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

[2025] SGHCR 28

Originating Summons No 126 of 2018 (Summons No 1028 of 2025)

Between

(1) Oro Negro Drilling Pte Ltd
(2) Oro Negro Decus Pte Ltd
(3) Oro Negro Fortius Pte Ltd
(4) Oro Negro Impetus Pte Ltd
(5) Oro Negro Laurus Pte Ltd
(6) Oro Negro Primus Pte Ltd

… *Plaintiffs*

And

(1) Integradora de Servicios Petroleros Oro Negro SAPI de CV
(2) Alonso Del Val Echeverria
(3) Gonzalo Gil White

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Judgments and orders — Non-compliance — Unless orders]

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Oro Negro Drilling Pte Ltd and others
v
Integradora de Servicios Petroleros Oro Negro SAPI de CV and others

[2025] SGHCR 28

General Division of the High Court — Originating Summons No 126 of 2018 (Summons No 1028 of 2025)
AR Perry Peh
26 June, 21 July 2025

26 August 2025

AR Perry Peh:

Introduction

1 HC/SUM 1028/2025 ("SUM 1028") was an application by the third defendant for an 'unless' order that the plaintiffs' claim for damages in HC/OS 126/2018 ("OS 126") be struck out if the plaintiffs failed to provide sufficient answers to certain interrogatories that they had previously been ordered by HC/ORC 1753/2025 ("ORC 1753") to furnish.

2 Based on the materials before me, it cannot be seriously disputed that the plaintiffs have not provided sufficient answers to the interrogatories and therefore failed to fully comply with ORC 1753. However, the plaintiffs sought to justify their non-compliance and resist the making of an 'unless' order by relying on matters, which either had been decided in the earlier proceeding

pursuant to which ORC 1753 was granted or were of such a nature that they ought to have been raised in the earlier proceeding. As I explain below, these justifications are a collateral attack on the outcome of that earlier proceeding and the legal principles underlying the doctrine of *res judicata* operated to preclude the plaintiffs from relying on them in resisting the 'unless' order sought. In any event, as I elaborate below, these justifications are without merit in themselves.

3 I therefore allowed SUM 1028 and granted the 'unless' order sought by the third defendant. The plaintiffs have appealed against my decision.[1] These detailed grounds are intended to supersede the reasons which I previously provided to the parties when I delivered my decision.

Background

4 In OS 126, the High Court had found in favour of the plaintiffs on liability against the third defendant (see *Oro Negro Drilling Pte Ltd and others v Integradora de Servicios Petroleros Oro Negro SAPI de CV and others* [2023] SGHC 297 ("*Oro Negro (HC)*")). The High Court's decision has been upheld by the Court of Appeal (see *Gonzalo Gil White v Oro Negro Drilling Pte Ltd and others* [2024] 1 SLR 307 ("*Oro Negro (CA)*")). The proceedings in OS 126 are now concerned with the assessment of damages which the plaintiffs are entitled from the third defendant pursuant to the court's earlier decision on liability. The background facts to OS 126 have been exhaustively set out in *Oro Negro (HC)* and *Oro Negro (CA)* and I only recite the salient facts where they are relevant for present purposes.

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1 HC/RA 149/2025.

The parties

5 The first plaintiff is a holding company, and its only assets are shares in the second to sixth plaintiffs which are special purpose vehicles each owning a single offshore jack-up drilling rig operating in Mexico (*Oro Negro (HC)* at [20]). Until September 2017, the first plaintiff was a wholly owned subsidiary of the first defendant, Integradora de Servicios Petroleros Oro Negro, SAPI de CV ("Integradora") (*Oro Negro (HC)* at [21]). The third defendant, Mr Gonzalo Gil White ("Mr Gonzalo"), was a director of the plaintiffs until September 2017 (*Oro Negro (HC)* at [26]). The second defendant, like Mr Gonzalo, was also a director of the plaintiffs until September 2017 (*Oro Negro (HC)* at [24]). The proceedings in OS 126 were and remain to be fought only between the plaintiffs and Mr Gonzalo only because (a) Integradora did not enter an appearance to oppose OS 126 and (b) the plaintiffs' claims against the second defendant have been privately settled (*Oro Negro (HC)* at [23] and [25]).

