("ROC 2014"). The second issue relates to the scope of material facts which a plaintiff in an *ex parte* application for an EJD order had to disclose in satisfaction of its duty of full and frank disclosure, particularly in a situation where it was the plaintiff's second or further attempt at seeking an EJD order, after the previous EJD order had been discharged.

4 Having considered the arguments, I found that the 2nd EJD Order had been properly served on the defendants and the examinee. I also agreed, as the defendants submitted, that a plaintiff making a second or further attempt at seeking an EJD order after a previous EJD order had been discharged must show a change in circumstances which warrant further questioning of the same examinee through the EJD process. However, applying that standard, I found

that the plaintiff had met its duty of full and frank disclosure. Finally, I did not think SUM 650 was the appropriate forum for objections relating to the scope of appropriate questions in the examination under the 2nd EJD Order to be dealt with; that was to be determined by the Registrar having conduct of the EJD proceedings.

5 For the reasons above, I dismissed SUM 650. The defendants have appealed against my decision.[1] In these written grounds, I elaborate on the reasons previously provided to parties and supplement them, where appropriate.

Background

The previous proceedings involving the parties

6 The plaintiff, Third Eye Capital Corporation ("TEC"), commenced (a) arbitrations against the first defendant ("Pretty View") and the second defendant ("Pretty Urban") in respect of unpaid hire under two charterparties, as well as (b) another arbitration against the third defendant ("Parakou Tankers") in its capacity as guarantor for Pretty View and Pretty Urban's liabilities under the charterparties. TEC obtained awards ("the Awards") in its favour, which it later was granted leave to enforce in OS 207, pursuant to which a judgment debt providing for payment in terms of the Awards and costs for OS 207 was obtained against the defendants ("the Judgment Debt").

7 In October 2022, TEC obtained an EJD order ("the 1st EJD Order") against the defendants. The examinee named in the 1st EJD Order was Mr Liu Por ("Mr Liu"), who is the sole shareholder and sole director of Parakou Tankers, and also a director of Pretty View and Pretty Urban. Pretty View and

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1 HC/RA 104/2025.

Pretty Urban are wholly owned subsidiaries of Parakou Tankers. In October 2023, TEC sought the discharge of the 1st EJD Order and brought the EJD proceedings thereunder to an end. According to TEC, it was led to believe, from the disclosures and information provided during the first set of EJD proceedings, that Pretty View and Pretty Urban had fully disclosed their assets, and that they had insufficient assets of their own to make any payment towards satisfaction of the Judgment Debt.[2]

8 In HC/SUM 245/2025 ("SUM 245"), TEC applied for permission to use in foreign proceedings, documents and information it had obtained from the defendants in the proceedings under the 1st EJD Order. The foreign proceedings involved an application which TEC intended to file in the Republic of Marshall Islands (where Parakou Tankers is incorporated) to seek an order piercing the corporate veil of Parakou Tankers and hold Mr Liu personally liable for the sum under the Awards. The High Court allowed SUM 245 (see *Third Eye Capital Corp v Pretty View Shipping SA and others* [2024] 4 SLR 1304).

SUM 253

9 In January 2025, TEC filed HC/SUM 253/2025 ("SUM 253"), seeking a second EJD order against the defendants, in which Mr Liu was again the named examinee. In its supporting affidavit for SUM 253, TEC stated that it had obtained information that one International Seaways Inc ("Intl Seaways") received a payment of US$339,578.71 ("the Payment") from Pretty View and Pretty Urban on 6 August 2024. TEC explained that it came across this information because it had entered into a confidential settlement with Intl Seaways over a separate dispute, the terms of which required the parties to

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2 1st affidavit of Patrick Harnett ("1PH") at para 30.

disclose to each other any amounts received or recovered from the defendants and/or their affiliates in relation to the charterparties to which the Awards relate. TEC states that the information which it acquired led it to believe that either the financial circumstances of Pretty View and Pretty Urban have improved since the discharge of the 1st EJD Order, or that Mr Liu had not been forthright during the first set of EJD proceedings, such that Pretty View and Pretty Urban in fact had more assets than what had been disclosed during those proceedings. On 31 January 2025, the court granted an order-in-terms of SUM 253 and made the 2nd EJD Order, HC/ORC 595/2025.

Service of the 2nd EJD Order and the circumstances leading to the filing of SUM 650

10 On 5 February 2025, TEC's solicitors, WongPartnership LLP ("WP") served the 2nd EJD Order on LVM Law Chambers LLC ("LVMLC") via e-Litigation.[3] LVMLC was at the material time, and continues to be, the solicitors on record for the defendants in OS 207 – the relevant Notices of Appointment/Change of Solicitor filed on e-Litigation were dated 8 February 2024 (see [41] below). Subsequent to the electronic service of the 2nd EJD Order, there was no response from LVMLC until it wrote a letter to the court on 14 February 2025 ("the 14 Feb Letter").[4] The 14 Feb Letter was a response to a letter issued by the court which directed TEC's solicitors to provide information relating to the conduct of the first hearing of the EJD proceedings under the 2nd EJD Order, which had been fixed for 21 February 2025.

11 In the 14 Feb Letter, LVMLC stated, among other things, that: (a) copies of the 2nd EJD Order were not personally served on the named examinee, Mr

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3 2nd affidavit of Patrick Harnett ("2PH") at para 11.

4 7th affidavit of Liu Por ("7LP") at pp 19–20.

Liu, the immediate implication of which was that there is minimally irregularity in relation to whether there was proper and effective service of the 2nd EJD Order; and (b) the court grant an extension of the relevant timelines for Mr Liu to comply with the 2nd EJD Order, and for the upcoming hearing to be refixed.

12 Further correspondence was exchanged between the court and the parties in relation to the date for the first hearing and whether an extension of the relevant timelines should be granted. In a letter dated 27 February 2025,[5] LVMLC informed the court that it intended to file an application to set aside the purported service of the 2nd EJD Order as well as the 2nd EJD Order itself, and it proposed timelines for the filing of the intended application as well as for the conduct of the EJD proceedings. The court, after considering the response of TEC's solicitors, directed that the first hearing of the EJD proceedings under the 2nd EJD Order be held in abeyance pending the determination of the intended setting aside application.[6] It should be noted that the court did not grant any extension of the relevant timelines in the 2nd EJD Order. In the event, the setting aside application (namely, SUM 650) was filed on 10 March 2025.

SUM 650 and the parties' submissions

13 In SUM 650, the defendants sought the following: (a) the service of the 2nd EJD Order be deemed invalid and set aside; (b) the 2nd EJD Order be set aside in its entirety; and (c) alternatively, the terms of the 2nd EJD Order be varied so that Mr Liu be required to provide responses only to questions which have not been traversed in the first set of EJD proceedings under the 1st EJD

5 2PH at pp 65–66.

6 2PH at pp 71–72.

Order, and/or that questions relating to the finances of Parakou Tankers be disallowed, or to the extent the court deems necessary.

14 The defendants' counsel, Mr Chan Kia Pheng ("Mr Chan"), made the following submissions in support of SUM 650:

(a) Order 48 r 1(2) of the ROC 2014 required that the 2nd EJD Order be "personally served" on the defendants and Mr Liu. In connection with the defendants, as there had been no prior agreement between the parties that documents requiring personal service under the ROC 2014 could be served electronically through e-Litigation, and since LVMLC also did not have instructions to accept service of documents otherwise requiring personal service (such as the 2nd EJD Order), the electronic service of the 2nd EJD Order did not constitute valid service required under O 48 r 1(2). As for Mr Liu, he was not even a party to OS 207 and there was no basis on which WP could have effected service of the 2nd EJD Order on LVMLC, who were the defendants' and *not* Mr Liu's solicitors. In submissions, Mr Chan accepted that LVMLC would have received instructions from the defendants *through* Mr Liu, but those instructions were provided by Mr Liu in his capacity as an officer of the defendants, and LVMLC did *not* act for Mr Liu in his personal capacity.

(b) The fact that Mr Liu had in fact been notified of the 2nd EJD Order and the proceedings thereunder does not assist TEC. It is established law that the requirement of personal service of an EJD order will not be dispensed with merely on the grounds that the person named in the order knows of its existence.

(c) TEC breached its duty of full and frank disclosure in its application for the 2nd EJD Order through SUM 253. The implication

of what had been stated in TEC's supporting affidavit for SUM 253 about the Payment (see [9] above) was that *only* Pretty View and Pretty Urban made the Payment. This has now been shown to be untrue by an e-mail from Intl Seaways to TEC's counsel sent on 8 August 2024, which TEC adduced in its reply affidavit for SUM 650. In this e-mail, Intl Seaways stated that "settlement funds were received from [Pretty View], [Pretty Urban] and Parakou Shipping Limited in the sum of US$339,57.71, on 6 August 2024".[7] Therefore, TEC had provided a half-truth to the court in its supporting affidavit for SUM 253. The identity of Parakou Shipping Limited ("Parakou Shipping") as one of the parties to the Payment was a material fact which the court would have considered when deciding whether or not to grant the 2nd EJD Order in SUM 253. Further, as part of its duty of full and frank disclosure, TEC ought to have made the necessary inquiries with Intl Seaways on the breakdown of the Payment and the proportion of which that had been contributed by Pretty View and Pretty Urban. If TEC had done so, they would have discovered that the Payment was made *entirely* by a third-party entity, and neither by Pretty View nor Pretty Urban, a position which Mr Liu maintained in his supporting affidavit for SUM 650.[8]

15 In response, TEC's counsel, Mr Lin Chunlong ("Mr Lin"), submitted:

(a) Because LVMLC acts for both the defendants and Mr Liu, LVMLC was not entitled to refuse acceptance of service, and Mr Liu as well as the defendants must be taken to have agreed that service of

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7 2PH at para 71.

8 7LP at paras 16–19.

documents otherwise requiring personal service could be effected through electronic service on LVMLC. Service of the 2nd EJD Order was therefore valid. However, even if the service of the 2nd EJD Order was found to be irregular, the court should dispense with the requirement of service pursuant to O 62 r 11 of the ROC 2014, or cure the purported irregularity pursuant to O 2 r 1 of the ROC 2014, given that it is plain that the 2nd EJD Order and the proceedings thereunder have been brought to the notice of Mr Liu, who has also instructed LVMLC to correspond with WP and the court in relation to these proceedings.

(b) Mr Lin argued that TEC had met its duty of full and frank disclosure in SUM 253. Further, to obtain the EJD order pursuant to SUM 253, it was unnecessary for TEC to show the court that Pretty View and Pretty Urban had in fact made the Payment. This is because, a judgment creditor is entitled as of right to avail itself of the EJD process for as long as the judgment debt remains unsatisfied and enforceable. Since the Judgment Debt remained unsatisfied, there was no need for TEC to explain why the 2nd EJD Order was necessary, and TEC was *prima facie* entitled to obtain the 2nd EJD Order. The defendants have also not shown any special circumstances as to why TEC should be deprived of the right to bring further EJD proceedings. TEC also disputed Mr Liu's position that the Payment was made entirely by a third-party entity.

