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

[2025] SGHCR 24

Suit No 45 of 2020 (Summons No 1381 of 2025)

Between

Dynamic Oil Trading (Singapore) Pte Ltd (in Creditors' Voluntary Liquidation)

… *Plaintiff*

And

Deloitte & Touche LLP

… *Defendant*

And

(1) The Personal Representative(s) of Jim Bøjesen Hessellund Pedersen, Deceased
(2) Morten Skou
(3) Götz Dieter Lehsten
(4) Lars Møller

… *Third Parties*

GROUNDS OF DECISION

[Civil Procedure – Third party proceedings – Whether orders made on a summons for third party directions should be varied]

Dynamic Oil Trading (Singapore) Pte Ltd (in creditors' voluntary liquidation)
v
Deloitte & Touche LLP
(Personal representative(s) of Pedersen, Jim Bøjesen Hessellund, deceased, and others, third parties)

[2025] SGHCR 24

General Division of the High Court — Suit No 45 of 2020 (Summons No 1381 of 2025)
AR Vikram Rajaram
8–9 July 2025

25 July 2025

AR Vikram Rajaram:

1 These are my full written grounds of decision for allowing the Defendant's application to vary orders that I previously made in the Defendant's summonses for third party directions. The orders in question concerned the manner in which the main action and the third party proceedings were to be tried. The original orders that I made, which followed the standard wording in Form 20 of the Rules of Court 2014, provided that the main action would be tried separately from the third party proceedings. I decided to vary those orders to provide for a combined trial for the main action and the third party proceedings. I now set out my full reasons.

Facts

The parties

2 The Plaintiff is a company incorporated in Singapore. It carried on a business of wholesale of crude petroleum and ship bunkering from the time it was incorporated on 24 August 2012 until it entered provisional liquidation on 18 November 2014.[1]

3 During the time when the Plaintiff was conducting business, its Board of Directors comprised the following persons:[2]

(a) Mr Jim Bøjesen Hessellund Pedersen (the "1st Third Party"); the 1st Third Party died in or around March 2017;

(b) Mr Morten Skou (the "2nd Third Party");

(c) Mr Götz Dieter Lehsten (the "3rd Third Party"); and

(d) Mr Lars Møller (the "4th Third Party").

4 The Plaintiff was part of a group of companies known as the "OWB Group". The parent company of the OWB Group was OW Bunker A/S, a Danish company that was listed on 28 March 2014 on NASDAQ OMX Copenhagen via an initial public offering (the "IPO").[3]

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1 Yeong Kai Jun, Geraldine's 15th Affidavit filed on 19 May 2025 ("Yeong Kai Jun, Geraldine's 15th Affidavit") at para 8.

2 Yeong Kai Jun, Geraldine's 15th Affidavit at para 8.

3 Yeong Kai Jun, Geraldine's 15th Affidavit at para 9.

5 The Plaintiff engaged the Defendant to perform a statutory audit of the Plaintiff's financial statements as of 31 December 2013 (the "2013 Audit"). The Defendant issued its report in respect of the 2013 Audit on 31 March 2014 (the "Audit Report").[4]

The collapse of the OWB Group

6 The OWB Group subsequently collapsed in or around November 2014 following the commencement of bankruptcy proceedings against OW Bunker A/S and other entities in the OWB Group. The Plaintiff also entered into provisional liquidation on 18 November 2014.[5]

7 In December 2014, an *ad hoc* trustee was appointed to investigate the possible legal liability of OW Bunker A/S and its subsidiaries, including the Plaintiff.[6] According to the Defendant, the *ad hoc* trustee's report made various observations including that the Plaintiff's trading with two companies, Petrotec Pte Ltd and later Tankoil Marine Services Pte Ltd ("Tankoil"), resulted in the Plaintiff acquiring a receivable owed by Tankoil totalling approximately US$156 million as at November 2014. This was apparently a key contributing factor to the collapse of the OWB Group. The *ad hoc* trustee's view was also that the Plaintiff breached its credit policy and procedures and that the 4th Third Party and several other members of the OWB Group's management were aware of this. The 1st Third Party, the 2nd Third Party and the 3rd Third Party were also

4 Yeong Kai Jun, Geraldine's 15th Affidavit at para 10.

5 Yeong Kai Jun, Geraldine's 15th Affidavit at para 11.

6 Yeong Kai Jun, Geraldine's 15th Affidavit at para 12.

apparently informed or had knowledge (in their capacity as directors of the Plaintiff) of the conditions in the Plaintiff.[7]

8 Following the release of the *ad hoc* trustee's report, various proceedings were commenced in the Eastern High Court of Denmark by, *inter alia*, the bankruptcy estates of the OWB Group companies and investors who subscribed for the IPO against, *inter* alia, the former directors, senior management, officers, employees, agents and shareholders of the OWB Group (the "Danish Proceedings").[8] According to the Defendant, only one case amongst the Danish Proceedings is still pending.[9] The trial for that matter has since commenced and is scheduled to take place until 13 October 2025.[10]

The claims in Suit 45

9 On 14 January 2020, the Plaintiff (managed by its liquidators) commenced HC/S 45/2020 ("Suit 45") against the Defendant.

10 In Suit 45, the Plaintiff claims damages in the amount of US$112.6 million for the Defendant's alleged breach of: (a) terms of a letter of engagement dated 11 November 2013 that was entered into between the Plaintiff and the Defendant for the 2013 Audit (the "LOE"); and/or (b) its duty of care in tort. In particular, the Plaintiff alleges that the Defendant breached the LOE and/or was negligent in its conduct of the 2013 Audit and in its preparation of the Audit

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7 Yeong Kai Jun, Geraldine's 15th Affidavit at para 13.