6 Integradora is wholly owned by the Mexican state-owned oil and gas company, Petroleos Mexicanos ("Pemex") (*Oro Negro (HC)* at [22]). Integradora also owns 99.25% of shares in another company, Perforadora Oro Negro S de RL de CV ("Perforadora"), and the remaining 0.75% shares in Perforadora are owned by another subsidiary of Pemex (*Oro Negro (HC)* at [28]). Perforadora chartered a drilling rig from each of the second to sixth plaintiffs under a bareboat charter, and then sub-chartered it further for offshore oil drilling operations in Mexico (*Oro Negro (HC)* at [28]).

The proceedings brought in Mexico and the US

7 Certain bonds ("the Bond") issued by the first plaintiff to finance the purchase of a drilling rig by each of the second to sixth plaintiffs required the company constitutions of each of the plaintiffs to be amended to insert a new

article ("Art 115A"), which, among other things, prohibited each plaintiff and its directors from carrying into effect any insolvency or restructuring proceeding anywhere in the world (an "Insolvency Matter") unless two conditions were met: (a) each plaintiff's shareholder voted in favour of doing so by passing an ordinary resolution to that effect; and (b) an independent director of each plaintiff, which was to be appointed by the trustee of the holders of the Bond ("the Bond Trustees"), voted in favour of doing so (*Oro Negro (HC)* at [32] and [37]). The Bond Trustees later appointed one Mr Noel Cochrane Jr ("Mr Cochrane") as their independent director of each of the plaintiffs (*Oro Negro (HC)* at [34]).

8 On 11 September 2017, a Mexico law firm Guerra Gonzalez y Asociados ("the Guerra Lawyers") filed a *concurso* petition in Mexico on behalf of Perforadora (*Oro Negro (HC)* at [44]). As the High Court explained in *Oro Negro (HC)* (at [8]–[10]), a *concurso mercantile* (or *concurso*) is a statutory, court-supervised restructuring procedure under Mexico law which is analogous to a creditors' scheme of arrangement under Singapore law, and its effect is territorially confined to Mexico. After a *concurso* petition is filed, the court first determines if the debtor is indeed insolvent and therefore entitled to present a *concurso* petition and if so, the court then *admits* the *concurso* petition before proceeding to deal with its substance, including the appointment of a conciliator to build consensus between the company and its creditors on an acceptable reorganisation plan (*Oro Negro (HC)* at [11]–[13]). The *concurso* comes to an end after the implementation of the organisation plan, which is subject to final court approval (*Oro Negro (HC)* at [14]). Appeals against the decision of the court hearing a *concurso* petition (hereafter, the "*concurso* court") are available on constitutional grounds to a separate court known as the *amparo* court which has the power to annul the *concurso* court's decision and

remit the issue for reconsideration by the *concurso* court (*Oro Negro (HC)* at [16]–[17]).

9 The Bond was supported by a guarantee from Integradora and a charterer's undertaking from Perforadora (*Oro Negro (HC)* at [31]). As security, the first plaintiff also charged all of its shares in the second to sixth plaintiffs to the Bond Trustees, while Integradora also charged all of its shares in the first plaintiff to the Bond Trustees (*Oro Negro (HC)* at [33]). Perforadora's *concurso* petition ("Perforadora's *Concurso*") constituted an event of default under the Bond (*Oro Negro (HC)* at [44]). The Bond Trustees accordingly declared such an event of default on 25 September 2017 and took steps for the plaintiffs' directors (including Mr Gonzalo) to be replaced by directors whom they appointed ("the New Directors") (*Oro Negro (HC)* at [46]).