The issues

16 SUM 650 raised three main issues:

(a) Whether service of the 2nd EJD Order was irregular?

(b) Whether TEC had breached its duty of full and frank disclosure in its application for the 2nd EJD Order in SUM 253?

(c) If the service of the 2nd EJD Order and/or the 2nd EJD Order itself were to stand, whether the 2nd EJD Order should be varied?

Preliminary issues: TEC's objections to the court hearing SUM 650

17 Before turning to the issues proper, as a preliminary point, I address two submissions made by Mr Lin as to why the court should stay or refuse to hear SUM 650, on account of the defendants and/or Mr Liu's conduct in these proceedings.

18 Mr Lin's first submission was that the court should exercise its inherent powers under O 92 r 4 of the ROC 2014 to stay SUM 650 until previous costs orders made against the defendants have been satisfied – these included the costs ordered in respect of SUM 245, as well as the costs of $5,000 in OS 207 which form part of the Judgment Debt. Mr Lin argued that the defendants were blatantly abusing the court's processes by bringing SUM 650, while refusing to pay the outstanding costs. Given that the defendants could afford the costs of engaging counsel to resist SUM 245 and now bring SUM 650, it appeared that the defendants have the requisite capacity and means to pay the outstanding costs but are deliberately refusing to pay these costs.

19 It is established law that the court has the inherent power to stay proceedings for non-payment of costs (see *Lim Poh Yeoh (alias Aster Lim) v TS Ong Construction Pte Ltd* [2017] 4 SLR 789 ("*Lim Poh Yeoh*") at [7]; *Huttons Asia Pte Ltd and another v Chen Qiming* [2024] 2 SLR 401 ("*Huttons Asia*") at [21]). In the context of proceedings under the Rules of Court 2021 ("ROC 2021"), this power is now expressly provided for in O 21 r 2(6), which states:

> The Court may stay or dismiss any application, action or appeal or make any other order as the Court deems fit if a party refuses or neglects to pay any costs within the specified time, whether the costs were ordered in the present proceedings or in some related proceedings.

20 I did not agree with Mr Chan's submission that, if TEC wished to seek a stay of SUM 650 on grounds of non-payment of the outstanding costs, then a separate application necessarily had to be taken out. Whether such a separate application is necessary depends on the *context* in which the party whose costs remained unsatisfied (which I refer to as the "judgment creditor" for the purposes of this section) seeks to invoke the inherent powers of the court. Where the power is invoked by the judgment creditor as a *response* to an application brought by the party refusing to pay costs (as in the present case), it should be open to the judgment creditor to invoke the court's power through its responsive submissions in the application, provided that the requisite factual material to support the invocation of that power is contained in its reply affidavits filed in the application. To require the judgment creditor to file a separate and standalone application in this context will only result in unnecessary and further costs being incurred by the judgment creditor, where it already faces difficulties in recovering costs that are outstanding. On the other hand, where the power is invoked at the *instance* of the judgment creditor, then obviously a separate application has to be taken out, in order to provide a forum in which the issue as to whether the court's inherent power is to be exercised could be raised.

21 In this case, the outstanding costs remain unsatisfied as at the time when I heard SUM 650. Nonetheless, I did not think this was an appropriate case for me to stay SUM 650 on account of the defendants' non-payment of the outstanding costs. As the High Court noted in *Lim Poh Yeoh* (at [10]), whether a stay should be granted would depend on the justice of the case and include considerations such as whether there had been an abuse of process, which was

to be balanced against the right of the defaulting party to be heard. While I found it significant that the defendants could continue to engage counsel and bring SUM 650, despite their apparent inability to satisfy the outstanding costs, the balance of interests in this case weighed in favour of the defendants' right to be heard regarding their objections about the service of the 2nd EJD Order and the 2nd EJD Order itself. After all, SUM 650 was brought as a *response* to the further EJD proceedings initiated by TEC. I therefore rejected Mr Lin's first submission.

22 Mr Lin's second submission as to why the court should refuse to hear SUM 650 was s 12(2) of the Administration of Justice (Protection) Act 2016 (2020 Rev Ed) ("the AJPA"), which provides as follows:

> *In addition to* any punishment imposed under [s 12(1)], where a person has committed contempt in relation to the proceedings before a court, the court may refuse to hear the person until the contempt is purged or the person submits to the order or direction of the court or an apology is made to the satisfaction of the court.
>
> [emphasis added]

23 Mr Lin argued that, since both the 2nd EJD Order and the timeline for Mr Liu's compliance with the 2nd EJD Order (which was 7 days from the date the order was made) stand, and given that Mr Liu has failed to comply with the 2nd EJD Order, this constitutes contempt of court which warrants the court exercising its powers under s 12(2) of the AJPA and refusing to hear Mr Liu regarding SUM 650. I did not consider s 12(2) of the AJPA to be relevant in this case. The opening words of s 12(2), namely, "[i]n addition to", make clear that the court's powers in s 12(2) are to be exercised in a case where punishment has already been meted out for the contempt. In this case, there are not even any contempt proceedings brought before the court and obviously s 12(2) is inapplicable. In any event, until SUM 650 is determined and concluded, and

until the defendants have exhausted any right of appeal which they may have if SUM 650 is determined against them at first instance, I do not think Mr Liu could be found in contempt for his failure to comply with the 2nd EJD Order, given that the validity of the service of the 2nd EJD Order as well as of the order itself has been put into question.

24 With these preliminary points out of the way, I turn to address the issues proper.

Whether the service of the 2nd EJD Order was irregular?

25 Order 48 r 1(2) of the ROC 2014 states:

> An [EJD order] … must be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination.

26 This is also the position in respect of examination of enforcement respondent proceedings (as EJD proceedings are now known) under the ROC 2021. Order 22 r 11(5) of the ROC 2021 states:

> An order under this rule … must be served personally on the enforcement respondent and, where the enforcement respondent is an entity, on any officer of the entity ordered to attend for examination.

27 Since the defendants are corporate entities, the 2nd EJD Order must be served personally on the defendants, as well as Mr Liu, who is the named examinee in the Order. However, it is undisputed that there was no such personal service within the meaning of O 62 rr 3–4 of the ROC 2014. Therefore, the question of whether service of the 2nd EJD Order was irregular turns on whether TEC's solicitors were permitted under the ROC 2014 to serve the 2nd EJD Order on the defendants and Mr Liu by way of electronic service on LVMLC.

Agreements for electronic service of documents otherwise requiring personal service under O 63A r 12 of the ROC 2014

28 Order 62 r 3(1) and O 62 r 4 of the ROC 2014 prescribe default methods by which personal service of a document can be effected on a person or body corporate. However, O 62 r 3(2) also states that personal service may be effected "in such other manner as may be agreed between the party serving and the party to be served" (for the equivalent provision in the ROC 2021, see O 7 r 2(1)(*d*)).

29 One such mode of agreement which the parties can reach is provided for in O 63A r 12(1)(*b*) and r 12(1A) of the ROC 2014, which I reproduce below:

> **12**.—(1) If a document —
>
> …
>
> (*b*) being a document which is required by these Rules to be served personally and *which the party to be served has agreed may be served using the electronic filing service*, is required under any other provision of these Rules to be served, delivered or otherwise conveyed by a person to any other person and that person is an authorised user or a registered user or is represented by a solicitor who is an authorised user or a registered user (referred to in this Rule as the person on whom the document is served), such service, delivery or conveyance may be effected by using the electronic filing service by electronic transmission or via a service bureau.
>
> (1A) For the purposes of paragraph (1)(*b*), *a party who has instructed his solicitor to accept service of a document* which is required by these Rules to be served personally shall be deemed to have agreed to be served using the electronic filing service.
>
> [emphasis added]

30 For completeness, I note that the ROC 2021 also contains these rules in identical terms (see O 28 r 12(1)(*b*) and r 12(2)).

31 An agreement for electronic service of documents otherwise requiring personal service under O 63A r 12 of the ROC 2014 can take one of two forms. It can take the form of an *express* agreement, which is provided for in O 63A r 12(1)(*b*). It can also take the form of an *implied* agreement, which is provided for in O 63A r 12(1A). Whether in a case of an *express* or *implied* agreement, it must be shown that the party served is "represented" by the solicitors on whom the documents had been served, or where the person served is himself an "authorised user" or a "registered user" of e-Litigation (see O 63A r 12(1)(*b*)).

32 A party effecting service (hereafter referred to as a "serving party") who relies on an *express* agreement under O 63A r 12(1)(*b*) to justify the use of electronic service on the other party's solicitors of a document that otherwise required personal service under the ROC 2014 must *prove* that such an agreement had been reached prior to the time of electronic service. Evidence which the serving party may rely on to prove such an agreement can take the form of a contract entered into before the act of service to which the parties' dispute relates and which makes provision for how originating process and documents requiring personal service are to be served, or it can also take the form of correspondence between parties or their solicitors which evidence such an agreement.

33 On the other hand, an *implied* agreement under O 63A r 12(1A) can be found where "a party has instructed his solicitor to accept service of a document" that otherwise required personal service under the ROC 2014. In most if not all cases, the party who relies on O 63A r 12(1A) to justify the regularity of service is likely to be the serving party. Obviously, the serving party would *not* be privy to any instructions that the party served through its solicitors might have given to those solicitors. If it were a requirement that the serving party must provide *direct* evidence of such instructions before an

implied agreement under O 63A r 12(1A) could be found, a serving party would necessarily fail to discharge its burden of proof and an implied agreement would only be found in the rarest of cases, thus rendering the provision in O 63A r 12(1A) nugatory.

34 In my view, what is crucial to the finding of an *implied* agreement under O 63A r 12(1A) is whether the circumstances of the case as well as the conduct of the solicitors of the party served, prior to the act of service, justify the conclusion that those solicitors had instructions from the party served to accept service of documents otherwise requiring personal service. Therefore, as explained in *Singapore Civil Procedure: Vol I* (Sweet & Maxwell, 2021) ("*Singapore Civil Procedure*") (at para 63A/12/2), O 63A r 12(1A) applies where "a solicitor *intimates* that he has been instructed to accept service" [emphasis added]. The relevant circumstances and conduct are to be assessed from the perspective of the serving party's solicitors and on objective standard. In other words, the test is not whether the serving party or his solicitors *subjectively* believed that the other side's solicitors had the requisite instructions to accept service, but whether a reasonable person standing in the shoes of the serving party's solicitors could have believed so. If an *implied* agreement under O 63A r 12(1A) is to operate as a principled *exception* to the requirement as to how personal service is to be effected, an objective standard should be applied in determining if it could be made out in each case.

Whether an agreement for electronic service of documents otherwise requiring personal service had been reached in this case

35 Since it is undisputed that there was no personal service of the 2nd EJD Order on the defendants and Mr Liu (see [27] above), for TEC to show that

service of the 2nd EJD Order was regular, it must show that an agreement on electronic service of the 2nd EJD Order under O 63A r 12 had been reached.

