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

[2025] SGHCR 25

Originating Application No 1311 of 2024 (Summonses Nos 561 and 958 of 2025)

Between

Aleksandr Viktorovich Prosetskii

… *Claimant*

And

(1) Igor Smirnov
(2) Infinite Tide Corp.
(3) Seasreno Marine Ltd

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Service]

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v
Smirnov, Igor and others

[2025] SGHCR 25

General Division of the High Court — Originating Application No 1311 of 2024 (Summonses Nos 561 and 958 of 2025)
AR Chong Fu Shan
28 March, 7 and 16 May 2025

30 July 2025

AR Chong Fu Shan:

Introduction

1 These applications raised the issue of whether an exclusive jurisdiction clause or choice of law clause may ground an application for permission to serve an originating process out of jurisdiction where it is alleged that there was no meeting of minds in respect of the main agreement to begin with. A determination was also sought on whether service out of jurisdiction may be granted in respect of nominal defendants against whom a claimant does not assert a cause of action, but who are nevertheless sought to be joined in order that the reliefs that the claimant seeks would be binding on those nominal defendants.

2 In HC/OA 1311/2024 ("OA 1311"), the first defendant applied in HC/SUM 561/2025 ("SUM 561") and the second and third defendants applied

in HC/SUM 958/2025 ("SUM 958") to set aside an Assistant Registrar's order granting permission for the claimant to serve the underlying originating application to the defendants out of jurisdiction (the "Service Out Order"). I dismissed both SUM 561 and SUM 958. In these grounds, I record my reasons and set out my conclusions on the legal issues engaged.

Facts

The parties

3 The claimant is Mr Aleksandr Viktorovich Prosetskii ("Mr Prosetskii"), a businessman residing in Singapore.[1]

4 The first defendant, Mr Igor Smirnov ("Mr Smirnov"), is in his twenties and is a citizen of the Republic of Moldova.[2] On Mr Smirnov's evidence, he is a businessman who is the owner of several companies based in multiple jurisdictions, and is engaged in trading petroleum products and maritime transportation.[3] While it is undisputed that he is the legal owner of one share in the second defendant and 250 shares in the third defendant (the "Shares"), he did not otherwise appear to be a person of significant financial means as a search on the real estate register in Moldova revealed that Mr Smirnov owned no real estate in Moldova; a search of the public register also revealed that Mr Smirnov was not a shareholder or director of any Moldovan company.[4]

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1 1st Affidavit of Aleksandr Viktorovich Prosetskii dated 16 December 2024 ("1AVP") at para 8.

2 1AVP at para 9.

3 1st Affidavit of Igor Smirnov dated 22 May 2025 ("1IO") at para 14.

4 5th Affidavit of Aleksandr Viktorovich Prosetskii dated 23 April 2025 ("5AVP") at para 31.

5 The second defendant, Infinite Tide Corp. ("ITC"), is a company incorporated under the laws of the Republic of Seychelles. ITC is a special purpose vehicle whose sole commercial purpose was to hold the property rights in the M/T Raven vessel ("MT Raven"), which is a crude-oil tanker[5] purportedly valued at approximately US$37m.[6]

6 The third defendant, Seasreno Marine Ltd ("SML") is a company incorporated under the laws of the Marshall Islands. SML, like ITC, was a special purpose vehicle. Its sole asset was the MT Raven, until the ownership of the vessel was transferred to ITC sometime in February or March 2024.[7]

7 As ITC and SML brought SUM 561 jointly and were aligned in their position, I will hereinafter term them as the "Companies" for ease of reference.

Background to the dispute

8 The underlying claim brought by Mr Prosetskii relates to an alleged trust deed that was entered into between Mr Prosetskii and Mr Smirnov, with the subject of the trust being the Shares. While much of the facts are contested and remain to be finally determined, it is nevertheless helpful to outline Mr Prosetskii's account which lends context to the germane issues in SUM 561 and SUM 958.

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5 1AVP at para 10.

6 5AVP at para 31.

7 1AVP at para 12.

The execution of the Trust Deed

9 Mr Prosetskii's case is that he is the beneficial owner of the Shares registered in Mr Smirnov's name.[8] On his evidence, the Shares are held on trust for him by Mr Smirnov pursuant to a trust deed executed on 28 February 2024 (the "Trust Deed").

10 According to Mr Prosetskii, the management of SML and the MT Raven were handled by two men, namely Mr Ivan Obukhov ("Mr Obukhov") and Mr Mikhail Ivanov ("Mr Ivanov").[9] Some discussions took place sometime around January 2024, during which Mr Ivanov informed Mr Prosetskii that Seychelles had become a more convenient jurisdiction than the Marshall Islands for the shipping business. He also informed Mr Prosetskii that a new company would be incorporated in the Seychelles, and the ownership of the MT Raven would be transferred from SML to that new company. Mr Prosetskii agreed to this suggestion. Following which, on 31 January 2024, Mr Ivanov informed Mr Prosetskii that the shares in the Seychelles company would be held by two nominee shareholders. One of them was "I. Smirnov", who would presumably be the nominee shareholder who would hold the shares on trust for Mr Prosetskii.[10] Mr Prosetskii also later found out from Mr Obukhov that the Seychelles company in question was ITC.[11]

11 Mr Prosetskii did not know Mr Smirnov and corresponded with Mr Obukhov on matters relating to the Trust Deed.[12] On or around 21 February

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8 1AVP at para 8.

9 1AVP at para 16.

10 1AVP at para 23e.

11 1AVP at para 28.

12 1AVP at para 25.

2024, Mr Prosetskii asked Mr Obukhov for a copy of Mr Smirnov's passport, which Mr Obukhov did send to Mr Prosetskii on that day over the "Telegram" text messaging platform.[13] On 22 February 2024, following a query by Mr Prosetskii as to the identity of the Seychelles company to which the MT Raven was to be transferred, Mr Obukhov sent Mr Prosetskii a copy of ITC's incorporation documents.[14] On 23 February 2024, Mr Prosetskii prepared a draft Trust Deed and sent it to Mr Obukhov via "Telegram", and asked him to procure Mr Smirnov's signature.[15] On 28 February 2024, Mr Smirnov allegedly signed the Trust Deed, witnessed by one Ms Xenia Ciudac ("Ms Ciudac"). On that day, Mr Obukhov sent a portable document format ("PDF") copy of the Trust Deed with Mr Smirnov's signature to Mr Prosetskii over the "Telegram" text messaging platform.[16]

12 On 1 March 2024, a PDF version of the Trust Deed as signed by Mr Smirnov was also sent to Mr Prosetskii via email in accordance with clause 10 of the Trust Deed, which provided that any notice or other communication pursuant to the Trust Deed may be sent to the email addresses of Mr Prosetskii and Mr Smirnov, the latter which was a Protonmail email account (hereinafter the "Smirnov Protonmail Account"). The Trust Deed was sent over via the Smirnov Protonmail Account.

13 After receipt of the Trust Deed, Mr Prosetskii signed the Trust Deed, which was witnessed by one Mr Leroy Lim Tiong Heng ("Mr Lim"). According to Mr Prosetskii, he could not remember the exact date when he signed the Trust

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13 1AVP at paras 26 and 27.

14 1AVP at para 28.

15 1AVP at para 29.

16 1AVP at para 31.

Deed, but remembered that his signature had been backdated and reflected as 28 February 2024 for consistency, as this was the date that Mr Smirnov signed it and it was also the date that the trust was stated to have been made in the opening words of the Trust Deed.

14 The Trust Deed purports to set out various obligations on the part of Mr Smirnov as trustee, including to transfer and deal with the Shares in such manner that Mr Prosetskii may direct. The Trust Deed also contains an express choice of Singapore law and an exclusive jurisdiction clause in favour of the Singapore courts.[17] The two clauses state:

> 11.1 This Agreement and any dispute or claim arising out of or in connection with it, its subject matter or formation (including any non-contractual rights, obligations, disputes or claims) are governed by and construed in accordance with the laws of Singapore.
>
> 11.2 The courts of Singapore shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this deed, its subject matter or formation (including non-contractual rights, obligations, disputes or claims).

15 Around the same time when the Trust Deed was executed, on or around 29 February 2024, a Stock Grant and Transfer Form was executed to transfer the shares in SML to Mr Smirnov. A copy of the Stock Grant and Transfer Form was also provided by Mr Obukhov to Mr Prosetskii after it was notarised on 29 February 2024.[18]

Events after the execution of the Trust Deed

16 On 22 April 2024, Mr Prosetskii sent an email to the Smirnov Protonmail Account requesting that Mr Smirnov send the original Trust Deed

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17 1AVP at para 36.

18 1AVP at para 37.

to him in Singapore.[19] However, there was no response. On 23 April 2024, he requested that Mr Obukhov convey the request to Mr Smirnov. Mr Prosetskii's request for the original Trust Deed was again not met.[20]

17 On 21 May 2024, Mr Prosetskii sent two further emails to the Smirnov Protonmail Account. The first was another request that Mr Smirnov send the original Trust Deed to him in Singapore, and the second was to provide Mr Smirnov with a scanned copy of the signed Trust Deed for good order. Again, there was no response.[21]

Alleged material breaches of the Trust Deed

18 According to Mr Prosetskii, he has not received any further communication from Mr Smirnov since the email from the Smirnov Protonmail Account on 1 March 2024 (see [12] above).[22] Mr Obukhov and Mr Ivanov were also evasive in providing him with information on the Companies and/or the MT Raven.[23]

19 Through his own investigations, Mr Prosetskii discovered that the flag state of the MT Raven was changed multiple times without his knowledge and that the ship management company of the MT Raven was also changed several times. He says that he is now completely in the dark regarding the affairs of the Companies and the MT Raven. He avers that the changes, which were done

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19 1AVP at p 194.