10 On 29 September 2017, the Guerra Lawyers filed two further *concurso* petitions: (a) a *concurso* petition on behalf of Integradora ("Integradora's *Concurso*") and (b) six *concurso* petitions on behalf of each of the plaintiffs ("the Plaintiffs' *Concursos*") (*Oro Negro (HC)* at [47]). The Plaintiffs' *Concursos* were filed pursuant to a shareholders' resolutions of each of the plaintiffs ("the Shareholders' Resolutions") executed by Integradora (in its capacity as the sole shareholder of the first plaintiff) and the first plaintiff (in its capacity as the sole shareholder of the second to sixth plaintiffs) for the Guerra Lawyers to be engaged to file a *concurso* petition and for the Guerra Lawyers to be empowered by way of a power of attorney to seek or resist any proceedings on behalf of each of the plaintiffs (*Oro Negro (HC)* at [45]). Prior to the execution of the Shareholders' Resolutions, Mr Gonzalo and the second defendant had, on 31 August 2017, in their capacities as directors of the plaintiffs, granted a power of attorney to the Guerra Lawyers to "file … all kinds of proceedings" on behalf of each plaintiff (see *Oro Negro (HC)* at [42]). It

should be further noted that, for the purposes of Art 115A, an Insolvency Matter is defined as including without limitation a *concurso* (*Oro Negro (HC)* at [32(b)]). Contrary to the second of the two conditions in Art 115A, Mr Cochrane's vote of approval was not obtained for the Shareholders' Resolutions pursuant to which the Plaintiffs' *Concursos* were filed (*Oro Negro (HC)* at [48]).

11 In the event, Perforadora's *Concurso* was admitted on 5 October 2017 (*Oro Negro (HC)* at [51]). In the papers filed in SUM 1028, Perforadora's *Concurso* was identified as Business Reorganisation Proceeding 345/2017-1 ("*Concurso* 345"),[2] while Integradora's *Concurso* and the Plaintiffs' *Concursos* were identified as having been filed on a joint basis as Business Reorganisation Proceeding 395/2017-1 ("*Concurso* 395").[3] However, Integradora's *Concurso* was subsequently joined to Perforadora's *Concurso* in *Concurso* 345. As such, all that remains of *Concurso* 395 is the Plaintiffs' *Concurso*, while *Concurso* 345 encompasses both Perforadora's *Concurso* and Integradora's *Concurso*.[4]

12 On 9 October 2017, the New Directors, who had then learnt of the Plaintiffs' *Concursos*, passed a directors' resolution to revoke all authority granted to the Guerra Lawyers under the Guerra POA, and they also appointed a Mexican law firm Sainz Abogados SC ("Sainz Abogados") to represent the plaintiffs in all legal proceedings in Mexico (*Oro Negro (HC)* at [52]). It may be observed that, while the Guerra Lawyers and Sainz Abogados both purport to act for the plaintiffs, quite clearly, they represented different sets of interests

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2 5th affidavit of Gonzalo Gil White ("5-GGW") at para 16(b).

3 5-GGW at para 16(a).

4 14th affidavit of Roger Arnold Hancock ("14-RAH") at paras 9–11; 6th affidavit of Gonzalo Gil-White ("6-GGW") at para 25.

in the Mexico proceedings which are also in opposition in OS 126 – the Guerra Lawyers represented the defendants in OS 126 who had brought about the *concursos*, while Sainz Abogados represented the plaintiffs in OS 126 who oppose those proceedings. From this point onwards, a contest ensued in the Plaintiffs' *Concursos* as to whether the Guerra Lawyers or Sainz Abogados were the lawful legal representatives of the plaintiffs (*Oro Negro (HC)* at [55]). This involved, among other things, applications in the *concurso* court as well as appeals to the *amparo* court against decisions of the *concurso* court brought by the Guerra Lawyers and Sainz Abogados (*Oro Negro (HC)* at [56]–[61]). On the other hand, the proceedings in Perforadora's *Concurso* and Intergadora's *Concurso* went ahead in parallel with the litigation in the Plaintiffs' *Concursos* on issues specific to those proceedings (*Oro Negro (HC)* at [62]–[67]).