36 Prior to the commencement of SUM 253, WP and LVMLC had been in communication with each other in respect of matters relating to SUM 245. I elaborate on these communications below (at [49]). However, it is undisputed that, before electronically serving the 2nd EJD Order on LVMLC, WP did not make any enquiries with LVMLC on whether they had instructions to accept service of documents such as the 2nd EJD Order on behalf of the defendants and Mr Liu. As such, there could have been no *express* agreement reached between the parties on electronic service of the 2nd EJD Order, for the purposes of O 63A r 12(1)(*b*) of the ROC 2014.

37 Accordingly, TEC did not take the position – and in my view, rightly so – that an *express* agreement had been reached. Instead, TEC's counsel, Mr Lin argued that LVMLC are the "solicitors on record" for the defendants and Mr Liu, and therefore, pursuant the Law Society's Practice Direction ("Law Soc PD") 8.5.4, which states that "[l]egal practitioners on record are not entitled to refuse acceptance of service of any documents", LVMLC was not entitled to refuse to accept service of the 2nd EJD Order, so long as they remain on record. In these circumstances, the 2nd EJD Order was regularly served on the defendants and Mr Liu. In response, the defendants' counsel, Mr Chan argued that the WP ought to have first made the necessary inquiries with LVMLC on whether LVMLC had instructions to accept service. Mr Chan also cited Law Soc PD 8.5.10, which states that, in cases of actual or contemplated legal proceedings where solicitors for the serving party had been in communication with the other party's solicitors, personal service of documents on the *other party* is not allowed if the solicitors for the serving party had not first made enquiries with the other party's solicitors on whether they had instructions to

accept service on behalf of the party to be served, and the other party's solicitors failed to provide a confirmation within three working days or any such other period of time as the parties may agree.

38 I do not think that the Law Soc PDs are relevant to the issue of whether service of the 2nd EJD Order was irregular. The Law Soc PDs relate to matters of "professional practice, etiquette, conduct and discipline" (see s 59(3) of the Legal Profession Act 1966). I do not think they are intended to supplement the rules of civil procedure, extensive provision for which is already made in the Rules of Court.

39 Be that as it may, the Law Soc PDs which Mr Lin and Mr Chan respectively cited do not appear to justify the position they have taken. Law Soc PD 8.5.4 states that legal practitioners on record are not entitled to refuse service of documents, but it also goes on to state that the legal practitioner served may "apply to strike off, expunge or in any way deal with the dilatory aspect of the service or the filing". In other words, the fact that a legal practitioner on record is obliged to accept service as a matter of professional conduct does not constitute a waiver of any irregular service. On the other hand, Law Soc PD 8.5.10 deals with when personal service of documents on the *party* concerned is not allowed. As such, the requirement for the serving party's solicitors to check with the other party's solicitors for instructions to accept service arises in the context of whether the serving party's solicitors may go on to effect personal service of documents on the *party* concerned directly. That requirement is not squarely engaged here given that WP had not made attempts at personal service of the 2nd EJD Order on the defendants and Mr Liu.

40 Therefore, if any agreement on electronic service of documents otherwise requiring personal service under O 63A r 12 is to be found in this

case, it can only take the form of an *implied* agreement. I go on to consider this in respect of the defendants and Mr Liu separately.

The defendants

41 The position in respect of the *defendants* is, in my view, relatively straightforward. On the e-Litigation case file for OS 207, LVMLC are the solicitors on record for the defendants. On 8 February 2024, LVMLC filed (a) a Notice of Change of Solicitor in respect of Pretty View and Pretty Urban (*ie*, the first and second defendants) and (b) a Notice of Appointment of Solicitor in respect of Parakou Tankers (*ie*, the third defendant). The effect of the Notice of Change of Solicitor and Notice of Appointment of Solicitor is that LVMLC are considered solicitors of the defendants "until the final conclusion of the cause or matter" (see O 64 rr 1 and 2 of the ROC 2014) unless subsequently, an application has been made by the other party for the removal of solicitors on record under O 64 r 4, or where an application is made by the solicitors themselves for discharge under O 64 r 5, both of which are inapplicable in this case. It therefore cannot be disputed that LVMLC represents the defendants in OS 207 and any proceeding within, including SUM 245, the proceedings under the 2nd EJD Order as well as SUM 650.

42 Pursuant to the Notices of Change of Solicitor and Notice of Appointment of Solicitor, LVMLC went on to represent the defendants in SUM 245, and after the conclusion of SUM 245, a series of correspondence was exchanged between LVMLC and WP in relation to the payment of costs of SUM 245, which the Judge hearing SUM 245 had ordered the defendants to pay. In each of the letters written by LVMLC to WP, LVMLC stated

unequivocally that they "act for the [d]efendants".[9] None of these letters included any qualification as to the extent to which LVMLC was instructed to act for the defendants, such as whether there was any limitation in their instructions to accept service of documents otherwise requiring personal service on behalf of the defendants. I accept that these were letters written in connection with SUM 245, but ultimately, they were correspondence exchanged in relation to proceedings arising from the Judgment Debt which TEC had obtained (*ie*, OS 207). In the absence of any indication to the contrary, WP is entitled to assume that LVMLC had full instructions to act for the defendants in *all* proceedings arising within OS 207, as long as LVMLC continued to be the defendants' solicitors on record in OS 207. In these circumstances, a reasonable person standing in the shoes of WP at the material time would have concluded that LVMLC had instructions to accept service of the 2nd EJD Order on behalf of the defendants. I therefore found that the defendants are "deemed to have agreed to be served" the 2nd EJD Order through electronic service for the purposes of O 63A r 12(1A). The service of the 2nd EJD Order on the defendants was therefore regular.

Mr Liu

43 Mr Chan submitted that LVMLC did not, and does not, act for Mr Liu in relation to proceedings in OS 207 and therefore they had no instructions from Mr Liu to accept service of the 2nd EJD Order. Before turning to the issue proper, as a preliminary point, let me first deal with two submissions that Mr Chan made in this regard.

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9 2PH at pp 146 and 150.

44 First, Mr Chan pointed me to the correspondence exchanged between WP and LVMLC on the issue of costs in SUM 245 and emphasised that in none of LVMCLC's letters did they state that they act for Mr Liu; those letters only state that LVMLC acts for the defendants. However, I do not see how that could in and of itself support the conclusion that LVMLC does *not* act for Mr Liu. It is common ground that Mr Liu was not a party to SUM 245 (and indeed, OS 207). Unlike an EJD proceeding in which Mr Liu could be the named examinee, SUM 245 was not a proceeding which directly required Mr Liu's participation. In these circumstances, it would not have been necessary for LVMLC to identify Mr Liu as one of the parties whom they were acting for.

45 Secondly, Mr Chan argued that a distinction had to be drawn between Mr Liu and the defendants, who were separate legal personalities. Given that Mr Liu was the only officer of the defendants, Mr Chan accepted that any instructions on matters pertaining to the defendants (both in respect of SUM 245 as well as the present application in SUM 650) had to be taken from *Mr Liu*, in his capacity as a director of the defendants. This, however, does not mean that LVMLC also acts for Mr Liu in his *personal capacity*, and it is in his personal capacity that Mr Liu is now involved in the proceedings under the 2nd EJD Order, which compels Mr Liu to *personally* attend examination and produce documents. In support of this argument, Mr Chan relied on the following extract from Court of Appeal's decision in *Burgundy Global Exploration Corp v Transocean Offshore International Ventures Ltd and another appeal* [2014] 3 SLR 381 ("*Burgundy*") (at [108]):

> …, [the Respondent] contends that company officers should not be considered non-parties for the purposes of EJD orders because such orders are directed to them in their capacity as officers of the judgment debtor; they are simply the personification of the judgment debtor for the purposes of EJD proceedings. But we are unable to see how we can ignore the separate legal personality of company officers when the EJD

> orders are addressed to them *personally*, with penal consequences for them *personally* if they do not comply. Unless there is evidence that the officer in question is in fact the *alter ego* of the company … or possibly where there is clear evidence that the officer in question 'instigates, controls and finances' the litigation … to such a degree that it would be unjust to allow him to rely upon the separate corporate personality, any attempt to characterise company officers as parties to the proceedings would be untenable.
>
> [emphasis in italics in original; emphasis added in underline]

46 The point of law decided in *Burgundy* was that a Singapore court had powers to make an EJD order against the officers of a judgment debtor-company who were resident overseas, and further, the judgment creditor seeking to serve the EJD order on the foreign officers had to apply for leave to serve the EJD order out of jurisdiction and could not simply serve the order on the judgment debtor's solicitors (see *Burgundy* at [90], [109] and [112]). This follows from the fact that the directors of a judgment debtor and the judgment debtor itself had separate legal personalities, as emphasised in the extract from *Burgundy* above. This is a trite proposition of law which TEC did not dispute in this case – TEC is not seeking to justify their electronic service of the 2nd EJD Order on Mr Liu on the ground that LVMLC had been solicitors for the defendants; TEC's case is that LVMLC *also acted for Mr Liu*, and so they were justified in serving the 2nd EJD Order on LVMLC.[10] In other words, no one is contending that LVMLC also acted for Mr Liu simply because they had acted for the defendants. As such, I did not see the significance of Mr Chan's point that the defendants and Mr Liu had separate legal personalities; it is undisputed that they do.

47 Given that Mr Liu is a non-party in OS 207, and he had no solicitors on record in the e-Litigation case file for OS 207, whether an implied agreement

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[10] Plaintiff's written submissions at para 46.

under O 63A r 12(1A) could be shown involves a further inquiry into whether LVMLC had "represented" Mr Liu at the material time, apart from the question of whether the circumstances were such that WP could reasonably conclude that LVMLC had instructions from Mr Liu to accept service of documents otherwise requiring personal service.

48 I note, of course, Mr Chan's submission that LVMLC did not, and does not, act for Mr Liu in his personal capacity, and any and all instructions taken from Mr Liu were in his capacity as a director of the defendants (see [45] above and also [51] below). However, I do not think LVMLC's subjective view of whether they acted for Mr Chan at the material time is determinative of this issue. Since there is no dispute that Mr Liu instructs LVMLC in connection with matters affecting the defendant, a retainer undoubtedly exists between Mr Liu and LVMLC. As for whether LVMLC represents Mr Liu in his personal capacity, this is effectively a question as to the scope of LVMLC's authority to act for Mr Liu (see Tan Yock Lin, *The Law of Advocates and Solicitors in Singapore and West Malaysia* (2nd Ed, Butterworths, 1998) at pp 266–267). Such authority can be *expressly conferred* but can also be *implied* from the conduct of the parties and the circumstances of the case (Tan Cheng Han SC, *The Law of Agency* (2nd Ed, Academy Publishing, 2017) at paras 03.027–03.031). If LVMLC's conduct was such as to suggest that Mr Liu intended that LVMLC had authority to act for him in his personal capacity, then it could nonetheless be concluded that LVMLC had acted for and represented Mr Liu at the material time, despite Mr Chan's present submission. Importantly, I note that in Mr Liu's affidavit which the defendants filed in support of SUM 650, Mr

Liu did not take the position that LVMLC does not act for or represent him in his personal capacity for the purposes of these proceedings.[11]

49 In this regard, the positions taken by LVMLC in the letters which it exchanged with WP *inter se* and with the court on the issue of whether Mr Liu should be ordered to pay the costs SUM 245 personally are significant. I examine these letters more closely:

(a) The issue began with a letter from WP to LVMLC dated 23 April 2024[12] in which WP asked that Mr Liu personally pay the costs for SUM 245, which the defendants had been ordered to pay. Reasons cited include the defendants' apparent inability to pay the costs ordered, and the fact that only Mr Liu alone stood to gain if the defendants were successful in resisting the application in SUM 245.