20 1AVP at para 38.

21 1AVP at para 39.

22 1AVP at para 40.

23 1AVP at para 41.

surreptitiously, led him to believe that there is a real risk that he will lose control over the Companies and/or the MT Raven entirely.[24]

20 Mr Prosetskii's belief stems also from his present dispute with one Mr Victor Sergeevich Baransky ("Mr Baransky"), who is allegedly the other beneficial owner of the remaining shares in the Companies and who is affiliated with Mr Ivanov and Mr Obukhov. Mr Prosetskii refers to a decision by the United States Court of Appeals for the Fourth Circuit which found Mr Baransky to have aided a company to evade creditors by fraudulently transferring money and other assets into the multiple maritime entities he controlled.[25] As Mr Ivanov and Mr Obukhov are affiliated with, if not representatives of Mr Baransky, Mr Prosetskii believes that there is an ongoing plan or conspiracy amongst Mr Baransky, Mr Ivanov and Mr Obukhov to deprive him of his proprietary rights, interest and benefits in respect of the MT Raven, including by keeping all profits generated by the operations of the vessel for themselves. He therefore seeks orders in OA 1311 to regain control over the Companies and the MT Raven.[26]

Formal demands sent to Mr Smirnov

21 On 24 September 2024, Mr Prosetskii instructed legal counsel in the Republic of Moldova to send a formal written demand dated on the same day (the "Demand Letter") to the Smirnov Protonmail Account. On 25 September 2024, the Demand Letter was also sent to Mr Smirnov's residential address in Moldova by registered mail. In the Demand Letter, Mr Prosetskii referred to the clauses in the Trust Deed which required Mr Smirnov to take the necessary steps

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24 1AVP at para 45.

25 1AVP at para 47.

26 1AVP at para 46.

to immediately transfer and return the Shares to Mr Prosetskii. It demanded that Mr Smirnov: (a) provide Mr Prosetskii with information on any funds received by him from the Companies and hold those funds for Mr Prosetskii's benefit until he determined their disposition; (b) to hand over all information, statements, accounting and other documents he received from the Companies; and (c) inform Mr Prosetskii in writing of all obligations, transactions, payments, debts and rights incurred by the Companies since the date of the Trust Deed and deliver up all relevant documents to Mr Prosetskii.[27]

22 On 18 October 2024, Mr Smirnov responded to the Demand Letter via post to Mr Prosetskii's Moldovan lawyers. In that letter, Mr Smirnov indicated that the Demand Letter "came as a surprise … and raised many questions". Mr Smirnov claimed that he did not know Mr Prosetskii and asked for further information.[28]

23 On 1 November 2024, Mr Prosetskii's lawyers wrote again to Mr Smirnov informing him that Mr Prosetskii held all required documents confirming Mr Prosetskii's rights, as well as Mr Smirnov's role as trustee. They demanded that the Shares be transferred to Mr Prosetskii. The lawyers also informed Mr Smirnov that they had identified reasonable grounds to suspect the possible commission of unlawful acts that led to Mr Prosetskii losing control of his property, and referred to the MT Raven and how it was being operated without Mr Prosetskii's involvement or authority.[29]

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27 1AVP at para 49.

28 1AVP at para 50.

29 1AVP at para 52.

Alleged breaches of the Trust Deed and commencement of OA 1311

24 On 16 December 2024, Mr Prosetskii commenced OA 1311 and alleged in his supporting affidavit that Mr Smirnov is in material breach of his obligations and duties under the Trust Deed, for three reasons:[30]

(a) First, despite Mr Prosetskii's express requests and/or demands, Mr Smirnov failed to take the necessary steps to transfer the Shares or to allow Mr Prosetskii to deal with the Shares.

(b) Second, despite Mr Prosetskii's express requests and/or demands Mr Smirnov failed to provide information and/or documents as to the operations of the Companies and the MT Raven.

(c) Third, in light of the two reasons above, there is good reason to believe that Mr Prosetskii may have been deprived of dividends or distributions relating to the Companies and/or the MT Raven, and/or Mr Smirnov has prejudiced his interests in relation to the Shares and his corresponding interest in the MT Raven.

25 Further, the Trust Deed provides that the trust may be terminated if the trustee is in breach of his obligations under it, and, if such breach is capable of being remedied, is not so remedied within 30 days of the trustee becoming aware of such breach. On Mr Prosetskii's case, he is entitled to terminate the trust since more than 30 days have elapsed since the issuance of the Letter of Demand on 24 September 2024; alternatively, the Letter of Demand itself constitutes written notice of termination of the trust.[31] The consequence is that

30 1AVP at paras 53 to 56.

31 1AVP at paras 57 to 58.

Mr Smirnov is obliged to transfer the ownership of the Shares back to Mr Prosetskii without any consideration.[32] Further, Mr Prosetskii seeks disclosure orders against the defendants to compel them to produce all relevant documents relating to any dividends or distributions in relation to the Shares, and the operations of the MT Raven, from 28 February 2024 to date. He also applied for injunctive relief *vide* HC/SUM 3655/2024 ("SUM 3655") filed in OA 1311 to prevent the defendants from taking any steps to deal with the Shares and the MT Raven.

26 While no cause of action was asserted against the Companies in OA 1311, Mr Prosetskii explained in his supporting affidavit for OA 1311 that he joined the Companies as nominal defendants in this claim because he had been advised by his lawyers that direct enforcement of the Trust Deed in the places of incorporation of the Companies (namely, Seychelles and the Marshall Islands) is likely to be met with difficulties. He therefore seeks to obtain a court order that is binding on the Companies and to have the court order recognised and enforced in Seychelles and the Marshall Islands.

Procedural history

27 On 18 December 2024, Mr Prosetskii applied in HC/SUM 3680/2024 for permission to serve the papers for OA 1311 and SUM 3655 on all the defendants out of Singapore. The Service Out Order was granted by an Assistant Registrar on 19 December 2024.

28 On 28 February 2025, ITC and SML applied in SUM 561 to set aside the Service Out Order in so far as it applied to them. SUM 561 was heard on

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[32] 1AVP at para 59.

28 March 2025, following which I reserved judgment. A few days before judgment for SUM 561 was due to be delivered, Mr Smirnov's solicitors wrote to court to request that I hold my decision in abeyance pending his challenge against the Service Out Order, which he made in SUM 958 on 9 April 2025.

29 As the Companies are nominal defendants whereas Mr Smirnov was the substantive defendant in OA 1311, the outcome of SUM 561 was potentially dependent on whether Mr Smirnov's jurisdictional challenge in SUM 958 succeeded. If Mr Smirnov's jurisdictional challenge in SUM 958 succeeded, there would be no reason not to grant SUM 561 as well since there would be no substantive defendant remaining in OA 1311. I therefore decided SUM 958 before SUM 561, giving my decision in relation to the former on 9 May 2025 and the latter on 16 May 2025. My reasons are set out in an expanded form below.

The principles on obtaining permission for service out of jurisdiction

30 The relevant provision in the Rules of Court 2021 ("ROC 2021") is O 8 r 1, which provides as follows:

> **Service out of Singapore with Court's approval (O. 8, r. 1)**
>
> **1.**—(1) An originating process or other court document may be served out of Singapore with the Court's approval if it can be shown that the Court has the jurisdiction or is the appropriate court to hear the action.

31 To establish that the court is the appropriate court to hear the action, para 63(2) of the Supreme Court Practice Directions 2021 ("SCPD 2021") requires a claimant to show that:

(a) there is a good arguable case that there is sufficient nexus to Singapore (the "Nexus Limb");

(b) Singapore is the *forum conveniens* (the "Forum Limb"); and

(c) there is a serious question to be tried on the merits of the claim (the "Merits Limb").

The claimant bears the burden of establishing all three requirements, even where a defendant who has been served out of jurisdiction mounts a jurisdictional challenge (*Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 at [75]; *Li Shengwu v Attorney-General* [2019] 1 SLR 1081 at [167]).

32 For the purpose of showing that there is a good arguable case that there is sufficient nexus to Singapore, para 63(3) of the SCPD 2021 sets out some non-exhaustive factors that the court may consider. It is worth noting that the position under the ROC 2021 differs from the Rules of Court (2014 Rev Ed) in that the factors which were previously exhaustive "jurisdictional gateways" are now merely non-exhaustive factors going towards the Nexus Limb.