13 Besides the proceedings in Mexico, it appears that "ancillary Chapter 15 proceedings in the United States"[5] were also brought in consequence of the Mexico proceedings. These US proceedings were referenced in the plaintiffs' supporting affidavit filed in HC/SUM 2725/2024 ("SUM 2725"),[6] which is the application pursuant to which the interrogatories in ORC 1753 were ordered. I will return to this below (at [20]).

The proceedings in OS 126

14 The plaintiffs filed OS 126 in January 2018, seeking the following reliefs: (a) declarations that the Plaintiffs' *Concursos* were invalidly filed for failure to comply with Art 115A and that the defendants had no authority to

5 10th affidavit of Roger Arnold Hancock ("10-RAH") at para 30.

6 4th affidavit of Gonzalo Gil White ("4-GGW") at para 66.

maintain the Plaintiffs' *Concursos*; and (b) injunctions to prevent the defendants from maintaining the Plaintiffs' *Concursos* or any other Insolvency Matter.

15 As mentioned above (at [5]), the proceedings in OS 126 were only contested by Mr Gonzalo because they were settled as against the second defendant, and Integradora did not enter an appearance to contest OS 126. The High Court found that plaintiffs are entitled to the reliefs sought against Mr Gonzalo as well as Integradora. In particular, the High Court found that the filing of the petitions for the Plaintiffs' *Concursos* was a breach of Art 115A, which had prohibited the plaintiffs from doing so unless the independent director appointed by the Bond Trustees (*ie*, Mr Cochrane) had voted in favour of the Shareholders' Resolutions (*Oro Negro (HC)* at [109]). The High Court further found that Art 115A formed the term of an implied contract between the plaintiffs and Mr Gonzalo (in his capacity as a director of the plaintiffs), and because Mr Gonzalo did cause the filing of the Plaintiffs' *Concursos* in breach of Art 115A (see *Oro Negro (HC)* at [109]):

> [Mr Gonzalo] has accordingly breached the implied contract between himself and each plaintiff. He is liable in the usual way for damages to each plaintiff for the loss he has suffered by reason of his breach and to be restrained by injunction from continuing his breach.

16 Mr Gonzalo appealed against the High Court's decision. In the appeal, the main issue was whether there had been such an identity of issues between OS 126 and the Plaintiffs' *Concursos* and whether that militated against the grant of the relief sought in OS 126. In the event, the Court of Appeal held that there was no such identity of issues for Mr Gonzalo's appeal to be sustained (*Oro Negro (CA)* ([4] above) at [56]), and it upheld the High Court's decision. With this, the proceedings in OS 126 are presently concerned with the

assessment of damages which the High Court had found Mr Gonzalo to be liable to the plaintiffs for his breach of Art 115A ("the AD Proceedings").

The interrogatories ordered in ORC 1753

17 Pursuant to the court's directions, on 1 April 2024, the plaintiffs' solicitors wrote to Mr Gonzalo's solicitors, identifying three heads of damages which it is seeking to recover in the AD Proceedings:

> a) The legal fees of [Sainz Abogados], … appointed by our clients to resist the *concurso* petitions and the ancillary actions filed purportedly on behalf of the plaintiffs in Mexico (the 'Plaintiffs' Concurso');
>
> b) The legal fees of Dechert LLP, the US lawyers appointed by our clients, insofar as such fees relate to the Plaintiffs' Concurso; and
>
> c) An unauthorised transfer of funds of US$19,00,000 from the Mexican bank account of Oro Negro Drilling Pte Ltd […], effected by and/or made on the instructions of your client.

18 I refer to these three heads of damages respectively as "the SA Legal Fees", "the Dechert Legal Fees" and "the Unauthorised Transfer".