(b) On 30 April 2024, LVMLC responded to WP's letter ("the 30 Apr Letter").[13] LVMLC stated that there was "no basis for [TEC] to now hold Liu Por [*ie*, Mr Liu] personally accountable" for the costs in SUM 245 and cited reasons in support.

(c) On 7 May 2024, WP wrote a letter to the court and asked that the court make an order for the costs of SUM 245 to be borne personally by Mr Liu.[14] This letter contained substantive arguments as to why Mr Liu ought to personally bear the costs of SUM 245. The court directed that LVMLC respond to the letter by 13 May 2025.

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11 7LP at paras 5, 11–12.

12 2PH at p 92.

13 2PH at p 94.

14 2PH at p 96.

(d) On 9 May 2025, LVMLC wrote to the court ("the 9 May Letter"),[15] seeking an extension of time to respond. The reasons cited for the extension of time was that they were only able to review the contents of WP's letter on the morning of 9 May 2025 due to the manner in which WP's letter had been electronically served on LVMLC.

(e) The court acceded to the request, and LVMLC wrote with a further letter on 15 May 2025 ("the 15 May Letter")[16] making extensive submissions as to why it was inappropriate for Mr Liu to be made personally liable for the costs of SUM 245.

50 The series of letters which I have cited above deal with the issue of whether Mr Liu should be ordered to pay the costs of SUM 245 *personally*; this was not an issue which concerned the defendants or which engaged Mr Liu's official capacity as a director of the defendants. If indeed LVMLC did not represent Mr Liu, then the 30 Apr Letter would have been the first opportunity in which the record could be set straight. Yet, the 30 Apr Letter was consistent with the suggestion that LVMLC acted for Mr Liu – otherwise, on what ground could LVMLC have taken the position that there was no basis for Mr Liu to *personally* bear the costs of SUM 245? LVMLC could only have taken that position pursuant to Mr Liu's instructions. By instructing LVMLC to take positions and correspond with TEC's solicitors on matters which affected *him personally*, Mr Liu obviously must have intended that LVMLC be conferred with the requisite authority to represent and act for him in his *personal capacity*. The same can be said of the 9 May Letter, and with greater force, in respect of the 15 May Letter, in which extensive submissions were made on behalf of Mr

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15 2PH at p 146.

16 2PH at p 150.

Liu. I reiterate that the issue of whether Mr Liu should be ordered to pay the costs of SUM 245 is one which affected him personally and indeed, the grounds on which WP sought a costs order against Mr Liu pertained largely to Mr Liu's *own* conduct and *his* connection with the proceedings in SUM 245. It was therefore implicit in the positions which LVMLC took and the submissions which they made in these letters that LVMLC had the requisite authority to act for and represent Mr Liu in his personal capacity, in addition to acting for the defendants.

51 Mr Chan argued that the submissions on the issue of whether Mr Liu should be ordered to pay costs were made pursuant to the instructions of *the defendants* and not Mr Liu. Indeed, this was a point which Mr Chan maintained at the hearing where I delivered my decision when the issue of whether Mr Liu should be ordered to pay the costs of SUM 650 was dealt with (see [96] below). With respect, I do not follow this submission. There is no dispute that any instructions from the *defendants* were given through *Mr Liu*.[17] While Mr Liu and the defendants are separate legal personalities, and while I also accept that a distinction is to be drawn between Mr Liu's official capacity as a director of the defendants and his personal capacity, this did not mean that any and all communications which Mr Liu had with LVMLC only had the effect of authorising LVMLC to act for the defendants. Where Mr Liu instructed LVMLC on matters which affected him *personally*, for example, in relation to the subject of a non-party costs order against *him*, or in relation to *his* compliance with an EJD order made in these proceedings, then obviously Mr Liu would have intended that LVMLC be conferred with the requisite authority to represent and act for him in his *personal capacity* (see [48] above). Indeed,

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17 Notes of Arguments, 9 April 2025, p 6, lines 8–12.

why would it be a matter of concern for the defendants as to whether Mr Liu should be ordered to pay costs of SUM 245? If anything, it stood to their interests that Mr Liu be ordered to pay those costs.

52 The letters that I have considered above only confirms that LVMLC had acted for Mr Liu at the time when those letters were exchanged. It must still be asked whether LVMLC acted for Mr Liu, at the time when the 2nd EJD Order was served. I found that to be the case, with reference to the 14 Feb Letter (see [10] above).[18] To recap, this was the first letter from LVMLC after the 2nd EJD Order was electronically served on them and it was addressed to the court. In that letter, LVMLC took issue with the fact that the 2nd EJD Order had not been personally served on Mr Liu and sought an extension of the relevant timelines for Mr Liu to comply with the 2nd EJD Order. Again, if it were the case that LVMLC only represented the defendants and *not* Mr Liu, the 14 Feb Letter would have been another opportunity in which the record could be set straight. Again, no such position was taken. Instead, LVMLC took positions on matters affecting Mr Liu *personally*, namely, to seek an extension of the timelines for Mr Liu's compliance with the 2nd EJD Order. Again, LVMLC must have taken the positions they did in the letter pursuant to Mr Liu's instructions. Since Mr Liu instructed LVMLC on matters relating to his compliance with the 2nd EJD Order which affected him *personally*, then obviously Mr Liu would have intended that LVMLC be conferred with the requisite authority to represent and act for him in his *personal capacity*. I do not think it is open for Mr Chan to submit, on the one hand, that the 2nd EJD Order entails *personal* consequences on Mr Liu, but on the other hand, take the position that instructions relating to Mr Liu's compliance with that order would have been obtained from Mr Liu in

[18] 7LP at p 19.

his *official capacity* as a director of the defendants.[19] In my view, the 14 Feb Letter is consistent with the series of letters LVMLC exchanged with WP and the court on the issue of costs in SUM 245, and similarly, it implied that LVMLC had the requisite authority to act for and represent Mr Liu in his personal capacity.

53 In both counsel's submissions, they relied heavily on an exchange between the court and counsel at the hearing of SUM 245, in support of their respective positions on the issue of whether LVMLC represented Mr Liu at the material time. For context, I set out the relevant parts of the transcript in full:[20]

Court:	… Can I clarify, is anyone acting for Mr Liu?
TEC's counsel:	No.
Defendants' counsel:	No, Your Honour.
	He's not a party to the ---
Court:	I know he's not a party, but ---
Defendants' counsel:	Yes. But, well, *I suppose we do act for Mr Liu Por in his personal capacity.*
Court:	So---no, in your---in appearing *today*, are you also acting for him?
Defendants' counsel:	*Not in the sense of appearing for him*, Your Honour.
Court:	Okay, okay, I understand.
TEC's counsel:	Your Honour---
Court:	And he's not made an application to join. Okay, alright.
Defendants' counsel:	But he has filed affidavit, Your Honour.
Court:	No, I'm just wondering. So in---

19 Notes of Arguments, 9 April 2025, p 6, lines 8–12.

20 2PH at pp 267–268.

Defendants' counsel:	Yes, Your Honour.
Court:	He's filed an affidavit in his capacity as an officer of the defendants.
Defendants' counsel:	Yes, that's right.
Court:	But he's not making himself a party to the proceedings.
Defendants' counsel:	No, no.
Court:	Okay, I just want to clarify that.
TEC's counsel:	Yes. In fact, Your Honour, that was something I wanted to point out. Because the *only parties* and the only parties whom my learned friend act for are the three defendants and not Mr Liu, *who is not a party and who has not applied to intervene*.
Court:	Yes, so I just want to clarify that too. Okay, that's fine.

[emphasis added]

54 Unsurprisingly, Mr Lin and Mr Chan relied on different parts of the transcript in support of their respective positions. Mr Lin relied on the confirmation from the defendants' counsel that they "do act for [Mr Liu] in his personal capacity" while Mr Chan pointed to the clarification made by TEC's counsel towards the end of the extract above and argued that it confirmed that LVMLC did *not* act for Mr Liu in SUM 245, and therefore they also do not act for Mr Liu for present purposes.

55 The exchange in the extract above arose from the court's queries in relation to an affidavit which Mr Liu filed in SUM 245 in his capacity as an officer of the defendants, and what the court had sought to understand, through its queries, was whether Mr Liu was seeking to make himself a party to the proceedings. TEC's position was that *only* the defendants were parties to the proceedings in SUM 245 because Mr Liu had not applied to intervene, and it

was in that context that TEC's counsel stated that the only parties who LVMLC acted for in SUM 245 were *the defendants*. Presumably this was intended to set the goalposts and make it clear that any submissions which LVMLC made in arguments for SUM 245 were in relation to *the defendants'* position alone, and not Mr Liu. On this note, the confirmation from the defendants' counsel that they "do act for [Mr Liu] in his personal capacity" is pertinent. Based on the extract of the transcript exhibited in the affidavits, it does not appear that the defendants' counsel went on to retract or clarify that position subsequently.

56 With the issue of whether LVMLC represented Mr Liu at the material time out of the way, the next question is whether the circumstances were such that a reasonable person standing in WP's shoes could conclude that LVMLC had instructions from Mr Liu to accept service of documents otherwise requiring personal service. Given that WP has been communicating with LVMLC on the issue of whether Mr Liu be ordered to pay costs of SUM 245, and that being a matter arising in the context of proceedings within OS 207, it is reasonable for WP to assume that there were no limitations in LVMLC's instructions from Mr Liu in relation to all proceedings within OS 207, unless there were indications to the contrary. There was nothing in the letters which LVMLC and WP exchanged that would suggest any limitation in the extent of LVMLC's instructions, such as if LVMLC had *no* instructions from Mr Liu to accept service of documents otherwise requiring personal service for the purposes of proceedings within OS 207, such as the 2nd EJD Order. A reasonable person standing in the shoes of WP would therefore have concluded that LVMLC had instructions to accept service of the 2nd EJD Order on Mr Liu's behalf, Mr Liu is therefore "deemed to have agreed to be served" the 2nd EJD Order through LVMLC by e-Litigation, for the purposes of O 63A r 12(1A) of the ROC 2014.