8 Yeong Kai Jun, Geraldine's 15th Affidavit at para 14.

9 Yeong Kai Jun, Geraldine's 15th Affidavit at para 14.

10 Yeong Kai Jun, Geraldine's 15th Affidavit at para 16.

Report.[11] The Plaintiff makes various allegations in support of its claim, including that the Defendant failed to carry out the necessary procedures, inquiries and investigations which would have led the Defendant to uncover the Plaintiff's inaccurate booking of invoices issued in respect of trades with Tankoil, the understatement of the trade receivables balance in the Plaintiff's financial statements as at 31 December 2013 and the erroneous recording of trade receivables which were "past due but not impaired" in the financial statements.[12]

11 The proceedings between the Plaintiff and the Defendant will be referred to as the "Main Action".

12 The Defendant has pleaded various defences in the Main Action including a denial of a breach of the LOE and/or the alleged duty of care in tort.[13] The Defendant also denies that the Plaintiff suffered loss and damage.[14] The Defendant further pleads that, in any event, any loss and damage was not caused by the Defendant.[15] The Defendant also pleads that before November 2014, the Plaintiff and, *inter alia*, its Board of Directors knew or ought to have known of the Plaintiff's true financial position, and any weaknesses in the design or operation of the accounting and internal control system, as well as the extent of the impairment of the receivables due from Tankoil and/or any alleged unlawful actions by the 4th Third Party or others.[16]

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11 Statement of Claim (Amendment No. 1) at para 18.

12 Statement of Claim (Amendment No. 1) at paras 18.5.1 to 18.5.3.

13 Defence at para 20.

14 Defence at para 27.

15 Defence at para 27.

16 Defence at para 29.

Limited stay of proceedings and lifting of the stay

13 On 11 January 2021, the Defendant filed an application for a case management stay of Suit 45 pending the disposal of the Danish Proceedings. The stay was eventually granted on appeal by Valerie Thean J. Thean J ordered that the stay was to be limited in that any preparation of affidavits of evidence in chief ("AEICs") or the trial was to be stayed, with liberty to apply for the stay to be lifted at the end of the discovery process if the circumstances made it appropriate (the "Limited Stay").[17]

14 Following the completion of discovery, the Plaintiff filed HC/SUM 3094/2024 to lift the Limited Stay (the "Lifting Application"). The Lifting Application contained an alternative prayer for the Court to bifurcate the trial of Suit 45 with issues of duties and standard of care, breach of duty and/or contractual issues being dealt with first, followed by a separate trial of issues of causation and damages.[18] Thean J heard and granted the primary prayer in the Lifting Application on 6 December 2024 – *ie*, the Limited Stay was ordered to be lifted (the "Lifting Decision").[19]

The third party proceedings

15 On 30 June 2021, the Defendant issued a Third Party Notice to join the former directors of the Plaintiff (ie, the 1st to 4th Third Parties) as third parties in Suit 45 (the "Third Party Proceedings"). The Third Party Proceedings were

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17 Yeong Kai Jun, Geraldine's 15th Affidavit at page 55, lines 4 to 6.

18 Yeong Kai Jun, Geraldine's 15th Affidavit at para 27.

19 Yeong Kai Jun, Geraldine's 15th Affidavit at para 31.

commenced for the purpose of seeking a contribution or indemnity from the 1st to 4th Third Parties.[20]

16 The Third Party Notice was served on the 2nd Third Party and the 3rd Third Party after their solicitors confirmed on 25 November 2021 that they had instructions to accept service.[21] Thereafter, the Defendant, the 2nd Third Party and the 3rd Third Party agreed to stay the Third Party Proceedings pending the disposal of the Danish Proceedings provided, *inter alia*, that the Limited Stay remained in place.[22]

17 The Third Party Notice was served on the 1st Third Party out of jurisdiction much later on 16 December 2024.[23]

18 The 4th Third Party has apparently been served with the Third Party Notice but he has not entered an appearance. I will refer to the 1st to 3rd Third Parties collectively as the "Third Parties".

19 After the Lifting Decision, the Defendant filed:

(a) HC/SUM 27/2025 ("SUM 27") to seek directions for the third party proceedings against the 2nd Third Party and the 3rd Third Party;[24] and

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20 Yeong Kai Jun, Geraldine's 15th Affidavit at para 32.

21 Yeong Kai Jun, Geraldine's 15th Affidavit at para 33.

22 Yeong Kai Jun, Geraldine's 15th Affidavit at para 34.

23 Yeong Kai Jun, Geraldine's 15th Affidavit at para 35.

24 Yeong Kai Jun, Geraldine's 15th Affidavit at pages 143 to 144.

(b) HC/SUM 461/2025 ("SUM 461") to seek directions for the third party proceedings against the 1st Third Party.[25]

20 Both SUM 27 and SUM 461 contained the following prayer in connection with how the Main Action and the Third Party Proceedings were to be tried (the "Trial Prayer"):[26]

> 5. The question of the liability of [the 1st Third Party / the 2nd and 3rd Third Parties] to indemnify the Defendant be tried at the trial of this action, but subsequent thereto.

21 The Trial Prayer mirrored the wording set out at paragraph 4 of Form 20 of the Rules of Court 2014 (the "ROC 2014"). The ROC 2014 applies to Suit 45 because Suit 45 was commenced before 1 April 2022 (see paragraph 1(*a*) of the First Schedule to the Rules of Court 2021). Paragraph 4 of Form 20 of the ROC 2014 is reproduced below for reference:

> 4. The question of the liability of the said third party to indemnify the defendant be tried at the trial (or hearing) of this action, but subsequent thereto.