33 With reference to these requirements, I outline the parties' submissions.

The parties' submissions

Mr Prosetskii

34 Mr Prosetskii argued that SUM 561 and SUM 958 should be dismissed for three main reasons.

35 First, the Nexus Limb was satisfied in relation to Mr Smirnov and the Companies. Relying on para 63(3)(d) of the SCPD 2021, the claim related to a breach of contract (*ie*, the Trust Deed) which was governed by Singapore law and contained an exclusive jurisdiction clause in favour of Singapore courts. While Mr Smirnov alleged that the Trust Deed was forged and that he did not

sign the Trust Deed (see [38] below), that was insufficient to displace the nexus to Singapore. In any event, the exclusive jurisdiction clause was separable from the rest of the Trust Deed, such that it would still be effective and would operate to satisfy the Nexus Limb despite the allegation of forgery. In respect of the Companies, Mr Prosetskii submitted that they would fall under para 63(3)(c) of the SCPD 2021 as they were necessary or proper parties to the claim and that para 63(3)(d) was also applicable in respect of the Companies for the same reason that it applied to Mr Smirnov.

36 Second, the Forum Limb was satisfied as the Trust Deed contained an exclusive jurisdiction clause favouring the Singapore courts and an express choice of Singapore law, and the international elements of the case did not make Singapore an inappropriate forum.

37 Third, the Merits Limb was met as there was evidence of breaches of the Trust Deed by Mr Smirnov, including unauthorised changes to the MT Raven's flag state and management, and his refusal to transfer the Shares back to the Mr Prosetskii. While no cause of action was advanced against the Companies specifically, the Companies were necessary parties as the orders sought would be binding on them, and proving specific claims against them was not required at this interlocutory stage.

Mr Smirnov

38 Mr Smirnov argued that SUM 958 should be granted and took the position that the Trust Deed was forged and that he neither signed it nor undertook to be Mr Prosetskii's trustee. His submissions focused on the issue of whether there was a good arguable case that he signed the Trust Deed, which was the higher standard required under the Nexus Limb relative to the standard

of a serious question to be tried under the Merits Limb. It may be surmised that Mr Smirnov directed his submissions towards the question of whether this higher standard was met because Mr Prosetskii relied on the terms of the Trust Deed (*ie*, the exclusive jurisdiction and choice of law clause) in arguing that the Nexus Limb was met; therefore, if Mr Smirnov successfully challenged the existence of any agreement to these clauses and accordingly satisfied the court that the Nexus Limb was not fulfilled, it would be dispositive of SUM 958.

39 To this end, Mr Smirnov argued that Mr Prosetskii had not provided any evidence to rebut his (Mr Smirnov's) sworn assertion that he did not sign the Trust Deed. Mr Smirnov also referred to the correspondence between Mr Smirnov and Mr Prosetskii's solicitors in seeking to show that the former had no knowledge of the Trust Deed and repeatedly requested to see a copy of it (see [21]–[23] above). Mr Smirnov also denied owning the Smirnov Protonmail Account (see [12] above) and argued that there were material differences between both his Russian and non-Russian signatures and the signature that is shown on the Trust Deed.

40 In the round, Mr Smirnov argued that even while SUM 958 was interlocutory in nature, the court should review the evidence and, weighing the evidence, Mr Smirnov had the better of the argument that he did not sign the Trust Deed.

The Companies

41 The Companies submitted that the Nexus Limb was not satisfied because at the time of the application for and granting of the Service Out Order in respect of the Companies, Mr Prosetskii had not served Mr Smirnov with the OA 1311 documents and the Service Out Order. Moreover, Mr Prosetskii had

not asserted any cause of action against the Companies, and there was also no basis for Mr Prosetskii to seek orders against the Companies for the production of documents or information, and that consequently the Companies were not necessary or proper parties to the claim in OA 1311. The Companies also alleged that to seek relief from the Singapore court to aid what might not be done in Seychelles or the Marshall Islands was impermissible and amounted to an abuse of process.

42 In relation to the Forum Limb, the Companies submitted that Singapore was not the more appropriate forum for the determination of a dispute between Mr Prosetskii and the Companies. Instead, the Seychelles and Marshall Islands were the more appropriate forums.

43 As for the Merits Limb, the Companies averred that there was no serious question to be tried in relation to the merits of Mr Prosetskii's claim against them, as Mr Prosetskii did not allege any cause of action in relation to the Companies.

Issues to be determined

44 While the broad question in both applications was whether the requirements for obtaining permission for service out of jurisdiction were satisfied, there were some issues which were of particular focus.

45 In relation to Mr Smirnov's application in SUM 958, the main question in dispute was whether the Trust Deed was forged. This was relevant as Mr Prosetskii relied on the purported authenticity of the Trust Deed for all three independent requirements of obtaining the Service Out Order (see [35]–[37] above). Further, quite apart from whether the authenticity of the Trust Deed is established to the requisite standard, a separate question arose as to whether the

exclusive jurisdiction clause is separable from the Trust Deed such that the exclusive jurisdiction clause will survive an allegation of forgery in relation to the Trust Deed, for the purpose of SUM 958. The significance of the question of separability is that if it were answered in the affirmative, then it should not matter that an allegation that the Trust Deed was forged was raised, and Mr Prosetskii would be entitled to rely on the exclusive jurisdiction clause as separable from the Trust Deed to establish the requirements for obtaining the Service Out Order.

46 In relation to SUM 561, the main contention that the Companies raised was whether a sufficient nexus to Singapore could be established to the "good arguable case" standard where no substantive claims were made against the Companies in OA 1311, and the Companies were joined solely to give effect to the reliefs sought in OA 1311.

The Service Out Order was upheld

47 I dismissed the applications and found no reason to set aside the Service Out Order.

There was a good arguable case that there was a sufficient nexus to Singapore

The standard of a good arguable case

48 First, in relation to all the defendants, I was satisfied that there was a good arguable case that there was a sufficient nexus to Singapore. The "good arguable case" standard requires the party upon whom the burden of proof lies to establish "facts from which an inference could clearly and properly be drawn" (*Manharlal Trikamdas Mody v Sumikin Bussan International (HK) Ltd* [2014] 3 SLR 1161 at [93] and [95]). It is more stringent than the "*prima facie* case"

standard (*The Kings' Challenge Pte Ltd and another v Baer-Richner Gabriele* [2021] SGHC 248 at [24]) and has been explained as requiring the proving party to show that he has "the better of the argument" *vis-à-vis* the opposing party (*Shanghai Turbo Enterprises Ltd v Liu Ming* [2019] 1 SLR 779 ("*Shanghai Turbo*") at [49]).

49 The upshot, as far as the opposing party is concerned, is that the opposing party bears the tactical burden of casting doubt on the proving party's case. On questions of fact, it is open to the defendant to show that the evidence of the claimant is incomplete or plainly wrong. As for questions of law, the court may go fully into the issues and will refuse permission if it considers that the claimant's case is bound to fail (*Bradley Lomas Electroluk v Colt Ventilation East Asia* [1999] 3 SLR(R) 1156 ("*Bradley Lomas*") at [15]). In either case, the tactical burden would be on the defendant to adduce evidence or to point out inconsistencies in the claimant's case to show that the claimant does not have the better of the argument.

50 Where there are factual disputes, it must be emphasised that the court is "not called upon to try the action or express a premature opinion on its merits" at this stage (*Bradley Lomas* at [17]). This is related to the notion that conclusions made in interlocutory matters are typically provisional in nature and subject to a final determination. Interlocutory matters are also typically decided solely on affidavit evidence and do not involve the cross-examination of witnesses. This explains why, where questions of fact are concerned, the court looks primarily at the claimant's case and does not attempt to try disputes of fact on affidavit (*Bradley Lomas* at [15]).

51 Nevertheless, the court examines if there is a "sufficient foundation" for the ground upon which permission to serve out of jurisdiction is sought. Without

being exhaustive, the court would consider if the affidavit was "by some person acquainted with the facts" and whether it "specif[ies] the sources or persons from whom the deponent derives his information" (*Bradley Lomas* at [17], citing Lord Davey in *Chemische Fabrik Vormals Sandez v Badische Anilin und Soda Fabriks* (1904) 90 LT 733 at 735). In this regard, it has been said elsewhere that the court "must reach a provisional conclusion that the plaintiff is probably right", which necessarily involves some analysis of the weight of the evidence based on the inherent probabilities of the claim, the detail and precision of the claim, the consistency of the claim, the evidence in relation to it, whether it is a bare claim or one plainly supported by independent evidence. The court must consider "all the circumstances, all the realities and all the commercial instincts" (*Continental Mark Ltd v Verkehrs-Club De Schweiz* [2001] 4 HKC 469 at 481).

There was a good arguable case that Mr Smirnov had signed the Trust Deed

52 Looking primarily at Mr Prosetskii's case, there was sufficient evidence that supported a good arguable case that Mr Smirnov had signed the Trust Deed.

53 The evidence that Mr Prosetskii provided and the circumstances surrounding the execution of the Trust Deed strongly suggested that Mr Smirnov had signed the Trust Deed. On its face, the Trust Deed bore the signatures of Mr Smirnov and Mr Prosetskii, as well as Mr Lim and Ms Ciudac (see [11] and [13] above). It was also undisputed that the Trust Deed contained highly personal details of Mr Smirnov, including his passport number and his registered address,[33] which suggested that Mr Smirnov had furnished those details to Mr Obukhov and Mr Prosetskii for the purpose of preparing the Trust

[33] 1AVP at p 37.

Deed. In this regard, Mr Prosetskii had also provided supporting evidence in the form of screenshots of messages that he had asked for a copy of Mr Smirnov's passport, a copy of which was provided by Mr Obukhov over the "Telegram" text messaging platform on 21 February 2024 (see [11] above). Notably, Mr Smirnov did not dispute the authenticity of those screenshots.