57 A further point which reinforces the view that LVMLC *did* have instructions to accept service of the 2nd EJD Order on Mr Liu's behalf, is the fact that the 14 Feb Letter contained no indication that LVMLC did not have instructions to accept service of the 2nd EJD Order. I note that LVMLC did take the position that there was "minimally irregularity in relation to whether there was effective and proper service" of the 2nd EJD Order, but I do not think that reservation of position is tantamount to an indication that LVMLC did *not* have instructions to accept service. If LVMLC indeed had no such instructions, they would have expressly stated so. Indeed, that reservation of position was premised on the *legal requirement* in the ROC 2014 that the 2nd EJD Order had to be personally served, and not any lack of instructions on LVMLC's part. In my view, the 14 Feb Letter, *read as a whole*, suggested that LVMLC did not dispute that it had instructions to accept service of the 2nd EJD Order, but that it was of the view that the 2nd EJD Order ought nonetheless to be personally served on Mr Liu. Of course, whether or not WP was justified in concluding that LVMLC had instructions to accept service of the 2nd EJD Order must be determined as at the time when the 2nd EJD Order was served, *ie*, before the 14 Feb Letter came to be sent, but that letter nonetheless reinforces the conclusion that LVMLC *did* have instructions to accept service.

Even if service of the 2nd EJD Order was irregular, it could be cured

58 For the reasons above, I found that the service of the 2nd EJD Order on the defendants as well as Mr Liu was regular. This suffices to dispose of the part of SUM 650 challenging the regularity of service of the 2nd EJD Order. However, as the parties also made extensive submissions on the issue of whether any alleged irregularity in the service of the 2nd EJD Order could be cured and/or whether the requirement of service of the 2nd EJD Order could be dispensed with by virtue of the fact that Mr Liu has been made fully aware of

the 2nd EJD order and even instructed LVMLC to correspond with WP regarding the present set of EJD proceedings, I will briefly state my views on this issue.

59 As a starting point, it is not in dispute that, if I had taken the view that service of the 2nd EJD Order was irregular, there were two options by which that state of affairs could be rectified – it was open to the court to cure such irregularity pursuant to O 2 r 1 of the ROC 2014, or alternatively, the court could dispense with the requirement of service of the 2nd EJD Order pursuant to O 62 r 11 of the ROC 2014. The effect of either option is to dispense with the requirement in O 48 r 1 that the 2nd EJD Order be personally served on Mr Liu.

60 In the context of an EJD order, there are two core functions of service – first, to ensure that the examinee named in the EJD order has notice of the same as well as of the EJD proceedings against him, and secondly, to establish the jurisdiction of the court over him (see *Burgundy* ([45] above) at [93]; *COSCO Shipping Speicalized Carriers Co, Ltd v PT OKI Pulp & Paper Mills and others* [2024] 3 SLR 807 at [25]). The penal consequences which an examinee may suffer personally if he fails to comply with an EJD order explains why the default position under the ROC 2014 (as well as the ROC 2021) is for an EJD order to be served *personally*. Another reason is that personal service of an EJD order is necessary as a preliminary to proceedings for committal in the case of non-compliance and for this purpose personal service will not be dispensed with even if the EJD order had been made in presence of the examinee (see *Singapore Civil Procedure* ([34] above) at para 48/3/7). There are, however, recognised exceptions to this rule, such as where the examinee had been notified of the EJD order but has evaded service, or where an order for substituted service has been made by the court (see *Singapore Civil Procedure* at para 48/3/7, citing In re *Tuck* [1906] 1 Ch 692 ("*Tuck*")).

61 The requirement for *personal service* of an EJD order is rooted in the common law rule that a respondent was required to have a notice of an order of court before he could be found in contempt of court for breaching it (see *MBR Acres Ltd and others v Maher and another* [2023] QB 186 ("*Maher*") at [74]). For the requirement of service, the common law drew a distinction between a mandatory order (which requires a person *to do certain acts* within a limited period of time, such as an EJD order) and a prohibitory order (which requires a person *not to do certain acts*, such as an injunction) (see *Maher* at [76]). In the case of a prohibitory order, notice could be demonstrated by means other than personal service, whereas in the case of a mandatory order, notice could only be established by personal service (see *Maher* at [76], citing *Tuck* at 696).

62 I do not think the principles cited above pose an impediment to me dispensing with the requirement of personal service of the 2nd EJD order on the defendants and Mr Liu. The present case is not merely one where the defendants and Mr Liu have been *notified* of the EJD proceedings arising from the 2nd EJD Order. Rather, this case is one where the defendants and Mr Liu have taken steps in pursuit of compliance with the EJD order. As mentioned earlier, in the 14 Feb Letter, LVMLC asked for the court to grant an extension of the relevant timelines for Mr Liu to comply with the 2nd EJD Order, and for the first hearing of the EJD proceedings to be refixed (see [11] above). The act of asking for more time to comply with the 2nd EJD Order could only be explained on the assumption that Mr Liu (and in turn, the defendants, who are the parties to SUM 253 and the EJD proceedings) *intend* to comply with the 2nd EJD Order.

63 As mentioned earlier (at [57]), in the 14 Feb Letter, the defendants and Mr Liu reserved their rights to mount a challenge to the regularity of service of the 2nd EJD Order. However, the *validity* of such a reservation is a matter to be determined by the court, and in this regard, a party should not be allowed to

approbate and reprobate simultaneously (see, for example, albeit in a different context, *Carona Holdings Pte Ltd and others v Go Go Delicacy Pte Ltd* [2008] 4 SLR(R) 460 at [99]–[101] and *Shanghai Turbo Enterprises Ltd v Liu Ming* [2019] 1 SLR 779 at [36]–[37]). Where a party has through his conduct evinced an intention to comply with an EJD order, it cannot then lie in his mouth to complain that the EJD order had not been properly served. I do not think it should be open to the defendants and Mr Liu to, on the one hand, contend that the 2nd EJD Order had not been validly served on them, and on the other, intimate that they intend to comply with the 2nd EJD Order by seeking the court's permission for an extension of the relevant timelines. Any intimation by the defendants and Mr Liu that they intend to comply with the 2nd EJD Order could only be explained on the assumption that they do not dispute the regularity of service of the 2nd EJD Order. Having done so, they should not be allowed to take the position that the service of the 2nd EJD Order was irregular.

64 In the circumstances, there is no utility in insisting upon the requirement that notice of the 2nd EJD Order be brought to the defendants and Mr Liu through personal service. Therefore, even if I were wrong on the above and the service of the 2nd EJD Order on the defendants and Mr Liu was irregular, I considered that this was an appropriate case for the requirement of personal service of the 2nd EJD Order in O 48 r 1 to be dispensed with.

Whether TEC had breached its duty of full and frank disclosure in its application for the 2nd EJD Order in SUM 253?

Nature of EJD proceedings

65 The predominant purpose of an EJD order is to aid the judgment creditor to gather information about the judgment debtor's finances so as to determine how it might enforce the judgment (see *Sun Travels & Tours Pvt Ltd v Hilton*

International Manage (Maldives) Pvt Ltd [2020] 2 SLR 725 ("*Sun Travels*") at [8]; *Burgundy* at [90]). The EJD order may render the judgment more effective, but it is not in itself a mode of enforcement of the judgment, as is evident from the fact that the information gathered might or might not result in successful enforcement (see *PT Bakrie Investindo v Global Distressed Alpha Fund 1 Ltd Partnership* [2013] 4 SLR 1116 at [16]). The information which a judgment creditor is permitted to gather pursuant to the EJD process is that pertaining to the judgment debtor's *existing* property as well as property which may become available (see *Pacific Harbor Advisors Pte Ltd and another v Tiny Tantono (representative of the estate of Lim Susanto, deceased) and another suit* [2015] SGHCR 3 at [31]).

66 In submissions, Mr Lin argued that a judgment creditor is entitled to an EJD order as of right, so long as the underlying judgment debt is unsatisfied but remains available for enforcement. I disagreed. Under both the ROC 2014 and ROC 2021, an EJD or EER order is a *relief* granted by the court on an *ex parte* or without notice basis, and the court has a *discretion* to not grant an EJD order (see *Burgundy* ([45] above) at [88]). This is entirely inconsistent with the view that a judgment creditor is entitled to an EJD order *as of right*.

67 In any case, having regard to the nature of the EJD process, I do not think it is envisioned as a procedure which a judgment creditor could avail itself of without any determination by the court as to the judgment creditor's entitlement to do so. By obtaining an EJD order, the judgment creditor is invoking the court's processes to compel the judgment debtor or its officers (where the judgment debtor is a corporate entity) to provide information in aid of its enforcement of the judgment concerned. In the event of non-compliance, the EJD order carries penal consequences for the persons against whom it is issued (see *Burgundy* at [108]). Given the significant consequences which the

EJD process might potentially carry, I do not think it could be intended that its initiation (*ie*, the grant an EJD order) be entirely outside of court supervision. That being said, because an EJD order is incidental to the judgment creditor's right to enforce the judgment obtained, the court will generally make the EJD order as a matter of course (see Jeffrey Pinsler SC, *Singapore Court Practice 2017: Vol II* (LexisNexis, 2017) at para 48/1/5).

What a judgment creditor must show in its second or further attempt at seeking an EJD order

68 Before considering whether TEC had breached its duty of full and frank disclosure in SUM 253, it is necessary to first ask, in what circumstances should the court permit a judgment creditor's second or further attempt at seeking an EJD order in respect of the same examinee who had been previously examined in an earlier set of EJD proceedings? To be clear, the ROC 2014 and ROC 2021 do not indicate that there is any limitation in the number of times which a judgment creditor is entitled to avail itself of the EJD procedure.

69 Where an EJD order is sought against a judgment debtor or a particular examinee for the first time, the court typically grants it as a matter of course, because, in so far as *that judgment debtor or examinee* is concerned, the judgment creditor would obviously have *no information* on how its judgment could be enforced and so subjecting that judgment debtor or examinee to an EJD would be consistent with the objectives of that process, namely, that it can yield information which may or may not lead to the enforcement of the judgment.

70 Where the judgment creditor makes a second or further attempt at seeking an EJD order against the same judgment debtor or examinee, the onus must be on the judgment creditor to persuade the court that *new* information could likely be obtained, despite questions relating to the judgment debtor's

finances having already been asked of that judgment debtor or examinee in the earlier set of EJD proceedings. Although the EJD process is an incident of the judgment creditor's right to enforce the judgment obtained, I do not think the entitlement of the judgment creditor to the EJD process is an unqualified one, such that the judgment creditor can resort to that process even where it is not able to demonstrate to the satisfaction of the court that its resort to the EJD process would be fruitful or consistent with the intended purposes of that process. In a related vein, in *Sun Travels* ([65] above) (at [14]), the Court of Appeal emphasised that information gathering pursuant to the EJD process is not a licence for a fishing expedition, and it agreed with the views of the High Court that the information sought to be obtained from an EJD should not be too removed or divorced from eventual enforcement. This lends support to the proposition that the judgment creditor's right to avail itself of the EJD process is not an *absolute* one and should have regard to the ends to which that process in capable of serving in the circumstances of the case.