22 When SUM 27 and SUM 461 were heard before me, the parties did not raise any issues in relation to the Trial Prayer. I granted the orders prayed for in SUM 27 and SUM 461 (including the Trial Prayer).[27] I will refer to the orders I made in respect of the Trial Prayer in SUM 27 and SUM 461 as the "Original Orders".

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25 Yeong Kai Jun, Geraldine's 15th Affidavit at pages 146 to 147.

26 Yeong Kai Jun, Geraldine's 15th Affidavit at pages 144 and 147.

27 Certified Transcript of the Notes of Arguments for the pre-trial conference on 10 January 2025 (see Show-Yen Shawn Chen's 7th Affidavit filed on 20 June 2025 ("Show-Yen Shawn Chen's 7th Affidavit") at page 40) and Certified Transcript of the Notes of Arguments for the pre-trial conference on 21 February 2025 (Bob Yap Cheng Ghee's 30th Affidavit filed on 10 June 2025 ("Bob Yap Cheng Ghee's 30th Affidavit") at page 69).

23 Subsequently, the Plaintiff and the Defendant had a difference in view on the meaning of the Original Orders. After hearing submissions from the parties, I decided at a pre-trial conference on 25 April 2025 that the Original Orders meant that the Third Party Proceedings would be tried in a separate tranche from the trial of the Main Action (the "Interpretation Decision"). I noted in the Interpretation Decision that it was open to the Defendant to apply to vary the Original Orders pursuant to O 16 r 4(5) of the ROC 2014. The material parts of my Interpretation Decision are quoted below for reference:[28]

> 1 This is my decision on a dispute that was ventilated before me at today's pre-trial conference in relation to the interpretation of the following order that I made on 10 January 2025 in HC/SUM 27/2025, which was the Defendant's application for third party directions: "The question of the liability of the 2nd and 3rd Third Parties to indemnify the Defendant be tried at the trial of this action, but subsequent thereto." (the "Third Party Trial Direction").
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> 2 The Third Party Trial Direction is a standard direction that is found in Form 20 of the Rules of Court 2014 ("ROC 2014") (see paragraph 4 of Form 20).
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> 3 The Plaintiff's view is that the Third Party Trial Direction means that the third party proceedings will be tried in a separate tranche from the trial of the main action. The Defendant's interpretation is that the Third Party Trial Direction means that the third party proceedings are to be tried in the same tranche as the trial of the main action.
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> 4 Having considered the parties' submissions, my view is that the Third Party Trial Direction bears the meaning that the Plaintiff has submitted. This is supported by the following authorities.
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> 5 First, in *Coles v Civil Service Supply Association* (1884) 26 ChD 529, the Court made an order that was worded in the same terms as the Third Party Trial Direction. The order made in Coles may well have inspired the wording of paragraph 4 of Form 20 of the Rules of Court 2014. The Court in *Coles* explained that the order it was making was a direction that the question as to the third party's liability to indemnify the

[28] Yeong Kai Jun, Geraldine's 15th Affidavit at pages 229 to 233.

defendant be determined "immediately after the trial of the action" (see *Coles* at page 530).

6 The words "immediately after" that the Court in *Coles* used suggest that the trial of the question of whether the third party is liable to indemnify the Defendant should be decided after the conclusion of the trial of the main action. In particular, the use of the word "after" suggests that the trial of the third party liability issues is to take place on another occasion after the trial of the main action. The word "immediately" does not mean that the trial of the third party issues is to take place with the trial of the main action. What that word means is that the trial of the third party issues is to take place very shortly after the trial of the main action.

7 Second, in *Brue Ltd v Solly & Others* (1988) Times, 9 February 1988, the Court considered an order that was worded in the same terms as the Third Party Trial Direction. The order, which was made by a master, stated as follows: "That the question of the liability of the third party to indemnify the second defendant be tried at the trial of this action but subsequent thereto". After the trial Judge, Harman J, issued his decision on both the main action and the third party proceedings, counsel highlighted to the Judge that the master's order indicated that there was to be a subsequent trial for the third party proceedings. Counsel stated as follows in relation to the master's order: "That indicates there is the trial of the action, one delivers judgment in the action first, then further evidence is admissible, and indeed further cross-examination may be allowed for the purposes of the third party proceedings which are quite different from the action, where different issues arise." (see *Brue* at page 11).

8 Harman J agreed that this was the meaning of the master's order, but he then proceeded to direct that the third party proceedings be tried with and be part of the hearing of the main action, and he then affirmed the judgment that he had issued. The Judge reached this conclusion because his view was that the proper course that should have been taken at the outset was for the third party proceedings to be tried *with* the main action. While Harman J's view ultimately was that the third party proceedings should have been tried with the main action, the fact that the Judge had to make a direction to that effect suggests that the master's *original* order meant that the third party proceedings were to be tried separately (ie, in a further tranche).