54 In light of the evidence presented above, the inference that Mr Smirnov signed the Trust Deed and held the Shares on trust for Mr Prosetskii provided a reasonable and realistic explanation for how Mr Smirnov came to be the legal owner of the Shares valued at millions, even though he was only in his twenties and was not apparently a man of means, and had no known prior affiliation with the Companies (see [4]–[5] above). Accordingly, I was of the view that the evidence provided by Mr Prosetskii strongly supported the conclusion that there was a good arguable case that Mr Smirnov signed the Trust Deed.

55 I turn to consider the objections raised by Mr Smirnov. First, while he pointed to Mr Prosetskii's failure to obtain evidence from Ms Ciudac or Mr Obukhov, who were persons allegedly involved in the preparation and execution of the Trust Deed and who would have had personal knowledge of whether Mr Smirnov signed the Trust Deed, that was not fatal to Mr Prosetskii's case. In interlocutory proceedings where discrete issues are assessed on a provisional basis, it is trite that an applicant is not required to present all the evidence in detail in a manner that is typically required for a conclusive and final determination to be made on the merits of the dispute (see, *eg*, *Leong Quee Ching Karen v Lim Soon Huat and others* [2024] 4 SLR 862 at [22]). What matters is whether the proving party has adduced *sufficient* evidence so as to establish the allegations of fact on the requisite standard, bearing in mind that the purpose of such interlocutory proceedings is generally not to determine disputes of fact finally and conclusively.

56 Second, while I agreed with Mr Smirnov that the decisions of *Tecnomar & Associates Pte Ltd v SBM Offshore N V* [2020] SGHC 249 ("*Tecnomar*") and *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR 1271 ("*Vinmar*") were instructive in so far as they stand for the proposition that the court will not accept a claimant's case at face value in determining whether a good arguable case has been made out but will assess the evidence, I was of the view that the objections that Mr Smirnov had raised were of limited evidential weight.

57 I begin with a discussion of *Tecnomar* and *Vinmar*, the facts of which provided useful guidance to my assessment of Mr Smirnov's case at this juncture. In *Tecnomar*, the plaintiff brought a claim against the defendant for breach of contract for services rendered in respect of a vessel. The alleged contract formed the basis of the plaintiff's application for leave to serve process out of jurisdiction. The parties took diametrically opposed positions. The plaintiff claimed that it had formed a contract with the defendant by an exchange of correspondence – namely, an email from the plaintiff dated 10 April 2018 containing a quote was alleged to be the relevant offer (the "10 April Quote"), which was purportedly accepted by the defendant in an email dated 17 April 2018 (the "17 April Email"). The defendant denied the existence of any contract between it and the plaintiff and said that it was the defendant's subsidiary that had instead contracted with the plaintiff.

58 The High Court concluded that the plaintiff's case on the relevant offer and acceptance was an "unlikely conclusion" and that both parties contemplated that any contract would not be on the terms of the plaintiff's 10 April Quote (at [54]–[55]). In drawing this conclusion, the court reviewed among other things the contents and wording of the 17 April Email and opined that it "stood against" the plaintiff's case that a contract had been concluded at that time (at [56]). The

court also considered other correspondence and concluded that it was inconsistent with the plaintiff's case (at [61]–[63]). Finally, the court examined the parties' conduct and opined that it either did not support or contradicted the plaintiff's case; instead, their conduct supported the defendant's position that the plaintiff had contracted with the defendant's subsidiary, and not the defendant (at [66]–[78]). Accordingly, the court held that the plaintiff did not have a good arguable case for service of process out of jurisdiction (at [127]).

59 In *Vinmar*, the appellant applied for a stay of proceedings in Singapore in favour of the High Court of England and Wales based on an exclusive jurisdiction clause (the "EJC"), which was one of the terms in a written agreement sent by the respondent to the appellant (the "Written Terms"), relating to a supply contract between the appellant and the respondent. The High Court held among other things that the EJC was a term of the supply contract, but refused to grant a stay on the basis that the appellant did not have a genuine defence to the respondent's claim. The appellant appealed to the Court of Appeal.

60 One of the issues revisited on appeal was whether the appellant had established a good arguable case that the parties had agreed to the Written Terms. The Court of Appeal held that the appellant had not done so for the reasons below (at [49]–[51]):

> (a) The court held that there was no meeting of the minds in relation to the Written Terms when the respondent sent them to the appellant on 27 November 2014. The respondent's email had expressly stated that the document was a "draft contract", and that the respondent would issue a "final contract in due course". This showed that the respondent had yet to assent to the Written Terms. Similarly, the appellant's reply on

30 November 2014 stated that the Written Terms were "under review" and that they had to be updated to reflect its proposed terms regarding shipment and pricing (at [51(a)]).

(b) Further, the court held that there was insufficient evidence that the parties had subsequently agreed to the Written Terms after November 2014. Although the parties had referred to the Written Terms as the supply contract in their subsequent correspondence, this had to be assessed in a context where the relations between the parties had started to break down by late November 2014, and the parties might have referred to the Written Terms as the supply contract simply because it was convenient for them to do so to support their opposing positions. Put differently, an agreement to the Written Terms was not the only plausible reason why the parties had equated the Written Terms with the supply contract in their subsequent correspondence. As the appellant had not adduced any evidence based on which its account might be preferred, the Court of Appeal held that the appellant did not have the better of the argument that the parties had agreed to the Written Terms (at [51(b)]).

61 *Tecnomar* and *Vinmar* illustrate the principle that where there is a lack of evidence to support the claimant's position, or if the evidence contradicts that position, the court may conclude that a good arguable case has not been made out, notwithstanding the general rule that the court will not delve into contested factual issues at this stage. This may be rationalised on the basis that the court will not blindly accept a claimant's version of events if it is not supported by the evidence. However, if the proving party has provided sufficient evidence to justify its position, it is not enough for the opposing party to make a bare assertion that the quality of the evidence could have been better, given the

interlocutory nature of these proceedings where the conclusions reached are often provisional and subject to a final determination (see [50] above). This is relevant to the three broad arguments that Mr Smirnov raised, which I elaborate on below.

62 First, Mr Smirnov argued that Mr Prosetskii had no personal knowledge as to who signed the Trust Deed and had not produced any direct evidence rebutting Mr Smirnov's position that he did not sign the Trust Deed. This however was a bare objection that went only towards the quality and sufficiency of Mr Prosetskii's evidence. As I had concluded earlier (at [53] above), the evidence provided by Mr Prosetskii was sufficient for me to reach a provisional conclusion that there was a good arguable case that the Trust Deed was signed by Mr Smirnov. If Mr Smirnov wished to allege that he did not sign the Trust Deed, the onus was on him to adduce evidence to that effect.

63 Secondly, Mr Smirnov submitted that the parties' correspondence revealed that Mr Smirnov neither knew about the Trust Deed nor had a copy of the same prior to these proceedings. While he relied on several discrete points, none of those (either taken in isolation or together) contradicted Mr Prosetskii's version of events:

(a) Mr Smirnov raised the fact that the copy of the Trust Deed was not sent by him to Mr Prosetskii but was rather sent by Mr Obukhov to Mr Prosetskii (see [11] above). However, this was not inconsistent with Mr Prosetskii's position that Mr Smirnov signed the Trust Deed, even if Mr Obukhov acted as an intermediary in sending a copy of the Trust Deed to Mr Prosetskii.

(b) Mr Smirnov also pointed to how Mr Prosetskii did not furnish the former with a copy of the Trust Deed or furnish additional details despite repeated requests since the parties started corresponding from September 2024 (see [21]–[23] above).[34] Instead, Mr Prosetskii reiterated his rights and requested Mr Smirnov's clarification as to how the latter's name came to be recorded on the Companies' official documentation. Mr Prosetskii also requested that Mr Smirnov formally document his refusal to transfer the Shares should he deny the existence of the Trust Deed.[35] In my view, Mr Smirnov's complaint about the unhelpfulness of Mr Prosetskii's replies could also be said about his own replies to Mr Prosetskii (see [22] above), and this fact did not materially affect the credibility of Mr Prosetskii's position that Mr Smirnov signed the Trust Deed.

(c) While I agreed with Mr Smirnov that his claimed ignorance of the Trust Deed in the correspondence between September and December 2024 was "consistent" with him not signing the Trust Deed, this was quite different from concluding that it was weighty evidence of his assertion. By the time Mr Smirnov's claim of ignorance was made, a formal demand had been made to Mr Smirnov via Mr Prosetskii's solicitors against the backdrop of an ongoing legal dispute between Mr Prosetskii and Mr Baransky (see [20] above). If Mr Baransky was allegedly represented by Mr Obukhov, and Mr Obukhov liaised with whom Mr Smirnov, it would come as no surprise that Mr Smirnov would take the position that he was not a trustee for Mr Prosetskii in opposition to Mr Prosetskii's attempt to regain control over the Shares.

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34 1IO at para 44.

35 1IO at para 47.