71 It must further be borne in mind that the earlier set of EJD proceedings would have been concluded at the instance of the judgment creditor, after it came to the view that it was unlikely to be fruitful to seek further examination of the judgment debtor or examinee. As such, if one were to take the view that a judgment creditor has an unqualified right to make a second or further attempt at seeking an EJD order against the same judgment debtor or examinee after the previous set of EJD proceedings have concluded, that could well disincentivise judgment creditors from concluding EJD proceedings with diligence, since they are effectively assured of an entitlement to resort to the EJD process again if they subsequently come to discover any deficiency in the information gathered.

72 In my view, where a previous set of EJD proceedings as against a judgment debtor or an examinee had concluded and the judgment creditor

makes a second or further attempt at obtaining an EJD order against that same judgment debtor or examinee, the judgment creditor must demonstrate the existence of *new* circumstances not previously known at the time when the previous set of EJD proceedings were still afoot or a *change* in the relevant circumstances which make it likely that *further* information relating to the judgment debtor's finances could be obtained from the judgment debtor or examinee. An instance of this is where, after the conclusion of the first set of EJD proceedings, the judgment creditor comes to know of new facts pertaining to the judgment debtor's finances which it was previously unaware of, as illustrated in the following two cases. In *Sturgess v Countess of Warwick* (1913) TLR 112, EJD proceedings were instituted against a judgment debtor in respect of two unsatisfied judgments. Subsequently, as a result of separate enforcement proceedings for which an interim injunction was made restraining the judgment debtor from dealing with her property, the judgment creditor came to learn that the judgment debtor had disposed of some property while the interim injunction was in force. It was held that the judgment creditor was entitled to a further examination of the judgment debtor as to whether she had any means of satisfying the judgments. The court said (at 114):

> … the [judgment debtor] contended that no order should be made under rule 33 [the equivalent of O 48 of the ROC 2014] to examine her as to her means. It was said that she had already been examined, but *since the date of that examination further facts had come to the knowledge of the plaintiff which had not been known before*. This was a case in which the *circumstances had altered* and *further questions seemed desirable*.
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> [emphasis added]

73 In the second case, *Lakatamia Shipping Co Ltd and others v Nobu Su and others* [2020] EWHC 426 (Comm), an order was made under Part 71 of the UK Civil Procedure Rules 1998 ("UK CPR") against the judgment debtor requiring him to attend court to provide information for the purpose of enabling

the judgment creditor to enforce its judgment. Part 71 of the UK CPR provides for a procedure similar to the EJD or EER process. The first set of examination proceedings under Part 71 revealed the existence of assets, including a sum of 27m euros that was transferred to the judgment debtor's mother. After the conclusion of the first set of proceedings, it emerged that those monies were transferred to a company owned by the judgment debtor, and then later transferred to another company. In these circumstances, the judgment creditor applied for a further set of examination proceedings. The court considered that the further developments in relation to the judgment creditor's assets were "material and important" and that this was a case in which a further set of examination proceedings was justified (at [34] and [43]). In this case, the judgment creditor had shown a change in the relevant circumstances from the time of the first set of examination proceedings, namely, that the information obtained from those proceedings as to the whereabouts of the 27m euros were no longer accurate.

74 I earlier referred to Mr Lin's submission that a judgment creditor is entitled to an EJD order as of right, which I had rejected (see [66]–[67] above). That submission was made in support of the broader point that, where a judgment creditor makes a second or further attempt at seeking an EJD order, it is not necessary for the judgment creditor to put forward affirmative evidence to satisfy the court that it should be entitled to a further EJD order, and as such, in SUM 253, there was no need for TEC to explain why a further EJD order was required, especially since one year has lapsed since the proceedings under the 1st EJD Order had concluded.[21] Mr Lin cited *Brown v Stafford* [1944] 1 KB 193 ("*Brown*") in support of his submission. In that case, the principal issue arising

[21] Plaintiff's written submissions at para 79.

was whether the court was precluded, as a matter of jurisdiction, to make an EJD order where there was already in place an order made under the Courts (Emergency Powers) Act 1939 which granted leave to a plaintiff to enforce a judgment obtained against the defendant but suspended the plaintiff's right to do so. The court held that it had the requisite jurisdiction. The other issue was whether a further EJD order against the defendant should be refused because an examination had already taken place two years before. The court disagreed, having regard to the fact that a not insignificant period of time had lapsed since the first examination. Lord Greene MR said (at 198):

> … the order for examination of a debtor is made practically as of course. *That does not mean that in very special circumstances there may not be a discretionary power to refuse such an order*, but a refusal would be contrary to the universal practice under the rule.
>
> Prima facie, therefore, the plaintiff, having obtained judgment against the defendant previously could come to the court and say: 'I am entitled to an order for the examination of the defendant as to means practically as of right,' and *in the absence of special circumstances the judge would have been wrong in refusing it*. What, then, are the special circumstances which are said to deprive him of that right ? *They are nothing more than that two years before the defendant was fully examined as to his means. A great deal may happen in the case of a man whose finances are made and unmade in the particular way in which the defendant earns his living*, and to say that the plaintiff, before he can get an order under this rule, must himself produce affirmative evidence merely because two years ago the defendant was examined, appears to me to be taking the wrong view of the scope of the rule. As I read it, a plaintiff is entitled to the order unless clear circumstances are shown to take that right away from him.
>
> [emphasis added]

75 Goddard LJ said (at 199):

> … Or. XLII, r. 32 [the equivalent of O 48 of the ROC 2021] … gives a party so entitled a right, when the circumstances justify it, to an order for the examination of the judgment debtor. There is nothing in that rule to say that the plaintiff must be entitled to enforce his judgment at once, … of course, the court can

> always prevent an abuse of its own procedure, and *if, soon after an examination has been held, the judgment creditor asks for a second examination without showing that some new fact, which he could not put at the first examination, has come to his knowledge, the court can say that that was an abuse of its procedure and refuse to make an order. I can, however, see no reason why, after a decent interval has elapsed, in which the circumstance of the debtor may have changed, he should not be required to submit himself to a second examination.*
>
> [emphasis added]

76 I do not think *Brown* lends support to Mr Lin's submission, for the following reasons. First, the relevant extracts from *Brown* which I have extracted above is consistent with the view that an EJD order is a relief granted at the court's *discretion*. In other words, an EJD order is not granted as a matter of course. Secondly, while I accept that the court in *Brown* was of the view that a second or further EJD order could only be refused in "special circumstances", that only speaks of what a court must be satisfied of to *refuse* a second or further EJD order, and it does not answer the question of what a judgment creditor must show to *obtain* a second or further EJD order. That "special circumstances" had to be shown means that it would take much to persuade the court to refuse a second or further EJD order, but it does not mean that a judgment creditor need not provide any justification for obtaining a second or further EJD order.

77 In *Brown*, the court was of the view that the lapse of two years *in the context of that case* meant that the circumstances of the judgment debtor's finances would have changed, and that justified a further EJD order. The court also observed that, conversely, if a further examination is sought very shortly after the previous set of EJD proceedings had concluded, then the judgment creditor must show some new fact which justifies the further examination and further satisfy the court that there no abuse of process (see [75] above). In my respectful view, I do not think the court intended to suggest that whether a further set of EJD proceedings could be justified turned solely on the duration

of time between the previous and subsequent set of EJD proceedings. The duration of time that has lapsed is but one factor which the court considers in determining if the judgment creditor should be entitled to a further EJD order. In my view, the onus must be on the judgment creditor to demonstrate a change in circumstances, since the conclusion of the previous set of EJD proceedings, to explain why a further EJD of the same judgment debtor or examinee is warranted (see [72] above).

78 Contrary the submissions made by Mr Lin, I do not think this imposes an unreasonable burden on the judgment creditor. This is because, to obtain a second or further EJD order, the judgment creditor does not have to affirmatively *prove* a change in the judgment debtor's finances or that the judgment debtor or examinee had concealed the true state of the judgment debtor's finances in the previous EJD proceedings; the judgment creditor need only demonstrate the existence of circumstances which suggest that *further information* relating to the judgment debtor's finances is likely to be obtained. This could be readily shown with reference to any information relating to the state of the judgment debtor's finances which the judgment creditor comes to obtain after the conclusion of the previous set of EJD proceedings, and which is apparently credible.

Whether the duty of full and frank disclosure was met in this case

79 With the principles above, I turn to consider whether TEC had met its duty of full and frank disclosure when it applied for the 2nd EJD Order in SUM 253. This required TEC, as the applicant in an *ex parte* application, to disclose to the court all matters within his knowledge which might be material even if they are prejudicial to his claim (see *The Vasily Golovnin* [2008] 4 SLR(R) 994 at [83]). "Material facts" encompass both factual and legal matters which the

court should take into consideration in making its decision and are not only limited to those which have a determinative impact on the court's decision (see *The Vasily Golovnin* at [86]). The test for materiality is an objective one and so it extends not only to those facts which the applicant knows of, but also those that could be reasonably ascertained by the applicant (see *The Vasily Golovnin* at [87]). The underlying rationale of this requirement is to ensure that the court has a *balanced* view of the application at hand, which is often heard in the absence of a defendant (see *Bahtera Offshore (M) Sdn Bhd v Sim Kok Beng and another* [2008] 4 SLR(R) 365 at [17]).

80 I reproduce the relevant portion of the supporting affidavit in SUM 253 on which the defendants rely in arguing that there had been a lack of full and frank disclosure by TEC:[22]

> … [Intl Seaways] informed TEC that it had received a payment of US$339,578.71 from the 1st and 2nd Defendants on 6 August 2024. Notably, this amount is significantly greater than the sum of the total assets of the 1st and 2nd Defendants which were disclosed in Mr Liu's fourth affidavit, which showed that the 1st and 2nd Defendants only possessed a combined US$247,034 worth of assets as of 31 December 2021.

81 I do not think it is in dispute that, by virtue of the above extract and the accompany material adduced in the supporting affidavit for SUM 253, TEC had shown a change in circumstances pertaining to Pretty View and Pretty Urban – while the first set of EJD proceedings suggested that the defendants had no funds or assets against which the Judgment Debt could be enforced, the fact that Intl Seaways received the Payment from Pretty View and Pretty Urban suggest that there has been a change and an improvement in the state of Pretty View and Pretty Urban's finances. Further, any possible improvement in the state of Pretty

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22 1PH at para 34.

View and Pretty Urban's finances suggested that Mr Liu might not have been entirely forthcoming in the first set of EJD proceedings as to the state of the *defendants'* finances, and this in turn justifies further EJD in respect of all of the defendants, including Parakou Tankers. The material adduced by TEC warranted the court granting the 2nd EJD Order.