9 Apart from these two authorities, the plain wording of the Third Party Trial Direction suggests that the third party proceedings are to be tried separately. The words "subsequent

> thereto" suggest that the trial of the third party proceedings is to take place after the trial of the main action.
>
> 10 For these reasons, I conclude that the Third Party Trial Direction bears the meaning that the Plaintiff submitted.
>
> 11 It remains open to the Defendant to apply to vary the Third Party Trial Direction if it considers that the more efficient course is for the third party proceedings to be tried with the main action. There is a suggestion in a case cited by the Defendant's counsel that third party proceedings which are closely connected to the main action are almost always, if not always, tried together: see *Sakae Holdings* [2017] SGHC 100 at [23] ("…. However, third party proceedings are closely connected with the main actions and the two are almost always, if not always, tried together. …".)
>
> 12 I will set timelines for the Defendant to file an application for variation of the Third Party Trial Direction, should the Defendant wish to do so. Any such application would be made pursuant to O 16 r 4(5) of the ROC 2014 which allows a court to vary or rescind any order or direction that it has made under O 16 r 4 (which is the provision empowering the court to issue third party directions).
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> …

24 A final point to note in relation to the Third Party Proceedings is that the Third Parties filed an application on 28 February 2025 for a stay of the Third Party Proceedings until the final disposal of the Danish Proceedings (the "Third Parties' Stay Application"). The Third Parties' Stay Application was heard and dismissed by Assistant Registrar Samuel Chan on 9 April 2025. The Third Parties have filed an appeal against that decision. At the Third Parties' request, I deferred the fixing of the appeal until the disposal of the present application in SUM 1381.

SUM 1381

25 On 19 May 2025, the Defendant filed SUM 1381 to seek a clarification and/or variation of the Original Orders. In particular, the Defendant sought the

following amendments to the Original Orders (as marked up in underline and strikethrough):

> The question of the liability of the 2nd and 3rd Third Parties to indemnify the Defendant be tried at the trial of this action, together with the main action ~~but subsequent therefto~~.
>
> The question of the liability of the 1st Third Party to indemnify the Defendant be tried at the trial of this action, together with the main action ~~but subsequent therefto~~.

The issues

26 Having regard to the submissions made by the parties, there were two main issues to consider, namely:

(a) Was there basis for a "clarification" of the Original Orders ("Issue 1")?

(b) Should the Original Orders be varied pursuant to O 16 r 4(5) of the ROC 2014 ("Issue 2")?

Issue 1: Was there basis for the Court to "clarify" the Original Orders by revisiting the Interpretation Decision?

27 In their written submissions, the Defendant submitted that the case law supported the Defendant's understanding that the Original Orders meant that the Third Party Proceedings will be tried at the same trial as the trial of the Main Action. The Defendant cited three cases in particular: *Steel v National Coal Board and Another* [1983] Lexis Citation 2026 ("*Steel v National Coal Board*"), *Sharneyford Supplies Ltd v Edge Barrington Black & Co. (Third Party)* [1987] 2 WLR 363 ("*Sharneyford Supplies Ltd*") and *Kingdom Power Development Limited v the Incorporated Owners of Cheong Wah Building, Tsuen Wan and others* [2025] HKCU 1362 ("*Kingdom Power Development Limited*").

28 The point that the Defendant was making in citing the three cases was initially unclear. It appeared to me that the Defendant might have been suggesting that the Interpretation Decision was incorrect and that I should revisit the Interpretation Decision in the light of the three cases. This may have been why the Defendant framed its prayers in SUM 1381 as seeking a *clarification* of the Original Orders in addition to a variation.

29 If the Defendant was seeking to challenge the Interpretation Decision, I would have found that there was no basis for them to have done so. There was no basis for me to rescind the Interpretation Decision. There is no provision in the ROC 2014 that empowered me to revisit the Interpretation Decision. If the Defendant was dissatisfied with the Interpretation Decision, the proper procedure to follow would have been for the Defendant to file an appeal against the Interpretation Decision. There was no basis to mount a collateral attack on the Interpretation Decision in the course of the present application.

30 During oral reply submissions, the Defendant's counsel clarified that the Defendant was not actually asking that I revisit the Interpretation Decision. The point that the Defendant wanted to make was that the three cases supported the Defendant's understanding that the Original Orders meant that the Third Party Proceedings would be tried at the same trial as the trial of the Main Action, and that I should vary the Original Orders to reflect the Defendant's understanding.

31 I will be considering whether there is basis to vary the Original Orders in the next section of these grounds of decision. At this point, I briefly state my view on the three cases. Having reviewed the cases and heard the parties' submissions on them, I found that none of the three cases support the Defendant's understanding of the Original Orders:

(a) *Steel v National Coal Board*: While this case involved an order that is worded in a manner that is similar to the Original Orders, as the Plaintiff's counsel highlighted, the judgment in *Steel v National Coal Board* expressly stated that the plaintiff applied to join the third party as a second defendant in the main action. This was stated to have been done two or three days before the trial. The judgment also states that leave was given for the joinder and so the third party was both the second defendant and the third party. This feature explains why the third party featured in the trial of the main action where the two defendants made a successful no case to answer submission.

(b) *Sharneyford Supplies Ltd*: This case also involved an order that is similar to the Original Orders. A Master had made an order that there was to be a trial of preliminary issues and that the question of the liability of the third party was to be tried at the trial of the preliminary issues "but subsequent thereto". While the judgment of the Court of Appeal might suggest that the third party's liability was determined in the same tranche as the trial of the preliminary issues, the Plaintiff's counsel helpfully referred me to the judgment issued at first instance: *Sharneyford Supplies Ltd v Edge (Barrington Black Austin & Co (a firm), third party)* [1985] 1 All ER 976. There are indications in the first instance judgment that the third party's liabilities might have been determined only after the trial of preliminary issues but perhaps very shortly after that trial. This is apparent from the fact that the first instance judgment states that the defendant was "recalled to the witness box and cross-examined by counsel for the third-party". As the Plaintiff's counsel submitted, the trial Judge's use of the word "recalled" suggests that the third party's liability was tried only after the completion of the trial of the preliminary

issues. If there was a single trial of the preliminary issues and the third party proceedings, it was not likely that the trial Judge would have said that the defendant was being "recalled".