64 Thirdly, Mr Smirnov argued that the signature reflected in the Trust Deed bore material differences to Mr Smirnov's actual signatures as reflected in various contemporaneous documents. He adduced in evidence several examples of his Russian and non-Russian signatures to advance his point that his purported signature on the Trust Deed was forged. I was not persuaded that it was so obvious that the signature on the Trust Deed was forged such that Mr Prosetskii did not have a good arguable case that the Trust Deed was signed by Mr Smirnov.

65 Where the allegation is serious and grave, such as fraud or forgery, the court will strictly scrutinise such allegations (*Yogambikai Nagarajah v Indian Overseas Bank and another appeal* [1996] 2 SLR(R) 774 ("*Yogambikai Nagarajah*") at [44]). It is well established that the party alleging the forgery must adduce evidence of that forgery (*Yogambikai Nagarajah* at [39]; *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [157] and [161]; *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 at [99]), even as it has been said that the *legal* burden of proving that a document is authentic is ultimately on the party adducing the document (*CIMB Bank Bhd v World Fuel Services (Singapore) Pte Ltd and another appeal* [2021] 1 SLR 1217 at [54] and [70]). In *Yogambikai Nagarajah*, the Court of Appeal observed that the trial before the High Court was dominated by evidence from the opposing parties' experts and the court expert on the authenticity of the signature, and the trial judge weighed their opinions in holding that the signature was genuine (at [25]). Likewise in *Pang Swee Kang v Low Chui Ying Foreen and another* [2012] SGHC 12 ("*Pang Swee Kang*"), each side sought the assistance of a handwriting expert, and the High Court considered the respective expert reports in reaching its conclusion (at [17]–[19]). While there is no legal requirement for an expert to be called whenever

an allegation of forgery is raised, the use of experts in *Yogambikai Nagarajah* and *Pang Swee Kang* are examples of how a party alleging forgery will have to provide credible evidence in order to discharge its high evidential burden.

66 Even where there are no expert witnesses, the court will require other compelling evidence for the burden to be discharged. The High Court decision of *Khoo Tian Hock and another v Oversea-Chinese Banking Corp Ltd (Khoo Siong Hui, third party)* [2000] 3 SLR(R) 55 is one example. In that case, the High Court held that the plaintiffs had discharged the high standard of proof in establishing that the signatures on certain cheques were forgeries, even though neither party produced any expert witness (at [40] and [50]). In reaching this conclusion, Woo Bih Li JC (as he then was) assessed the consistency of the contemporaneous conduct of the plaintiffs; in particular, that the first plaintiff had made a police report against his own son alleging that the latter had forged his signatures and had withdrawn $475,000, even though the first plaintiff had previously been rather indulgent with his son, and must have been aware that his son would be liable for prosecution if he had maintained his position about the forgeries (at [46]–[50]).

67 In the present case, the purported differences between Mr Smirnov's actual Russian and non-Russian signatures on the one hand and the signature on the Trust Deed on the other was alone an insufficient basis to discharge the high evidential standard that he had to meet. While Mr Smirnov's Russian signature appeared rather distinct from the signature on the Trust Deed, the examples of his non-Russian signatures bore some similarities to the signature on the Trust Deed. In any event, any differences between the non-Russian signatures and the signature on the Trust Deed were not conclusive because even the various examples of Mr Smirnov's non-Russian signature that he provided were visually different as between themselves. Furthermore, as I had concluded

earlier (see [53]–[63] above), the other evidence relied on by Mr Smirnov was also not so compelling.

68 Accordingly, Mr Smirnov's objections did not detract from the provisional conclusion that, based on the evidence before me, there was a good arguable case that Mr Smirnov had signed the Trust Deed. I will however emphasise that the upshot of my holding is simply that forgery was not *clearly* established in SUM 958, though this issue remains a live dispute.

69 As the Trust Deed contained an exclusive jurisdiction clause in favour of the Singapore courts, and an express choice of Singapore law, the Nexus Limb in relation to Mr Smirnov was fulfilled by virtue of para 63(3)(d) of the SCPD 2021. Specifically, paras 63(3)(d)(iii) and 63(3)(d)(iv) were satisfied as "the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract", being a contract which "is by its terms, or by implication, governed by the law of Singapore" and "contains a term to the effect that that Court will have jurisdiction to hear and determine any action in respect of the contract". For completeness, I was of the view that while the Trust Deed was not a *contract* in the technical sense, there was no reason why the factors enumerated in para 63(3)(d) could not be applied to a broader class of agreements if such factors could be helpful in elucidating a nexus with Singapore, and indeed counsel for Mr Prosetskii and Mr Smirnov agreed with this approach.

The doctrine of separability was not applicable to the exclusive jurisdiction clause

70 The presence of a good arguable case that Mr Smirnov had signed the Trust Deed was sufficient to satisfy the Nexus Limb. Nevertheless, as the parties made detailed arguments in relation to the issue of the separability of the

exclusive jurisdiction clause in the Trust Deed, I observe that the doctrine would not have been engaged on the facts of this case. I also observe, for completeness, that the reasons for why the exclusive jurisdiction clause was not separable from the Trust Deed also explained why the choice of law clause therein could not be relied on if there had been no good arguable case that Mr Smirnov signed the Trust Deed. This was relevant as the choice of law clause was also a factor that Mr Prosetskii relied on in seeking to establish the Nexus Limb (see [35] above), even though Mr Prosetskii did not specifically raise the doctrine of separability in relation to the choice of law clause.

71 The doctrine of separability provides that a challenge to the main agreement will not automatically deprive a jurisdictional clause of its effect. In the context of jurisdictional clauses which form the sole basis of a tribunal's jurisdiction, such as an arbitration clause, the doctrine of separability is important in ensuring that a challenge to the main agreement does not automatically invalidate an arbitration agreement contained therein. But even so, separability cannot shield an arbitration agreement from a challenge that affects the underlying contract as a whole (*Founder Group (Hong Kong) Ltd (in liquidation) v Singapore JHC Co Pte Ltd* [2023] 2 SLR 554 at [55]).

72 The doctrine of separability is of lesser relevance where jurisdictional clauses in favour of the Singapore courts are concerned. This is because the existence of the court's jurisdiction is founded not on the existence or validity of an exclusive jurisdictional clause *per se*, but on valid service, or submission to the court's jurisdiction through the taking of a step in the proceedings (see, for example, ss 16(1)(*a*) and 16(1)(*b*) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) and *Shanghai Turbo* at [39]–[48]). Nevertheless, the issue arose in SUM 958 because Mr Smirnov took the position that the validity of service was impugned because the entire Trust Deed which contained the

exclusive jurisdiction clause was never entered into to begin with; and since the exclusive jurisdiction clause was relied on by Mr Prosetskii in arguing that this dispute has a sufficient nexus to Singapore, this basis for establishing the Nexus Limb failed.

73 This resulted in an examination of the limits to the separability doctrine, especially in relation to jurisdictional clauses in favour of a domestic court. In arguing for an expansive application of that doctrine to exclusive jurisdiction clauses, Mr Prosetskii relied on the Court of Appeal's decision in *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 ("*CIMB Bank*") for the proposition that "a distinction ought to be drawn between a case where the parties are agreed that there is no agreement at all, and a case where the parties are in dispute as to the *existence* or validity of the agreement (*eg*, due to fraud or misrepresentation)" [emphasis added], and that "in the latter situation, the dispute as to the existence or the validity of the contract would be construed in accordance with the law that governs that contract as if the contract were valid" (at [30]). In Mr Prosetskii's submission, to allow a party to release itself from its contracted obligations under an exclusive jurisdiction clause on the basis of a bare allegation is precisely what the Court of Appeal in *CIMB Bank* cautioned against (at [30]). Mr Prosetskii further relied on the wording of the exclusive jurisdiction clause in the Trust Deed, which expressly stated that the courts of Singapore "shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this deed, its subject matter or *formation*" [emphasis added]. Hence, the factual dispute over the existence of the Trust Deed and whether Mr Smirnov signed it fell squarely within the ambit of the exclusive jurisdiction clause and must be determined by the Singapore courts. In contrast, Mr Smirnov argued that the doctrine of separability had no application in a case where the existence of the main agreement was disputed

and a claimant failed to establish a good arguable case that any agreement ever came into existence.

74 While Mr Prosetskii's position was persuasive to some extent, I was of the view that Mr Smirnov's position represented a more principled approach that is supported by the authorities.

75 Considering first Mr Prosetskii's reliance on *CIMB Bank*, I did not think that the case stands for the proposition that he advanced, *ie*, that even if the existence of the entire contract were challenged because it is alleged that the parties did not enter into the contract to begin with, an exclusive jurisdiction clause and/or choice of law clause would not be impugned by such a challenge and would still continue to have effect. It is important to have regard to the facts of *CIMB Bank* and the reasoning of the Court of Appeal. That case concerned a claim in the Singapore courts for unjust enrichment by the respondent for sums paid pursuant to an agreement for the purchase of promissory notes issued by the appellant. The agreement stated that the applicable law would be the law of England, and the parties would submit to the non-exclusive jurisdiction of the English courts. The appellant alleged that one of its employees had perpetuated a fraud on both parties by purporting to execute a contract for the sale and purchase of the promissory notes on behalf of the appellant when he had not been authorised to do so. The appellant applied for a permanent stay of the respondent's action in Singapore on the ground of *forum non conveniens*; specifically, the appellant submitted that England was the more appropriate forum to adjudicate on the respondent's claim. Under stage one of the test in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460, which examines if there is a more appropriate jurisdiction to hear the matter, there was a question as to the applicable law that should govern the question of the consequential restitutionary relief that would follow from the invalidity of the agreement.