82 However, it is similarly not in dispute that when Intl Seaways informed TEC of the Payment, a third party (Parakou Shipping) was identified together with Pretty View and Pretty Urban as the parties who had made the Payment. The relevant part of the e-mail from Intl Seaways to TEC states:[23]

> …, we write to notify you and Third Eye [TEC] that View Tanker Corporation ('VTC') and Urban Tanker Corporation ('UTC') received settlement funds from Pretty View Shipping SA, Pretty Urban Shipping SA and Parakou Shipping Limited in the sum of US$339,578.71, on 6 August 2024.

83 This e-mail was exhibited in TEC's reply affidavit in SUM 650, in response to Mr Liu's affidavit filed in support of SUM 650, in which Mr Liu claimed that the Payment was in fact "effected by a third-party entity who is also a party to the settlement agreement involving [Pretty View], [Pretty Urban] and [Intl Seaways", and that "[the] Payment was not made by [Pretty View] or [Pretty Urban]".[24] Mr Chan relied on this and argued that the TEC had breached its duty of full and frank disclosure by failing to mention the involvement of a third party to the Payment. This, Mr Chan submitted, would have been a consideration for the court in deciding whether to grant the 2nd EJD Order, and more specifically, it would have resulted in the court declining to grant the 2nd EJD Order. Mr Chan further submitted that TEC *in fact* knew that Pretty View and Pretty Urban did not make the Payment, and that it was a third-party entity

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23 2PH at para 71.

24 7LP at para 16.

which had made the Payment. Even if TEC did not know as such, they ought to have made the necessary enquiries with Intl Seaways to find out whether Pretty View and Pretty Urban had made any part of the Payment.[25] Either way, what TEC stated in its supporting affidavit for SUM 253 was a lack of full and frank disclosure.

84 In my view, so long as Pretty View and Pretty Urban were parties to the Payment, whether or not there was also a third party involved (and whether it was Parakou Shipping or some other party) would not have been a relevant consideration for the court in deciding whether to grant the 2nd EJD Order. Hence, even if TEC had disclosed the existence of such a third party in its supporting affidavit for SUM 253, it would not have affected the court's decision to grant the 2nd EJD Order. Let me explain. The fact that a third party was involved in the Payment might suggest that Pretty View and Pretty Urban did not contribute to the Payment, whether in full or in part. However, whether or not Pretty View and Pretty Urban *actually* contributed to the Payment and the extent of their contributions would not have been relevant considerations for the court in deciding whether or not to grant the 2nd EJD Order. To obtain the 2nd EJD Order, all TEC had to show was a change in circumstances or the discovery of new circumstances, not known at the time when the 1st EJD Order subsisted, which show that *further* information relating to the defendants' finances could likely be obtained or which *suggest* that Mr Liu might not have been entirely forthcoming in the first set of EJD proceedings regarding the defendants' finances. Whether Pretty View and Pretty Urban made any contribution to the Payment at all goes towards *actually* showing a change or improvement in Pretty View and Pretty Urban's finances and/or that Mr Liu had

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[25] Defendants' written submissions at paras 84–93.

in fact not been forthcoming as to the defendants' finances in the first set of EJD proceedings, but these are not relevant to whether the 2nd EJD Order should be granted; they are points to be traversed at the EJD proceedings themselves. So long as Pretty View and Pretty Urban *were parties to the Payment* – a fact which is not in dispute and not controverted by TEC's omission to mention the involvement of a third party – that alone paints a picture as to the state of Pretty View and Pretty Urban's finances which is different from that suggested by Mr Liu's evidence given in the first set of EJD proceedings, and to the extent that suggests Mr Liu had not been entirely forthcoming in the first set of EJD proceedings, it implies that the picture previously conveyed by Mr Liu of Parakou Tankers' finances might be incorrect. This constitutes a change in circumstances and shows that further information relating to the defendants' finances could likely be obtained and justifies the grant of the 2nd EJD Order.

85 Further, I do not think it is necessary for TEC to make any inquiry with Intl Seaways as to the extent to which Pretty View and Pretty Urban had contributed to the Payment. In the context of an *ex parte* application for a warrant of arrest of a ship, the duty of full and frank disclosure only requires the arresting party to disclose defences that are "referable to objections (factual and/or legal) to the claim being brought in the first place, or to the arrest being mounted at all", and these include defences going towards whether the court has *in rem* jurisdiction over the claim, or which suggest that the claim is so obviously frivolous and vexatious as to be open to summary dismissal, *but* they do not include defences relating to the *ultimate* merits of the claim (see *The Eagle Prestige* [2010] 3 SLR 294 at [72]–[75]). What this suggests is that the factual or legal matters that are to be disclosed in satisfaction of the duty of full and frank disclosure are those which constitute a knock-out blow to the *ex parte* application concerned and would *in and of themselves* suggest that the applicant

is not entitled to the relief sought in the *ex parte* application. In this case, even if inquiries were made by TEC with Intl Seaways and it was discovered that Pretty View and Pretty Urban had not made any contribution to the Payment or only contributed in part, that alone did not mean that *no further information* relating to the defendants' finances could be obtained from a further set of EJD proceedings. Questions would still be raised as to why the third party would have been willing to contribute towards the Payment, and in satisfaction of a debt that was owed by Pretty View and Pretty Urban themselves (a point which I note the defendants do not dispute).[26] Put another way, whether or not a third party was involved in the Payment would not have affected TEC's entitlement to the 2nd EJD Order. Inquiries as to the involvement of a third party are not those which TEC could reasonably be expected to make, as part of its duty of full and frank disclosure.

86 On this note, TEC's case in SUM 650 was that it made no further inquiries with Intl Seaways regarding the involvement of Parakou Shopping (which was the third party identified in the e-mail from Intl Seaways), because they disagree that Parakou Shipping would have made the Payment, and accordingly, they were entitled to assume that Pretty View and Pretty Urban were the entities who made the Payment since the debt in question was owed by Pretty View and Pretty Urban.[27] I accept TEC made no further inquiries with Intl Seaways on this point. Although the defendants emphasised in their submissions that TEC *must* have made those inquiries,[28] they have not adduced any evidence directly in support or indeed any evidence in support of an inference that such inquiries had in fact been made by TEC. Following from my

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26 7LP at para 16.

27 Plaintiff's written submissions at paras 72–73; 2PH at paras 75 and 77.

28 Notes of Arguments, 9 April 2025, p 12, lines 4–10.

earlier view that it would not have been necessary for TEC to make inquiries with Intl Seaways regarding Pretty View and Pretty Urban's contributions to the Payment to satisfy its duty of full and frank disclosure (see [85] above), whether or not such inquiries were actually made is neither here nor there. However, if such inquiries were made and Intl Seaways confirmed that Pretty View and Pretty Urban *had made contributions* to the Payment, then obviously TEC would have stated the same in its affidavit for SUM 253 as that directly suggests an improvement in Pretty View and Pretty Urban's finances and strengthens its case for obtaining the 2nd EJD Order. On the other hand, if Intl Seaways confirmed that Pretty View and Pretty Urban had *made no contributions*, then I think TEC ought to have stated in its supporting affidavit what it had been told but go on to explain to the court why it considers that a further EJD is nonetheless warranted. But I emphasise, even if TEC had indeed omitted to do so, that alone does not constitute a lack of full and frank disclosure – as explained earlier (at [85]), the fact that a third party was willing to contribute in part or entirely to the payment of a debt owed by Pretty View and Pretty Urban would imply a change in circumstances which suggest that further information relating to the defendants' finances could be obtained.

87 For the reasons above, I am satisfied that TEC had met its duty of full and frank disclosure when it applied for the 2nd EJD Order in SUM 253. Accordingly, there was no reason for the EJD Order to be set aside on this ground.

Whether the 2nd EJD Order should be varied

88 As an alternative, the defendants asked that the 2nd EJD Order be varied so that: (a) only questions which have *not* previously been traversed in the first set of EJD proceedings be allowed; and (b) questions directed at the third

defendant, Parakou Tankers, be removed. This is necessary to ensure that Mr Liu is not required to provide answers *again* to questions that have been traversed previously and thereby save judicial time and costs. Further, since the grant of the 2nd EJD Order is justified on the ground that Pretty View and Pretty Urban (but *not* Parakou Tankers) had made the Payment, there is no basis for further EJD proceedings in relation to the finances of Parakou Tankers.

89 The defendants' objections relate to the scope of appropriate questioning in the second set of EJD proceedings. The appropriate forum for these objections to be dealt with is at the hearing of the EJD itself, and they are to be determined by the Registrar having conduct of the examination, who can also give the necessary directions for these objections to be dealt with. This is made clear by O 48 r 1(3) of the ROC 2014 (see also *Singapore Civil Procedure* ([34] above) at para 48/3/8):

> Any difficulty arising in the course of an examination under this Rule before the Registrar, *including any dispute with respect to the obligation of the person being examined to answer any question put to him,* may be referred to the Court and the court may determine it or give such directions for determining it as it thinks fit.
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> [emphasis added]

90 As such, I make no comment on the defendants' objections, since these are to be reserved to the Registrar having conduct of the examination under the 2nd EJD Order. It suffices for me to state that, even if the Registrar hearing the EJD determines that the same set of questions traversed in the first set of EJD proceedings should not be asked, or that questions relating to Parakou Tankers should not be asked, this does not in any way suggest that the 2nd EJD Order was incorrectly granted or that it ought to be varied. The issue of the appropriate scope of questions that can be asked in the examination turns on the utility of these questions in providing information that could assist the judgment creditor

in the enforcement of its judgment – that is not what a court concerns itself with when it decides whether or not to grant an EJD order. In deciding whether to grant an EJD order, the court is only concerned with whether *information* could likely be obtained of a judgment debtor or the named examinee, and in the case of a second or further attempt at obtaining an EJD order, whether there has been such a change in circumstances so that further information could *likely* be obtained from the judgment debtor or examinee through a fresh set of EJD proceedings.

Conclusion on SUM 650

91 For the reasons above, I dismissed SUM 650 – there is no basis for setting aside the service of the 2nd EJD Order as well as the 2nd EJD Order itself. As explained, there is similarly no basis on which the 2nd EJD Order could be varied – any objections the defendants have over the scope of appropriate questioning should be raised at the EJD proceedings themselves.

Whether a non-party costs order should be made against Mr Liu

92 Given my decision on SUM 650, the defendants obviously had to pay costs to TEC. TEC asked that these costs be paid by Mr Liu personally. The final issue, therefore, was whether Mr Liu ought to be ordered to pay the costs of SUM 650.

93 Mr Lin argued that, since the 2nd EJD Order is directed at Mr Liu personally, SUM 650 is brought entirely for Mr Liu's own benefit and could only have been driven by Mr Liu himself. A non-party costs order ought to be made because Mr Liu's actions have caused unnecessary costs to be incurred. Mr Liu emphasised that the costs orders which TEC had thus far obtained against the defendants in the proceedings in OS 207 – including the costs

forming part of the Judgment Debt and the costs in SUM 245 – remain unsatisfied. Therefore, if Mr Liu was not ordered to pay the costs of SUM 650 personally, it is very likely that the defendants would simply refuse to pay any costs ordered against them, adding on to the sum total of unsatisfied costs and cause TEC prejudice.