(c) *Kingdom Power Development Limited*: This case is distinguishable because the order made by the Master was worded differently from the Original Orders. The Master's order was that "[t]he question of the liability of the Third Parties for indemnity and/or contribution be tried at the trial of this action with the main action or subsequent thereto as the Trial Judge shall direct". The Master's wording of the order essentially left it to the trial Judge to decide how the third party proceedings were to be tried. Given the different wording, *Kingdom Power Development* does not assist in the interpretation of the Original Orders.

Issue 2: Should the Court vary the Original Orders?

32 I turn next to consider whether the Court should exercise the power under O 16 r 4(5) of the ROC 2014 to vary the Original Orders. I begin by outlining the applicable principles.

Applicable principles

33 The starting point is O 16 r 4(5) of the ROC 2014. That provision allows the court to vary or rescind an order made or direction given under O 16 r 4. Order 16 r 4 is the provision in the ROC 2014 under which the Court is to issue directions for third party proceedings. Order 16 r 4(5) is reproduced below for reference:

> (5) Any order made or direction given under this Rule must be in Form 21 and *may be varied or rescinded by the Court at any time.* [Emphasis added.]

34 Order 16 r 4(5) of the ROC 2014 does not set out the matters that the court is to consider when deciding whether to vary or rescind an order made under O 16 r 4. The parties did not cite any authorities directly addressing the principles that the court should apply when considering whether a variation is appropriate.

35 The Plaintiff's counsel submitted that the court should only grant a variation if there is a material change in circumstances and/or new material, evidence or argument which justifies a variation.[29] In support of this standard, the Plaintiff's counsel cited the approach taken in *TG Master Pte Ltd v Tung Kee Development (Singapore) Pte Ltd* [2023] SGHC 64. That case involved a request for further arguments after a full trial.

36 The Defendant's counsel disagreed with the standard proposed by the Plaintiff's counsel. The Defendant's counsel submitted that the court should, instead, adopt the principles that would apply where a court considers an application to vary orders made in a summons for directions under O 25 of the ROC 2014. The leading authority in this regard is *Auto Clean 'N' Shine Services (a firm) v Eastern Publishing Associates Pte Ltd* [1997] 2 SLR(R) 427 ("*Auto Clean 'N' Shine Services*"). The Court of Appeal was concerned with a situation where the plaintiff wished to call additional witnesses who had not been named in the summons for directions. The Court of Appeal found (at [17]) that the orders made in a summons for directions can be varied. The Court noted that

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29 Plaintiff's Skeletal Submissions filed on 30 June 2025 ("Plaintiff's Skeletal Submissions") at para 6.3.

orders made under such rules at the interlocutory stage are "not immutable". The Court of Appeal also held that where a party wishes to call additional witnesses not named in the order made on the summons for directions, the court should be conscious that there may be circumstances where a party may not be able to name all their witnesses at the summons for directions stage for a variety of reasons. The Court of Appeal noted that "the courts should not adopt an unduly rigid or restrictive approach in considering the directions to be given concerning matters pertaining to the trial or hearing" and that a balance ought to be struck between compliance with the rules and the parties' right to call the witnesses they need to prove their case.

37 The Court of Appeal ultimately decided to allow the party to call additional witnesses. In reaching this decision, the Court of Appeal took into consideration the fact that the proceedings were at a relatively early stage and there would be no prejudice to the defendants because the defendants would have sufficient time and opportunity to consider and respond to the additional evidence: see *Auto Clean 'N' Shine Services* at [18].

38 My view was that the principles in *Auto Clean 'N' Shine Services* can and should be applied by analogy to an application under O 16 r 4(5) of the ROC 2014 to vary or rescind orders made in a summons for third party directions. A summons for third party directions is like a summons for directions in that both types of summonses are concerned with issuing directions for the efficient conduct of a trial. In line with the approach in *Auto Clean 'N' Shine Services*, a court hearing an application under O 16 r 4(5) of the ROC 2014 should not adopt an unduly rigid approach to orders made at the interlocutory stage in a summons for third party directions.

39 I also disagreed with the Plaintiff's proposed standard which requires a material change in circumstances and/or new material, evidence or argument before a variation can be ordered (see [35] above). I did not think that a court dealing with an application to vary a procedural order on how a trial is to be conducted should be bound by the standard that is applied where a court is considering varying a decision made on the substance of the case after a full consideration of the merits. Finality should be given greater emphasis for variations of substantive decisions. A less rigid approach should be applied where a court is considering varying a procedural order regarding the conduct of a trial or hearing. My view was that the need for finality should be given less emphasis when such procedural orders are being reviewed.

40 In my view, the factors that a court should consider when faced with an application under O 16 r 4(5) of the ROC 2014 to vary procedural directions previously made in a summons for third party directions include the following:

(a) First, the court should consider whether the party that is seeking to vary the orders made earlier has a good explanation for why the orders, as varied, were not put forward at the time when the summons for third party directions was originally heard.

(b) Second, the court should consider whether there are good reasons to vary the orders originally made. Whether a particular reason given is sufficient would depend on the proposed variation to the order.

(c) Third, in the specific context of an application to vary an order on the manner in which the third party proceedings are to be tried, the court should be guided by the principles that would ordinarily apply when deciding whether the third party proceedings should be tried with

the main action. In this connection, the Court of Appeal has held in *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 ("*CIMB Bank*") at [82] that "the real test to determine whether a third-party action should be heard together with the main action is not that of connection alone but whether they are inextricably linked and the third-party action is an integral and inseparable part of the main action". The court should consider whether the variation that is being sought is consistent with the principle stated in *CIMB Bank*.