76 The Court of Appeal held that where the parties had intended to enter into a contract but, due to other circumstances or reasons, the contract had become void or ineffective or a contractual failure had arisen, the parties in such situations had intended to enter into the contract, including the choice of law clause. It would therefore be logical to apply that same law to consequential restitutionary obligations following either the contract becoming ineffective or a contractual failure (at [41]). In contrast, where the defence of *non est factum* was applicable because there was *no meeting of the minds* to enter into that particular contract, there would be no reason or logic to give effect to any of the clauses. Accordingly, a restitutionary claim arising from such a void contract was a claim independent of and outside the contract (at [49]). On the facts of *CIMB Bank*, as the parties were agreed that there was no contract between them for the sale and purchase of the promissory notes, the choice of law clause in the contract was held to have no effect on the respondent's restitutionary claim (at [56]).

77 The Court of Appeal's statement at [30] of *CIMB Bank* must therefore be understood in light of its subsequent reasoning at [41] and [49], which explains that the relevant distinction is whether there is a dispute as to a meeting of minds between the parties. The relevant distinction is *not* whether the *existence* of the contract is disputed, as a contract can be void *ab initio* and be deemed to have never come into existence even if there had been a meeting of minds, due to reasons such as illegality. In such situations, it might make sense for an exclusive jurisdiction clause and/or choice of law clause in that agreement to continue to operate, if the parties had reached an agreement on those clauses despite the contract failing to come into existence for some other reason. However, this does not mean that an exclusive jurisdiction clause and/or choice of law clause would continue to have effect even if it is alleged that there is no

meeting of the minds or any sort of agreement between the parties to begin with. It would simply not be just to bind a party to a contractual obligation to which he never agreed.

78 This conclusion is also evident upon deeper examination of the case authorities that the Court of Appeal cited at [30], and at [55] which referred to the earlier holding at [30]. The cases – *Compania Navéra Micro S.A. v Shipley International, Inc ("The Parouth")* [1982] 2 Lloyd's Rep 351 ("*Parouth*"), *Ash v Corporation of Lloyd's* (1992) 9 OR (3d) 755 ("*Ash*"), and *Industrial & Commercial Bank Ltd v Banco Ambrosiano Veneto SPA* [2000] SGHC 188 ("*Banco*") – involved situations in which it was accepted that there was a meeting of minds, but the agreement was alleged to have been affected by fraud or lack of authority:

(a) In *Parouth*, the Court of Appeal upheld the leave granted to serve process out of jurisdiction. In that case, the plaintiffs alleged that they had agreed to enter into a charterparty agreement with the defendants for the shipment of cargo, and that the defendant failed to provide the cargo. The defendants denied that there was a concluded contract at all, and said that if there was it was made by brokers who were not acting for them, or, alternatively, who had no authority to so act and that there was no basis for any suggestion that the defendants had held those brokers out as having authority.

(b) In *Ash*, the plaintiffs argued that the exclusive jurisdiction clause should be ignored because there was fraud surrounding the procurement of the contracts in question and that the contracts should be void *ab initio*, with the consequence being that the clauses relating to forum were of no effect.

(c) In *Banco*, the plaintiff brought an action to enforce two standby letters of credit. The defendant however sought a declaration that the standby letters of credit were void *ab initio* as they were procured by the fraud of the defendant's ex-employee.

In sum, it may be understood that when the Court of Appeal stated (at [30] of *CIMB Bank*) that a choice of law clause contained in a contract would still govern disputes as to the "*existence* … of the contract" [emphasis added], the court was referring to situations where there was a meeting of minds but due to some reason a contract was never validly concluded.

79 Indeed, the aforementioned distinction was recognised in *PT Selecta Bestama v Sin Huat Huat Marine Transportation Pte Ltd* [2016] 1 SLR 729 ("*PT Selecta*"), which considered *CIMB Bank*. In that case, the plaintiff produced two contracts which the defendant had admitted to signing, but which were alleged by the defendant to be voidable for misrepresentation. Following the defendant's failure to enter an appearance, the plaintiff obtained judgment in default of appearance against the defendant with interest and damages to be assessed. The defendant applied to set aside the default judgment and to stay the proceedings on the ground of an exclusive jurisdiction clause in the contracts naming the Batam courts as the forum of choice. One of the issues before the High Court on appeal was whether a stay of the proceedings in Singapore should be granted, and in particular, whether the plaintiff was entitled to rely on the exclusive jurisdiction clause even though it disputed the validity of the contracts.

80 Steven Chong J (as he then was) held that the plaintiff was entitled to do so and held that the mere fact that the validity of a contract was challenged by a party did not *ipso facto* infect the exclusive jurisdiction clause. It "remained

critical" to examine the substance of the challenge as to whether the factor which led to the invalidity of the contract itself also infected and invalidated the choice of law clause, and central to this assessment was whether there had been a meeting of minds between the parties (at [40]). On the facts, the defendant's plea of misrepresentation did not entail a challenge to the exclusive jurisdiction clause (at [43]). Further, given that the plaintiff's case was itself premised on the validity of the contracts, the defendant was permitted, as a matter of principle and fairness, to enforce the exclusive jurisdiction clause against the plaintiff (at [45]).

81 Finally, brief mention may also be made of *Deutsche Bank AG v Asia Pacific Broadband Wireless Communications Inc* [2009] 2 All ER (Comm) 129 ("*Deutsche Bank*"), a decision of the Court of Appeal of England and Wales. In that case, the court observed that an agreement had undoubtedly been concluded but the issue was whether it was an authorised agreement. In such a situation, the doctrine of separability was held to be applicable (at [26]). The court contrasted this with other situations where the jurisdiction clause was itself under some specific attack, such as where fraud or duress was alleged in relation specifically to the jurisdiction clause, or where the signatures to the agreement were alleged to be forgeries, although it was observed in passing that a mere allegation to that effect might not be sufficient (at [24]).

82 Considering the detailed treatment of this issue in *CIMB Bank*, *PT Selecta* and *Deutsche Bank*, I was of the view that, had the issue been necessary for determination, I would not have held that the exclusive jurisdiction and choice of law clauses were separable. The allegation of fraud in the present case would have concerned the issue of whether the exclusive jurisdiction clause and choice of law clause as contained in the Trust Deed was agreed to by Mr Smirnov to begin with. Had there not been at least a good arguable case

supported by the evidence that Mr Smirnov had signed the Trust Deed, it would not be fair and just to establish jurisdiction on the basis of these clauses.

The Companies are necessary or proper parties to the claim

83 I turn next to the issue of whether the Nexus Limb was established in relation to the Companies, which I answered in the affirmative.

84 Mr Prosetskii relied on paras 63(3)(c) and 63(3)(d) of the SCPD 2021 in support of his position that the Nexus Limb was met:

(a) In respect of para 63(3)(c), which requires that "the claim is brought against a person duly served in or outside Singapore, and a person outside Singapore is a necessary or proper party to the claim", he contended that the Companies were necessary or proper parties to the claim in OA 1311, namely that the Companies' participation in OA 1311 would ensure full and effectual relief, as the determination of the legal and beneficial ownership of the Shares would be binding and effective on the Companies. While Mr Smirnov was not served with the OA 1311 documents prior to the granting of the Service Out Order in respect of the Companies, since the order was applied for and obtained in respect of *all* the defendants simultaneously (see [27] above), Mr Prosetskii argued that the non-compliance could be waived.

(b) As for para 63(3)(d), Mr Prosetskii took the position that since the Trust Deed contained a choice of law clause in favour of Singapore law, and an exclusive jurisdiction clause in favour of the Singapore courts, this met the requirements of paras 63(3)(d)(iii) and 63(3)(d)(iv) (see [69] above).

85 On the other hand, the Companies argued that the requirements of para 63(3)(c) of the SCPD 2021 were not met, advancing the following reasons:

(a) First, at the time of the application for, and granting of, permission to serve the OA 1311 documents on the Companies outside of Singapore, Mr Smirnov had not been served with the OA 1311 documents, since the Service Out Order was applied for and obtained in respect of *all* the defendants simultaneously. Therefore, in relation to whether the Companies could be served out of Singapore at the time of the Service Out Order, the requirement that in para 63(3)(c) that there must be an existing claim "brought against a person *duly served* in or outside Singapore" [emphasis added] was not met and there was therefore no basis to serve the Companies outside of Singapore.

(b) Second, there was no claim in OA 1311 upon which the Service Out Order could be based.

(c) Third, there was also no basis for the Claimant to seek orders against the Companies for the production of documents or information.

86 As a preliminary matter, although Mr Smirnov had not been served when the Service Out Order in respect of the Companies was granted, it was uncontroversial that by the time that SUM 561 was heard and decided, Mr Smirnov had been served with the documents for OA 1311 and a copy of the Service Out Order. The essential objection of the Companies in this regard was that since the court had no jurisdiction to hear and determine the dispute as between Mr Prosetskii and Mr Smirnov (in the absence of valid service), the court would similarly have no jurisdiction over the Companies, which participation in these proceedings is ancillary to the primary dispute between the two individuals. However, since Mr Smirnov had already been served, I was

of the view that the Service Out Order should not be set aside on this basis in the absence of any specific allegation of prejudice raised by the Companies. The remaining question was whether the Companies are necessary or proper parties to the claim in OA 1311.