19 In support of their claim for damages, on 3 June 2024, the plaintiffs disclosed 119 invoices issued by Sainz Abogados in relation to the SA Legal Fees ("SA Invoices"), and 41 invoices issued by Dechert LLP ("Dechert") in relation to the Dechert Legal Fees ("Dechert Invoices").[7] While the SA Invoices were unredacted, all of the Dechert Invoices were wholly redacted save for the total fees and disbursements charged under each invoice.[8] Subsequently, on 15 August 2024, the plaintiffs disclosed a further set of documents, including five more invoices issued by Sainz Abogados between March 2024 and July 2024

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7 5-GGW at paras 20–21.

8 5-GGW at para 22.

("Further SA Invoices"). Like the Dechert Invoices, the Further SA Invoices were wholly redacted save for the total fees charged under each invoice.[9]

20 On 6 September 2024, Mr Gonzalo served on the plaintiffs a set of interrogatories in connection with the three heads of damages.[10] The plaintiffs then filed SUM 2725 for these interrogatories to be withdrawn pursuant to O 26 r 3(2) of the Rules of Court (2014 Rev Ed) ("ROC 2014"). The plaintiffs' supporting affidavit for SUM 2725 refer to certain US proceedings which they say were brought in consequence of the Mexico proceedings (see [13] above).[11] The plaintiffs say that they had appointed Dechert to act for them in those US proceedings, and the fees incurred are the subject of the Dechert Legal Fees.[12] By the time SUM 2725 came up for hearing before me, only the interrogatories pertaining to the SA Legal Fees and the Dechert Legal Fees remained to be dealt with, because Mr Gonzalo accepted that the interrogatories pertaining to the Unauthorised Transfer had been sufficiently answered.

21 In resisting SUM 2725, Mr Gonzalo's case was that the interrogatories are necessary for the plaintiffs to particularise and provide details of their claimed damages for the SA Legal Fees and the Dechert Legal Fees so that he can meaningfully respond and make his case in the AD Proceedings. Importantly, the documents disclosed by the plaintiffs did not assist him in understanding and responding to the plaintiffs' case for damages. For example, each of the SA Invoices consisted of broad and generic descriptions without any indication of the legal proceeding for which work was undertaken and so they

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9 5-GGW at para 26.

10 5-GGW at para 29.

11 4-GGW at para 66.

12 10th affidavit of Roger Arnold Hancock ("10-RAH") at paras 30–31.

did not show how the plaintiffs' legal fees had been incurred in relation to proceedings occasioned by his breach of Art 115A.[13] As for the Dechert Invoices (and the same may be said of the Further SA Invoices), it was wholly unclear what the relevant legal fees had been incurred for because these invoices were completely redacted, and so the interrogatories requested were all the more necessary.[14] The state of the plaintiffs' documents also had to be viewed in the context of the court's directions for the parties' Affidavits of Evidence-in-Chief ("AEICs") in the AD Proceedings to be filed concurrently, which meant that Mr Gonzalo had no opportunity to obtain further information about what the plaintiffs' case on damages was, before his AEICs are to be prepared.[15]

22 On 23 October 2024, I decided SUM 2725 in Mr Gonzalo's favour and ordered that the plaintiffs file and serve an affidavit within six weeks providing their answers to the following interrogatories (*ie*, ORC 1753):[16]

> (1) In relation to [the SA Legal Fees], which was claimed as a head of damages in the Plaintiffs' letter dated 1 April 2024 ('1 April Letter'), please state:
>
> > (a) A breakdown of the specific legal work allegedly performed by [Sainz Abogados] in resisting the Mexican *concurso* petitions and ancillary actions on behalf of the Plaintiffs;
> >
> > (b) The specific Mexican action, application, hearing, appeal and/or proceedings in which the aforesaid works were allegedly undertaken;
> >
> > (c) The quantum of the professional fees, specific disbursements and identity of the invoices which correspond to the abovementioned work; and

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13 4-GGW at paras 56–59.

14 4-GGW at paras 67–68.

15 4-GGW at para 45.