(d) Fourth, the Court should consider whether the variation will cause prejudice to the other parties and whether the variation is being sought at a relatively early stage of the proceedings. These were factors that were considered in *Auto Clean 'N' Shine* at [18].

Analysis and decision

41 Having considered the parties' submissions, I decided that the Original Orders should be varied in the manner prayed for in SUM 1381. My reasons were as follows.

42 First, the Defendant provided a coherent explanation for why it was seeking to vary the Original Orders even though those orders were granted in the exact terms proposed by the Defendant. The Defendant has explained that its initial understanding was that the Original Orders provided for a single trial for both the Main Action and the Third Party Proceedings. The Defendant has since found out, through the Interpretation Decision, that its understanding of the Original Orders was incorrect, and this then led the Defendant to take out the present application to vary the Original Orders to bring them in line with the

Defendant's wishes for how the trial is to be conducted. This requires some explanation.

43 The Defendant has filed an affidavit stating that its understanding of the Original Orders was that the Third Party Proceedings would be tried together with the Main Action.[30] The Defendant's representative went on to state that the need for the present application only became apparent after the Plaintiff disputed the Defendant's interpretation of the Original Orders during a pre-trial conference on 11 April 2025 and after I decided (in the Interpretation Decision) that the Original Orders did not have the effect that the Defendant thought they had. Instead, the Original Orders provided for a separate trial of the Third Party Proceedings.[31]

44 I note that the Plaintiff contended that the true reason for the present application is that the Defendant wishes to delay the progress of Suit 45.[32] On the evidence before me, I was unable to conclude that the Defendant's explanation (under oath) for why it had brought SUM 1381 was false. The Defendant's conduct before the Original Orders were made, and after the Original Orders were made, is consistent with the Defendant's explanation that its initial understanding was that the Main Action and the Third Party Proceedings will be heard together:[33]

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30 Show-Yen Shawn Chen's 7th Affidavit at para 25.

31 Show-Yen Shawn Chen's 7th Affidavit at para 25.

32 Plaintiff's Skeletal Submissions at para 18 and para 43.3.

33 Defendant's Written Submissions filed on 30 June 2025 ("Defendant's Written Submissions") at para 43.

(a) The Defendant's written submissions filed for the Lifting Application (which was filed before the Defendant had applied for the Original Orders through the summonses for third party directions) suggested that the Defendant's intention was for the Main Action and the Third Party Proceedings to be heard in the same trial:

(i) The Defendant stated in those submissions that the Third Parties and the Defendant had agreed to a stay of the Third Party Proceedings while the Limited Stay was in effect. One of the conditions of that agreement was that the Third Party Proceedings would be tried and heard together with the Main Action.[34]

(ii) The Defendant also submitted that it was "clear that Suit 45 (including the Third Party Proceedings) will not be set for trial anytime soon".[35] The Defendant's phrasing of this sentence suggested that the Defendant's view was that there would be a single trial for Suit 45 and that the single trial would include the Third Party Proceedings.

(b) After the Lifting Application was decided, at a pre-trial conference on 27 December 2024, the parties were asked for their views on whether the court should direct the parties to file their lists of witnesses. The Defendant's counsel response to that query was that the Third Party Proceedings should progress first before such directions are issued because relevant evidence might be furnished by the Third

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34 Yeong Kai Jun, Geraldine's 15th Affidavit at page 105, [61].

35 Yeong Kai Jun, Geraldine's 15th Affidavit at page 105, [62].

Parties.[36] A possible interpretation of this response is that the Defendant's view was that the court should wait for the Third Party Proceedings to "catch up" before issuing directions for the trial, such as the filing of lists of witnesses.

(c) After the Original Orders were issued, at a pre-trial conference on 10 January 2025, the Plaintiff's counsel suggested that the court set timelines for the expert witnesses to file their AEICs. The Defendant's counsel's view on this suggestion was that it was too early for the experts to prepare their AEICs because the Third Party Proceedings might surface facts that the experts would have to opine on, and the experts would then have to review the evidence again. The Defendant's counsel reiterated that the proceedings on the Main Action should not move forward and that the Third Party Proceedings should "catch up".[37] These statements by the Defendant's counsel could be interpreted as suggesting that the Defendant's view was that the Third Party Proceedings were going to be heard with the Main Action and thus the Third Party Proceedings had to "catch up" before directions for the single trial of the Main Action and the Third Party Proceedings should be issued.

45 To sum up my first reason, I was satisfied that the Defendant had provided a coherent explanation for why it was seeking a change in the Original Orders. I was not convinced that the Defendant had sought a variation to delay these proceedings. Instead, the evidence before me suggested that the Defendant

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36 Show-Yen Shawn Chen's 7th Affidavit at page 32.

37 Show-Yen Shawn Chen's 7th Affidavit at page 41.

was seeking a variation to bring the Original Orders in line with how the Defendant previously intended for the trial to be heard.

46 Second, there was a good reason for varying the Original Orders to provide that the Third Party Proceedings should be tried with the Main Action. Applying the test in *CIMB Bank*, I found that the Main Action and the Third Party Proceedings are inextricably linked because common issues will need to be decided in both the Main Action and the Third Party Proceedings:

(a) The Defendant's defences in the Main Action include a pleading that any loss suffered by the Plaintiff was caused by the conduct and/or negligence of the Plaintiff and/or its directors, officers and/or management, and/or the Plaintiff's shareholder (OWB Trading A/S) and/or its directors, officers and/or management, and/or the shareholders in the OWB Group and/or their directors, officers and/or management.[38]

(b) This defence is an integral component of the Defendant's claim against the Third Parties in the Third Party Proceedings for a contribution or indemnity. The Defendant has pleaded in the Third Party Proceedings that if the Defendant is found liable for any loss suffered by the Plaintiff, such loss was caused (wholly or in part) by the Third Parties' breaches of their duties owed to the Plaintiff and/or negligence and that the Third Parties are therefore liable for any loss suffered by the Plaintiff.[39]

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38 Defendant's Written Submissions at para 47. Also see Defence at para 33.