87 As for the Companies' argument that no cause of action was asserted against them in OA 1311 and/or that the orders sought against them had no basis, this did not mean that the Nexus Limb could not be satisfied. It is not the case that the Nexus Limb invariably requires the claimant to assert a cause of action against every defendant in respect of whom permission for service out is sought.

88 For instance, and this is a point which was directly material, all that the wording of para 63(3)(c) of the SCPD 2021 requires is that "the *claim* is brought against a person duly served in or outside Singapore, and a person [to be served] outside Singapore is a *necessary or proper party* to the claim" [emphasis added]. While the words of para 63(3)(c) require that the defendant to be served out of Singapore must be a necessary or proper party to the *claim*, they do not require that a *cause of action* must also be brought against such necessary or proper parties, or that such parties must be necessary or proper parties to the cause of action. It may be the case that a claimant may also have a cause of action against these necessary or proper parties, but this is not what para 63(3)(c) requires.

89 With respect, the Companies' submission that a claimant must also assert a cause of action in respect of *all* the defendants in respect of which he wishes to serve out of jurisdiction is incorrect for conflating the meanings of a "claim" and a "cause of action". The two terms, while related, have different meanings.

90 A "cause of action" has been defined as "the facts which the plaintiff must prove in order to get a decision in his favour" (see *Salmizan bin Abdullah v Crapper, Ian Anthony* [2024] 5 SLR 257 ("*Salmizan*") at [31] and *Zhang Run Zi v Koh Kim Seng and another* [2015] SGHC 175 at [42], citing *Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd and others* [1992] 2 SLR(R) 382). In *Salmizan*, Goh Yihan JC (as he then was) also referred to *Black's Law Dictionary* (Bryan A Garner ed) (Thomson Reuters, 11th Ed, 2019), which defines a cause of action in the following terms (at p 275):

> **cause of action … 1.** A group of operative facts giving rise to one or more bases for suing: a factual situation that entitled one person to obtain a remedy in court from another person.

In essence, a cause of action concerns the pre-conditions that must be met for the claimant to obtain some relief.

91 In contrast, a "claim" is a broad term of "very extensive signification, embracing every species of legal demand" and "is one of the largest words of law" (*Bachoo Mohan Singh v Public Prosecutor and another matter* [2010] 4 SLR 137 ("*Bachoo*") at [59], citing *P Ramanatha Aiyar's The Law Lexicon* (Justice Y V Chandrachud & V R Manohar gen eds) (Wadhwa and Company, 2nd Ed, 1997) ("*The Law Lexicon*") at p 329. The various definitions of a "claim" have been observed to include (*Bachoo* at [59], citing *The Law Lexicon* at p 330):

(a) a "demand made of a right or supposed right" or a "calling of another to pay something due or supposed to be due";

(b) a demand for something as due, or an assertion of a right to something;

(c) "relief and also any grounds of obtaining the relief"; and

(d) the assertion of a cause of action.

92 Therefore, a claim is a *demand* for some requested relief, typically when a cause of action is alleged to have been established. However, contrary to what the Companies suggested, it is wrong to conclude that a claimant must be able to assert a cause of action against each defendant independently. A claimant is permitted to add defendants for the purpose of ensuring that any reliefs that he seeks, if granted, will not be rendered ineffective and unenforceable because such nominal defendants are not bound by the findings and declarations of the court; adding such defendants to the claim on a nominal basis, even while no cause of action is asserted against them, ensures that the claimant does not find himself with no relief at the end of the day despite having a judgment in his favour.

93 This was illustrated in *Tam Tak Chuen v Khairul bin Abdul Rahman and others* [2009] 2 SLR(R) 240 ("*Tam Tak Chuen*"), where some companies whose shares had been the subject of a dispute were added as nominal defendants in the suit. The plaintiff had agreed among other things to sell his shares in those companies to the first defendant and resign as a director of the companies after the first defendant obtained video footage of the plaintiff's indiscretion. The plaintiff subsequently brought a suit seeking, among other things, a declaration that his agreement to sell his shares in the companies to the first defendant and resign his directorships, as well as the documents he had executed pursuant to that agreement, should be set aside as they had been procured under duress. Judith Prakash J (as she then was) observed that the companies were added as nominal defendants to the suit (at [1]), and she eventually ordered that the executed documents be set aside and that the defendants should take all necessary steps to give effect to the setting aside of the documents, including to re-vest the plaintiff's original shareholdings (at [80(a)] and [80(c)]). This case

illustrates that nominal defendants may be added in a claim to ensure that any relief granted would be binding on all the nominal defendants, so that the reliefs that a claimant seeks can and will be given effect.

94 While counsel for the Companies submitted at the hearing that *Tam Tak Chuen* was distinguishable from this case because the defendant-companies in *Tam Tak Chuen* also brought counterclaims against the plaintiff for breaches of directors' duties and also participated substantively in the suit (at [21]), this did not detract from the fact that the companies in that case were nominal defendants for the purposes of the plaintiff's claim; the fact that they were also co-plaintiffs in the counterclaim was irrelevant to their role in respect of the plaintiff's claim.

95 In my view, para 63(3)(c) of the SCPD 2021 is meant to apply to situations similar to *Tam Tak Chuen*, where the presence of nominal defendants is necessary or proper to ensure that a claimant will not be deprived of practical relief even if he succeeds in his claim against the substantive defendant. This provision also encapsulates the concern of preventing the fragmentation of proceedings, avoiding the potential for multiple, inconsistent rulings across different jurisdictions. This explains why, if the Singapore court already has jurisdiction over at least one defendant and provided that the other requirements for service out of jurisdiction are met, foreign defendants who are necessary or proper parties to the claim may be joined to the claim.

96 As the effect of para 63(3)(c) is to join a foreign defendant to an existing claim, I am of the view that the same considerations that are applicable to an application for a joinder or the removal of parties should also apply in determining who a necessary or proper party to the claim is. In *Tan Yow Kon v Tan Swat Ping and others* [2006] 3 SLR(R) 881 ("*Tan Yow Kon*"), Sundaresh

Menon JC (as he then was) observed that the court may join as a party (at [31], [50] and [51]):

> (a) any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon; or
>
> (b) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or *connected with any relief or remedy claimed in the cause or matter* which in the opinion of the court it would be *just and convenient to determine as between him and that party* as well as between the parties to the cause or matter.

I note that while *Tan Yow Kon* was decided under a previous iteration of the procedural rules, namely the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("ROC 2006"), there is no indication that the position under the ROC 2021 is any different.

97 Pertinently, it was observed in *Tan Yow Kon* that the reach of the court's ambit to join necessary or proper parties (which are *not* disjunctive terms) extends to parties against whom there is no cause of action (at [49(b)], [56] and [57]). Two cases cited in *Tan Yow Kon* are relevant and were the subject of some discussion in that case.

98 The first is *TSB Private Bank International SA v Chabra* [1992] 1 WLR 231 ("*Chabra*"), where the plaintiff bank issued a writ against the first defendant for failure to honour a guarantee given in respect of advances by the plaintiff to a British Virgin Islands company. The plaintiff obtained a Mareva injunction

and subsequently brought an application to join the second defendant, a company in which the first defendant was the majority shareholder, to obtain a Mareva injunction against the second defendant as well. The second defendant applied to have the writ struck out as no cause of action was disclosed against it. The English High Court declined to strike out the writ and held that adding the second defendant to the action was necessary to ensure that all matters in dispute in the cause or matter might be effectually and completely determined and adjudicated upon (at 238, *per* Mummery J).

99 The court in *Chabra* further extended the Mareva injunction to the second defendant and reasoned that it did not follow that because the court would have no jurisdiction to grant a Mareva injunction against the second defendant if it were the sole defendant, the court had no jurisdiction to grant an injunction against the second defendant as ancillary to, or incidental to, the cause of action against the first defendant. While there was no cause of action against the second defendant, there was credible evidence that the property of the second defendant was in fact the assets of the first defendant and could be available to satisfy a judgment obtained against the first defendant. As a Mareva injunction against the first defendant was inadequate given that it was not clear what personal assets he had, the court extended the Mareva injunction to the second defendant to protect the plaintiff from the risk that the assets vested in the second defendant might become unavailable to satisfy the judgment obtained against the first defendant (at 242, *per* Mummery J).

100 *Chabra* was applied locally in *Lee Kuan Yew v Tang Liang Hong and other suits* [1997] 2 SLR 819 ("*Tang Liang Hong*"). In that case, the plaintiff commenced a suit against the first defendant for the tort of defamation. The plaintiff applied to have the second defendant joined to the suit and to obtain Mareva injunctions against her. Lai Kew Chai J observed that the rules of civil

procedure in England and in Singapore pertaining to joinder were the same at that time, and granted the applications to add the second defendant to the suit and to issue the Mareva injunctions sought against her (at [6]). Those orders were made on the basis of a property registered in her name, which the plaintiffs believed the first defendant had a beneficial interest in, either through a trust in favour of the first defendant and/or as matrimonial property (at [5]).