94 In *DB Trustees (Hong Kong) Ltd v Consult Asia Pte Ltd and another appeal* [2010] 3 SLR 542 ("*DB Trustees*") (at [24]), the Court of Appeal held that, since costs are entirely at the discretion of the court, the court had the power to make an order for costs against a non-party, whether or not that party is formally a party to the proceedings or not. As explained in *DB Trustees* (at [30]–[36]), the overarching rule with regard to ordering costs against a non-party is that it must, in the circumstances be just to do so, and two factors should be present:

(a) First, there must be a close connection between the non-party and the proceedings. There will be many ways to demonstrate a close connection between the non-party and the legal proceedings in question, and examples include where the non-party funds the proceedings in question *or* controls those proceedings with the intention of ultimately deriving a benefit from them.

(b) Secondly, the non-party must have caused the incurring of costs. This is ultimately a matter of causation, and it would ordinarily not be just for a non-party to bear costs which a litigant would have incurred regardless of the non-party's role. This factor may be established by the very same facts which go towards showing a close connection between the non-party and the proceedings.

95 In *SIC College of Business and Technology Pte Ltd v Yeo Poh Siah and others* [2016] 2 SLR 118 ("*SIC College*"), the Court of Appeal expressed some caution as to the readiness to which costs orders should be made against shareholders or a director of a company in litigation involving the company. The fact that non-parties like shareholders and directors of a company would be the real and only beneficiaries of any successful litigation involving the company should not be the overriding consideration in whether a non-party costs orders should be made because otherwise, any court which rules against a closely-held company would have to make such a costs order, and this is inconsistent with the doctrine of the separate liability of the company (see *SIC College* at [91(a)]). Where the litigant company is impecunious, it is not a principle of law that the successful party can look to the person with a close connection to the company for costs; the corporate veil can only be lifted where there is fraud or highly unconscionable conduct (see *SIC College* at [91(b)]).

96 In his submissions that Mr Liu should not be ordered to pay the costs of SUM 650, Mr Chan reiterated his position that these submissions were made at the instructions *of the defendants* and not Mr Liu, and the fact that these submissions were made did not imply mean that Mr Chan's firm (LVMLC) acted for Mr Liu. I have already explained earlier why I do not see the logic in this submission (see [51] above). Turning to the submission proper, Mr Chan urged me to have regard to the caution sounded by the Court of Appeal in *SIC College* and argued that the presence of the two factors in *DB Trustees* is not conclusive as to whether a non-party costs order should be made. Mr Chan further emphasised that SUM 650 is a proceeding which the defendants had to bring to counter the TEC's commencement of the second set of EJD proceedings, and it had been brought in good faith and in the belief that the defendants had reasonable grounds for the service of 2nd EJD Order as well as

for the 2nd EJD Order itself to be set aside. Finally, they urged me to have regard to the fact that the court in SUM 245 had, despite TEC's invitation, declined to make an order for costs against Mr Liu.

97 In my view, there is a clearly a close connection between Mr Liu and SUM 650, in that Mr Liu controlled SUM 650 with the intention of deriving a benefit from its outcome, and further, Mr Liu had caused the incurring of costs in SUM 650. In relation to the former, I agreed with Mr Lin's submission that, since the 2nd EJD Order is made against Mr Liu personally, he is necessarily the only party who stands to benefit from any successful litigation in SUM 650. Given the apparent impecuniosity of the defendants (since they have failed to pay any of the costs orders made against them so far in the proceedings in OS 207), and given that they were bound to satisfy the Judgment Debt so long as it remained unpaid and unenforceable, why would it be in the defendants' interests to take out proceedings like SUM 650 which incurs further costs but does nothing to reduce their liabilities *vis-à-vis* TEC? Further, it is also undisputed that Mr Liu has been the only director through which the defendants have acted in these proceedings, and obviously, he must also be in control of SUM 650 and directed that it be brought. If the application SUM 650 had not been filed, the defendants would not have incurred any of the costs which it is now ordered to pay as a consequence of the dismissal of SUM 650.

98 In support of their submission that Mr Liu should not be ordered to pay the costs of SUM 650, Mr Chan relied on the following extract from *SIC College* (at [106]):

> … where the insolvent company's defence is *bona fide*, a court should lean against an award of third party costs for the primary reason that it would not be in the public interest or, indeed, the interests of the other creditors, to deter the directors or shareholders from assisting it to pursue a legitimate defence

> even if it turns out, in the end, that the defence was not successful. But this is not a strict rule and the factual circumstances may vary widely from case to case.

99 Mr Chan argued that SUM 650 was effectively a proceeding that the defendants have brought *in defence* of the second set of EJD proceedings under the 2nd EJD Order, and following the guidance in *SIC College*, the court should lean against ordering Mr Liu to bear the costs of SUM 650. However, the facts of *SIC College* are important to appreciate the guidance of the Court of Appeal in that case. There, the appellant was a company in the private education business and was controlled by two individuals, "KC" and "CM". The appellant brought a claim against the respondents in respect of an alleged scheme by the first to third respondents to enrich the fourth respondent at the appellant's expense, and the first respondent subsequently brought a counterclaim against the appellant in respect of certain advances he had allegedly made to the appellant. However, as the appellant failed to furnish security for costs that was ordered, its claim was struck out and only the counterclaim remained to be tried. At trial, the appellant was disallowed from proving certain part of its defences which effectively dealt with its main claim which had been dismissed. Consequently, the counterclaim was allowed. Costs for the dismissal of the main claim, as well as costs for the counterclaim, were ordered against KC and CM on a joint and several basis with the appellant. On appeal, the Court of Appeal ordered a retrial of the counterclaim, holding that the trial judge ought not to have denied the appellant the opportunity to prove relevant facts in respect of the counterclaim simply because they were relevant to the main claim. The Court of Appeal also held that it was not in the interests of justice to order KC and CM to pay costs for the main claim and the counterclaim and therefore set aside those costs orders. In respect of the main claim, the Court of Appeal considered that KC and CM had been funding a *bona fide* claim, in respect of which the appellant was clearly the proper claimant, and there had been no

finding of impropriety or bad faith on the part of KC and CM. As for the counterclaim, the appellant's defence was *bona fide* and it had reasonably defended the counterclaim, which was also in its interests as well as those of its creditors (see *SIC College* ([95] above) at [95]–[100] and [106]).

100 I do not think that the Court of Appeal in *SIC College* intended to lay down a general proposition that non-party costs orders should *never* be made in litigation involving companies that are driven by non-party shareholders or directors *except* only where some impropriety or bad faith was shown on their part. What the Court of Appeal had in mind was that the award of a non-party costs order should not have the effect of deterring these non-parties from pursuing a legitimate claim or defence for the company and seeking recourse for the company's rights (see *SIC College* at [96] and [106]). Whether a non-party costs order, if made, would have such a deterrent effect, will depend on the nature of the proceeding in question. The key consideration is whether the litigation in question represents a *genuine* attempt at seeking recourse for the company's rights and whether seeking such recourse is in the best interests of the company and/or its creditors. *SIC College* was clearly one such case because the main claim was a genuine attempt by the appellant to get compensation from those who wronged it and put it out of funds (and it was dismissed, not upon the merits, but for the appellant's failure to provide security for costs), while its defence of the counterclaim was legitimate (see *SIC College* at [95]–[100] and [106]). An opposite example is provided by the facts of *DB Trustees* ([94] above). In that case, the sole director of a company was ordered to bear the costs of the appeals as well as the proceedings below in which the company resisted the appointment of receivers pursuant to the company's default on certain secured notes it had issued. The Court of Appeal found that the appeals and steps taken by the company in the proceedings below were not in the company's

interests and were not pursued *bona fide*, because, among other things, the evidence was clear in showing that the company had not been in a position to obtain fresh financing during the material period to redeem the notes, and the company had also taken an unreasonable stance by failing to cooperate with the receivers appointed (see [37]–[40]).

101 Returning to the present case, it obviously would have been within the defendants' legal rights to seek to set aside the 2nd EJD Order and take the position that they (and Mr Liu) had been served the 2nd EJD Order irregularly. But it is quite another matter as to whether SUM 650 was consistent with the defendants' interests and represented a legitimate attempt by the defendants at seeking recourse for their rights. In my view, that is clearly not the case. Since the Judgment Debt remains unsatisfied, TEC is entitled to avail itself of the available procedures at law to enforce that judgment, including by taking out applications for EJD orders, which are incidental to its right as a judgment creditor. A proceeding like SUM 650 does not go anywhere in reducing the defendants' liabilities towards TEC in respect of the proceedings in OS 207. Whatever the outcome in SUM 650, it could only result in the defendants incurring further costs, at a time where they already appear to be impecunious and hence unable to pay any of the costs ordered against them as well as the Judgment Debt. In this light, even if the defendants had reasonably taken the view that it was within their legal rights to pursue SUM 650, I do not think SUM 650 can be characterised as a legal proceeding that is consistent with their interests or those of their creditors. To the contrary, the only party which stood to gain was Mr Liu, as he could be relieved of his personal obligations under the 2nd EJD Order if SUM 650 had been successful. The caution in ordering costs against non-parties like the shareholders and/or directors of a company, as explained in *SIC College* (see [95] and [98] above), is therefore not engaged. It

is therefore also not necessary for any bad faith or unconscionable conduct to be shown on Mr Liu's part in order for him to be ordered to pay the costs of SUM 650. In my view, such an order fully accords with the justice of the case.

102 Finally, in arriving at my decision above to order Mr Liu to pay the costs of SUM 650, I did not consider it relevant that the court in SUM 245 had declined to order Mr Liu to pay costs. SUM 245 is distinct from SUM 650 and in the two applications, different reliefs were sought in different circumstances. Any reasons which the court considered in declining to make a non-party costs order in SUM 245 will not have a bearing on whether a similar order should or should not be made in SUM 650.

103 For the reasons above, I dismissed SUM 650, and ordered that Mr Liu pay to TEC legal costs of SUM 650 in the sum of $16,000 and disbursements of $2,341.67. For legal costs, as none of the specific costs ranges in Section II(B) of Appendix G of the Supreme Court Practice Directions 2013 were directly applicable to an application in the nature of SUM 650, I agreed with Mr Lin that the applicable range is the "contested/complex or lengthy application" category in Section II(A), which was between $9,000 to $22,000. Having regard to the papers filed, the length of the submissions, the number of authorities cited as well as the time it took for the hearing, I considered $16,000 appropriate for legal costs. As for disbursements, having regard to the breakdown provided by Mr Lin at the hearing, I considered the sum of $2,341.67 reasonable.

Perry Peh
Assistant Registrar

Lin Chunlong, Tian Keyun and Lucas Wong (WongPartnership LLP) for the plaintiff;
Chia Kia Pheng (LVM Law Chambers LLC) for the defendants.