39 Defendant's Written Submissions at para 47. Also see Defendant's Statement of Claim (Third Party Proceedings in respect of the 2nd and 3rd Third Parties) at para 27 and Defendant's Statement of Claim (Third Party Proceedings in respect of the 1st Third Party) at para 27.

(c) Thus, in both the Main Action and the Third Party Proceedings, a key issue that the Court will need to consider is whether any loss suffered by the Plaintiff was due to any breaches of duties on the part of the Third Parties.

47 Since the Defendant's defence in the Main Action overlaps with its claims against the Third Parties in the Third Party Proceedings, there is a potential for inconsistent findings if the trial of the Main Action is conducted separately and before the trial of the Third Party Proceedings. There is a possibility that the Court dealing with the Main Action may reach a different conclusion on the overlapping issues from the Court dealing with the subsequent trial of the Third Party Proceedings.

48 There is a real possibility of inconsistent findings which may cause prejudice to the Defendant. The discovery process in the Main Action has proceeded as between the Plaintiff (which is under the control of liquidators) and the Defendant. That discovery process has apparently been hampered because the Plaintiff claims that the electronic mailboxes of the Third Parties are allegedly not in the Plaintiff's possession, custody and/or control.[40] In contrast, the discovery process in the Third Party Proceedings may lead to more extensive production of documents since the Third Parties will be required to disclose documents. Given these circumstances, if the Main Action is heard before the Third Party Proceedings, there is a possibility that the court hearing the Main Action (with a less extensive set of documents) might reach a different conclusion on the overlapping issues as compared to the court hearing the eventual trial of the Third Party Proceedings (with the benefit of a more

[40] Defendant's Written Submissions at para 56 and Yeong Kai Jun, Geraldine's 15th Affidavit at para 55.

extensive set of documents produced by the Third Parties). Any inconsistency in the findings in the two trials may prejudice the Defendant.

49 I note that the Plaintiff submitted that the Defendant will not suffer prejudice under the Original Orders because the Defendant's strategy is apparently to rely on the Danish Proceedings "to resolve the issue of the [Plaintiff's] board [of directors]' cognisance of [the Plaintiff's] true financial position and/or their complicity in the misconduct on the part of the [Third Parties]". The Plaintiff's argument was that the Third Parties' participation was never necessary for the Defendant to conduct its Defence.[41]

50 To support this contention, the Plaintiff referred, *inter alia*, to the directions I issued at a pre-trial conference on 17 March 2025. At that pre-trial conference, I fixed the Third Parties' Stay Application for a hearing and I then directed the parties (excluding the Third Parties) to file their lists of witnesses. In the list of witnesses that the Defendant filed pursuant to those directions, the Defendant did not list any of the Third Parties as their factual witnesses for the trial.[42] The Defendant proposed to call only one factual witness, one Mr Patrick Tan Hak Pheng, who was stated to be an Audit & Assurance Partner at the Defendant.[43] The Plaintiff submitted that this conduct shows that the Defendant did not really require the Third Parties to defend the Main Action.

51 The Defendant explained in an affidavit filed in SUM 1381 that the exclusion of the Third Parties from the Defendant's list of witnesses was due to the Defendant's understanding that my direction was that the parties were not

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41 Plaintiff's Skeletal Submissions at [41].

42 Bob Yap Cheng Ghee's 30th Affidavit at pages 258 to 259.

43 Bob Yap Cheng Ghee's 30th Affidavit at page 259.

to list the Third Parties in their list of witnesses. Thus, the Defendant stated that the list of factual witnesses that was provided by the Defendant (and which excluded the Third Parties as witnesses) should not be seen as a suggestion that the Defendant was ready to proceed to a trial of the Main Action without the Third Parties' involvement.[44]

52 The Defendant's interpretation of my direction at the pre-trial conference on 17 March 2025 was incorrect. My direction for the filing of the lists of witnesses was as follows: "Each party is to write to the Registry by 4pm on 1 April 2025, copying the other parties, setting out the list of witnesses that the party intends to call at the trial (this excludes the third parties)." The words "(this excludes the third parties)" in my direction were meant to convey that the Third Parties were not required to file their lists of witnesses. This was because at the time of the pre-trial conference on 17 March 2025, the Third Parties' Stay Application had not been heard yet. The words "(this excludes the third parties)" were not meant to place any restrictions on the persons that the Plaintiff and the Defendant may wish to call as witnesses. There would have been no basis for the court to restrict the parties from calling the Third Parties as witnesses.

53 In any event, the Defendant has stated under oath its understanding of the direction I made. Given this explanation, I was unable to conclude that the Defendant's conduct in failing to list the Third Parties as its witnesses shows that the Defendant did not need the Third Parties to defend the Main Action.

54 In sum, I was satisfied that there was a good reason for varying the Original Orders to provide for a combined trial for the Main Action and the

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44 Show-Yen Shawn Chen's 7th Affidavit at para 13.

Third Party Proceedings. The two sets of proceedings are inextricably linked due to common issues that need to be decided in both proceedings. Any inconsistency in the findings on the common issues may be prejudicial to the Defendant.