101 These cases stand for the rule that defendants may be joined to the claim even if there is no cause of action against them if the presence of such defendants is necessary or proper for the court to hear and determine all issues and to give effect to the relief that the claimant seeks. This position also reflects the general preference of the court to have all issues ventilated in a single forum, involving all parties whose interests are directly affected by a determination of the court, so that the dispute may be determined without the delay, inconvenience and expense of separate trials or actions (*Tan Yow Kon* at [33], citing *Singapore Civil Procedure 2003* (Sweet & Maxwell Asia, 2003) at para 15/6/2, p 192). It is therefore unobjectionable that the court's powers "*to bring and keep* the appropriate parties before it is broad indeed and may be exercised even where no cause of action is asserted against a particular defendant" [emphasis in original] (*Tan Yow Kon* at [58]). In this regard, one of the relevant questions to ask is what the respective interests of the party whose presence is sought and of the party who is resisting this are, and how do those interests stand to be affected by the order that the court is asked to make in relation to the subject matter of the action (see *Tan Yow Kon* at [44(a)] and [45], citing the statement of the Privy Council in *Pegang Mining Co Ltd v Choong Sam* [1969] 2 MLJ 52 at 56, *per* Lord Diplock).

102 The operation of these principles was illustrated in *Tan Yow Kon*, which concerned an application to strike out the action in relation to the second to fifth

defendants (who were termed the "Remaining Defendants"). The defendants had contended that: (a) the principal relief was sought against the first defendant; (b) the plaintiff's statement of claim made no allegations against the Remaining Defendants, and in the alternative (c) the Remaining Defendants were neither necessary nor proper parties as the first defendant had undertaken to meet any claim that the plaintiff might succeed in and therefore should cease to be parties to the proceedings pursuant to O 15 r 6(2)(*a*) of the ROC 2006. At first instance, the Assistant Registrar struck out the plaintiff's claim against the Remaining Defendants, and the plaintiff appealed against the decision.

103 On appeal, Menon JC held that, having regard to the sort of reliefs that were being sought against the Remaining Defendants, they were in principle necessary or proper parties to the action (at [58]). Among other factors considered, it was relevant that the plaintiff's claim arose out of a partnership in which the Remaining Defendants too were partners and related to a promise alleged to have been made on their behalf (at [59]). Additionally, the court reasoned as follows (at [61]):

> The plaintiff's interest in keeping the Remaining Defendants in the action relates directly to his desire to be able to establish his rights against them and to proceed to enforcement against each of them if he succeeds, without the need to commence fresh proceedings. The Remaining Defendants however appear to have been driven primarily by considerations of convenience. They do not wish to be troubled by the stress and expense of a law suit to which they believe they can contribute nothing. In my view, even if one assumed that the Remaining Defendants' concerns are legally relevant, they are not weighty. No one wishes to be troubled by a law suit but if that is necessary to settle the rights and liabilities between disputing parties then it is inevitable. The Remaining Defendants are not accepting the plaintiff's claim. Rather, they are saying he should look only to the one willing defendant. A willing defendant is one of a rare breed and one's willingness to be subjected to litigation cannot be a condition to a plaintiff's right to proceed against him. In my judgment, the availability of such a defendant cannot limit the plaintiff's right to proceed against the unwilling defendants

> in this case. There is also the possibility that if the plaintiff succeeded against the first defendant and she was not able to meet his claim for any reason he would then have to recommence proceedings against the Remaining Defendants and that would be intolerable in my view.

Two points may be gleaned from this passage. First, it is relevant that a claimant has an interest in being able to enforce the relief he seeks in a single forum and in a single proceeding. Secondly, considerations of convenience, such as the stress and expense of a lawsuit, even if legally relevant would not be a weighty factor.

104 With these principles in mind, I was satisfied that the Companies were necessary or proper parties to the claim in OA 1311 as they were joined to ensure that any declarations made as to Mr Prosetskii's beneficial interest in the Shares would be binding on the Companies themselves. If the Companies were not joined to this action, Mr Prosetskii may have to commence fresh proceedings in Seychelles or the Marshall Islands to attempt direct enforcement of the Trust Deed, to which the Companies were not parties. While the Companies made a passing objection pertaining to foreign illegality and abuse of process (see [26] and [41] above), there was no explanation for why it would be so objectionable to join the Companies to the claim to obtain orders against them to address potential difficulties with *direct* enforcement of the Trust Deed in Seychelles and the Marshall Islands. It was also not disputed that the Singapore courts are able to deal with issues of foreign law as questions of fact should they arise. In any event, it is also up to the relevant foreign court to decide whether any eventual judgment or orders should be recognised and enforced, and a decision of the Singapore court will do nothing to fetter their discretion.

105 As the satisfaction of para 63(3)(c) of the SCPD 2021 was sufficient to establish the Nexus Limb, there was strictly no need for me to decide on

Mr Prosetskii's reliance on para 63(3)(d) of the SCPD 2021. Nevertheless, I record my observation that para 63(3)(d) may not be applicable as an *independent* basis for establishing the Nexus Limb in relation to the Companies who are not parties to the Trust Deed. I however accepted that it may be possible for para 63(3)(d) to be applied *conjunctively* with para 63(3)(c) in bolstering the conclusion that the Nexus Limb was established in relation to the Companies.

Singapore is the **forum conveniens**

106 Turning to the Forum Limb, I was also satisfied that Singapore is the *forum conveniens*.

107 The purpose of the *forum conveniens* analysis is to determine the most appropriate forum to hear the substantive dispute. The presence of other factors pointing away from Singapore which outweigh the connecting factors to Singapore is insufficient in itself to establish that Singapore is not the *forum conveniens*; the factors that point away from Singapore must point to a more appropriate forum than Singapore, and they might not do so if those connections are dispersed across multiple jurisdictions (*Siemens AG v Holdrich Investment Ltd* [2010] 3 SLR 1007 ("*Siemens*") at [4]).

108 In this case, the claim is founded on the Trust Deed, which contained an exclusive jurisdiction clause in favour of the Singapore courts and an express choice of Singapore law, and there was at least a good arguable case that the Trust Deed was signed by Mr Smirnov. Those were connecting factors that pointed towards Singapore. As for the factors that pointed away from Singapore, they were dispersed across multiple jurisdictions and did not establish that another identifiable jurisdiction would be a more appropriate forum than Singapore to hear the action. For instance, the parties to this action are all based

in different jurisdictions (*ie*, Singapore, Moldova, Seychelles, and the Marshall Islands). Contrary to the Companies' submission, I also did not regard it relevant that there was no cause of action asserted against the Companies in this claim, as it simply did not point towards or away from any jurisdiction.

109 In the circumstances, I was satisfied that Singapore was the *forum conveniens*, with no jurisdiction being a more appropriate forum to hear the action.

There was a serious question to be tried on the merits of the claim

110 Finally, I concluded that the Merits Limb of para 63(2) of the SCPD 2021 was satisfied.

111 In light of my holding that there was a good arguable case that the Trust Deed was signed by Mr Smirnov, which was a higher standard than "a serious question to be tried", it remained for me to be satisfied that there was a serious question to be tried relating to the alleged breaches of the Trust Deed. In this regard, the Trust Deed provided that Mr Smirnov was obliged to transfer and deal with the Shares in such manner as Mr Prosetskii might direct (see [14] above). It was not disputed that Mr Smirnov had not done so and had refused to do so (see [21]–[23] above). Mr Smirnov had also not provided information and/or documents as to the operations of the Companies and the MT Raven, and no explanation was also forthcoming on why the flag state of the MT Raven was changed several times (see [19] above). While this was not surprising, given that Mr Smirnov denied holding the Shares on trust for Mr Prosetskii in the first place, it nevertheless followed that if there was a good arguable case that Mr Smirnov had signed the Trust Deed, and it was not disputed that he did not carry out any positive duties under the Trust Deed on which Mr Prosetskii was basing

his claim, there would be at least be a serious question to be tried as to whether Mr Smirnov was in breach of those duties under the Trust Deed. Furthermore, for Mr Prosetskii's stated reason (at [25] above), I was also satisfied that there was a serious question to be tried as to whether he was entitled to terminate the trust and seek the return of the Shares.

112 For completeness, it was not material that no cause of action was asserted against the Companies as nominal defendants, as this was simply not a requirement set out in para 63(2) the SCPD 2021, and to imply such a requirement would be an impermissible gloss on the plain wording of that paragraph. Moreover, it would be incongruous if the Nexus Limb allowed for nominal defendants against whom no cause of action is asserted to be joined to the proceedings, while the Merits Limb nullifies that effect by requiring a cause of action in respect of every defendant. In my view, the question properly framed was whether there was a serious question to be tried in relation to Mr Prosetskii's claim in OA 1311 and, for the reasons set out in the preceding paragraph, I was satisfied that this question was answered in the affirmative.

Conclusion

113 For these reasons, I dismissed SUM 561 and SUM 958, and fixed costs to be payable by the defendants to Mr Prosetskii.

114 It remains for me to thank Mr Koh Junxiang and Ms Clarissa Soon (counsel for Mr Prosetskii), Ms Mazie Tan (counsel for Mr Smirnov), and Mr Jeremy Gan (counsel for the Companies) for their helpful submissions.

Chong Fu Shan
Assistant Registrar

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