16 HC/ORC 1753/2025 (Third defendant's bundle of documents for HC/SUM 1028/2025 ("3D BOD"), Vol 2, Tab 16) at para 3.

(d) The date on which the said invoices were paid.

(2) In relation to [the Dechert Legal Fees], which was claimed as a head of damages in the 1 April Letter, please state:

(a) A breakdown of the specific legal work allegedly performed by [Dechert] which relate to the Plaintiffs' *concurso*;

(b) The specific action, application, hearing, appeal and/or proceedings in which the aforesaid works were allegedly undertaken;

(c) The quantum of the professional fees, specific disbursements and identity of the invoices which correspond to the abovementioned work; and

(d) The date on which the said invoices were paid.

23 For ease of discussion, I refer to the interrogatories relating to the SA Legal Fees as "the SA Interrogatories", and the interrogatories relating to the Dechert Legal Fees as "the Dechert Interrogatories", and the sub-paragraphs respectively as parts (a), (b), (c) and (d) of the relevant interrogatories.

24 My decision for SUM 2725 was set out in a brief oral judgment provided to the parties. I considered that the ordered interrogatories would benefit the AD Proceedings by directing the parties' attention to the central issues in dispute at an early stage. In the AD Proceedings, Mr Gonzalo would obviously seek to counter the plaintiffs' claim on damages by saying that certain legal fees were unreasonably incurred, or that they are unreasonable in quantum, and hence not recoverable by way of damages. As such, the interrogatories ordered are necessary to have the plaintiffs particularise their case on the claimed damages so that Mr Gonzalo can properly and meaningfully put forward his response. Otherwise, Mr Gonzalo would effectively have to counter the plaintiffs' case on a global basis and possibly in a manner that does not correspond with what the plaintiffs' case on damages actually is. The SA Invoices (and needless to say, the completely redacted Further SA Invoices and Dechert Invoices) which the

plaintiffs had disclosed up till that stage did not provide the level of particularisation required.[17]

25 In support of its application in SUM 2725 for the interrogatories to be withdrawn, the plaintiffs relied on the following arguments, each of which I rejected for the reasons below (at [26]–[28]).

26 First, the plaintiffs argued that the interrogatories were unnecessary because their case is that *none* of the SA Legal Fees and the Dechert Legal Fees (as a whole) would have been incurred but for Mr Gonzalo's breach of Art 115A. As such, if the interrogatories were allowed, the plaintiffs would effectively have to rewrite and narrow their case on damages. I rejected this. The plaintiffs were obviously entitled to run their case on damages in whatever manner they wished, but that does not detract from them having to provide necessary information about their case on damages which I considered Mr Gonzalo was entitled to.[18]

27 Secondly, the plaintiffs argued that Mr Gonzalo would be fully aware as to what their claimed damages were because the legal fees were incurred in connection with proceedings that Mr Gonzalo had commenced through lawyers he engaged. I did not accept this submission. Although it is true that Mr Gonzalo would have an inkling of what the plaintiffs' appointed lawyers had to do in response to the proceedings he had brought about, it remains the case that the SA Legal Fees and the Dechert Legal Fees were incurred in connection with the work which the plaintiffs had instructed Sainz Abogados and Dechert

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17 Oral judgment in HC/SUM 2725/2024 ("OJ") [3D BOD, Vol 2, Tab 15] at para 13.

18 OJ at para 17.

respectively to perform, and Mr Gonzalo would obviously not be privy to those instructions.[19]