55 Third, a variation of the Original Orders in the manner proposed by the Defendant would likely lead to a more efficient resolution of the entire dispute. The Third Parties, who are likely to be relevant witnesses for resolving the overlapping issues, will not need to testify twice on the same issues. There will also be a saving of time for the court if evidence from the Third Parties, and any other relevant witnesses on the overlapping issues, is taken only once in a combined trial that deals with both the Main Action and the Third Party Proceedings.

56 I accepted that the Original Orders, which contemplate a separate trial for the Third Party Proceedings, had some benefits:

(a) There are issues in the Main Action that do not concern the Third Party Proceedings such as the issue of whether there was any breach of the Defendant's obligations to the Plaintiff. The parties are calling expert evidence which will address the issue of whether there was a breach of the Defendant's obligations. This would mean that a variation of the Original Orders might result in the Third Parties attending a combined trial where considerable time may be spent dealing with issues that have no relevance to the Third Parties.

(b) I also accepted that under the Original Orders, there will likely be cost savings if the court were to find (after the trial of the Main Action) in the Defendant's favour on the issue of breach. If the

Defendant succeeds in showing that it did not breach its obligations, there would be no issues to address in the Third Party Proceedings at all.

57 In the final analysis, I did not think that the benefits outlined above outweighed the other considerations. In particular, the potential for inconsistent decisions on the overlapping issues was a factor that I thought should be given significant weight.

58 Fourth, I was not satisfied that the Plaintiff would suffer prejudice if the Original Orders were varied. Since the time the Original Orders were made, the Plaintiff and the Defendant had not taken irreversible steps on the basis that the trial would be heard as directed in the Original Orders. The steps that the Plaintiff and the Defendant had taken thus far (namely, to prepare their lists of witnesses, to engage experts, to have the experts confer on the issues they are to testify on and to prepare the experts' AEICs) were steps that would have been taken even under the orders as varied.

59 I accepted that a variation would likely mean that the combined trial of the Main Action and the Third Party Proceedings will take place later than a trial of just the Main Action. However, the Plaintiff did not cite any real prejudice that would be suffered by the delay. For example, the Plaintiff did not suggest that it would encounter real difficulties in presenting its case, or in calling certain witnesses to testify, if the fixing of the trial had to wait for the Third Party Proceedings to "catch up".

60 In any case, a variation of the Original Orders might also ultimately assist the Plaintiff in reaching a complete and final outcome sooner than under the Original Orders. If the Main Action is tried separately and if inconsistent

findings are subsequently reached in the trial of the Third Party Proceedings, that might lead to steps being taken to challenge the findings in the trial of the Main Action. For example, if an appeal had not been filed earlier, the findings in the separate trial of the Third Party Proceedings may lead to the filing of an appeal against the findings in the Main Action. If the time for appealing against the findings in the Main Action had expired at the time when the decision in the separate trial for the Third Party Proceedings is released, the Defendant may well seek an extension of time to file an appeal against the findings in the Main Action. These steps that may be taken would likely delay the final resolution of the full dispute between the parties.

61 For these reasons, I decided to vary the Original Orders in the manner proposed by the Defendant.

Costs

62 I did not think that there was any reason to depart from the principle that costs should follow the event. Thus, I ordered the Plaintiff to pay the Defendant the costs of SUM 1381.

63 In fixing the quantum of costs, I referred to the range set out in Appendix G to the Supreme Court Practice Directions 2013, Part II.B., S/N 2 for complex or lengthy contested applications fixed for special hearing. The range is S$9,000 to S$22,000, excluding disbursements.

64 I took the view that SUM 1381 was a moderately complex application. The affidavits were voluminous because the parties' arguments dealt extensively with the long procedural history of this action. I would therefore have fixed costs at around S$15,000 excluding disbursements. However, I

decided to moderate the costs to be awarded downwards in view of my decision on the first issue as outlined above. On that issue, I ruled against the Defendant. The three authorities that were cited were, in my view, ultimately not helpful and the point that was being made in written submissions about the three cases was unclear.

65 Taking into account the fact that I decided against the Defendant on the first issue, I decided to fix the costs of the application at S$12,000.

66 As for disbursements, I disallowed the amounts claimed in respect of the two bundles of documents prepared by the Defendant's counsel. The two bundles were ultimately difficult to use because the original page numbering on the affidavits was removed for some of the affidavits. The hard copies of the bundles were also difficult to use because there were no tabs provided for the exhibits to the affidavits. I also did not think that this was a case which required the compilation of an extensive bundle of documents, and the printing of hard copies of those bundles. The Defendant should have relied on the soft copies of the affidavits as filed on the eLitigation system.

67 I therefore fixed the disbursements at S$1,555.50, this being the amount of disbursements said to have been incurred excluding the filing fees and printing costs for the two bundles of documents.

Conclusion

68 For these reasons, I decided to vary the Original Orders in the manner prayed for by the Defendant. I also ordered the Plaintiff to pay the Defendant costs fixed at S$12,000 plus disbursements fixed at S$1,555.50.

Vikram Rajaram
Assistant Registrar

Randolph Khoo, Sharon Ki and Phyllis Chin (Drew & Napier LLC) for the plaintiff;
Tan Ee Hsien, Goh Wei Wei, Kong Pek Yoke and Gabriel Koh (WongPartnership LLP) for the defendant;
Kevin Kwek, Charmaine Ong and Tan Shi Hui (Legal Solutions LLC) for the 1st to 3rd Third Parties;
The 4th Third Party absent and unrepresented.