28 Thirdly, and with particular relevance for SUM 1028, the plaintiffs argued that requiring them to answer the interrogatories would be oppressive because: (a) in relation to the SA Legal Fees, beyond the invoices evidencing those fees, they had no further knowledge of the specific information that is required for the interrogatories to be answered; and (b) substantial costs would have to be incurred by them to obtain the necessary information to answer the interrogatories given the extensive number of legal proceedings involved. I rejected this submission, on two counts. In the first place, I do not think any expense that the plaintiffs were likely to incur is even a relevant consideration as to whether those interrogatories, which I already considered to be justified, should be ordered. Since the plaintiffs bore the legal burden of proving their claimed damages in the AD Proceedings, it would be consistent with the incidence of that legal burden for the plaintiffs to provide particulars of their claimed damages, regardless of the expense they might have to incur in obtaining information for those particulars to be furnished. Otherwise, this means that Mr Gonzalo is left to speculate what exactly the plaintiffs' case on damages is. I also unequivocally rejected the plaintiffs' argument that they had no knowledge of the information required to answer the interrogatories. How could that be the case when they were the ones who had engaged and instructed Sainz Abogados and Dechert to perform the work for which the relevant invoices were issued?

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19 OJ at para 18.

29 Pursuant to O 56 r 1(3) of the ROC 2014, the time for appeal against my decision in SUM 2725 expired on 7 November 2024. The plaintiffs did not appeal against my decision.

The plaintiffs' attempts at compliance with ORC 1753 and the events leading to the filing of SUM 1028

30 ORC 1753 required the plaintiffs to provide their answers to the SA Interrogatories and the Dechert Interrogatories by 4 December 2024. The plaintiffs subsequently obtained an extension of time until 15 January 2025 for compliance.[20]

31 On 15 January 2025, the plaintiffs filed an affidavit ("the 15 Jan Affidavit")[21] which purportedly contained their responses to the interrogatories. Paragraphs 6 and 7 of the 15 Jan Affidavit, respectively, identified Annex A of its exhibit as the plaintiffs' response to the SA Interrogatories, and Annex B of its exhibit as the plaintiffs' response to the Dechert Interrogatories. I will address the contents of these annexes in detail below (at [40]–[43]).

32 On 25 February 2025, Mr Gonzalo's solicitors wrote to the plaintiffs' solicitors ("the 25 Feb Letter"), identifying several deficiencies in the responses provided by the plaintiffs in the 15 Jan Affidavit (see [44] below). Mr Gonzalo's solicitors invited the plaintiffs' solicitors to file a further affidavit by 4 March 2025 to properly answer the interrogatories.[22] At a pre-trial conference on 6 March 2025, the plaintiffs' solicitors informed the court that they were still in the midst of taking their clients' instructions on furnishing further answers to

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20 4-GGW at para 32.

21 5-GGW at para 33; 12th affidavit of Roger Arnold Hancock ("12-RAH").

22 5-GGW at para 37.

the interrogatories as requested in the 25 Feb Letter. The court directed that the plaintiffs provide a response to the 25 Feb Letter by 13 March 2025.[23] On 13 March 2025, the plaintiffs' solicitors wrote to court, citing the court's earlier directions and informed the court that a response to the 25 Feb Letter would be provided by 21 March 2025 instead.[24]

33 On 21 March 2025, the plaintiffs filed a further affidavit which they said contained responses which addressed the deficiencies identified in the 25 Feb Letter ("the 21 Mar Affidavit").[25] In the 21 Mar Affidavit, the plaintiffs exhibit a copy of a letter from the plaintiffs' solicitors of even date which they confirmed contained their responses to the 25 Feb Letter. Similarly, I will address the contents of the 21 Mar Affidavit in detail below (at [45]).

34 Having reviewed the contents of the 21 Mar Affidavit, Mr Gonzalo maintained his view that the plaintiffs' responses are deficient and on 28 March 2025, he filed SUM 1028.

The application in SUM 1028

35 In SUM 1028, Mr Gonzalo sought an order for the plaintiffs to fully comply with ORC 1753 by furnishing the following answers in relation to the SA Interrogatories and the Dechert Interrogatories:

> (a) In relation to [the SA Legal Fees], which was claimed as a head of damages in the Plaintiffs' letter dated 1 April 2024 ('1 April Letter'),:
>
> > (i) the specific quantum of professional fees and disbursements (as detailed in the invoices of Sainz Abogados found in the Plaintiffs' lists of documents)

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23 5-GGW at para 38.

24 5-GGW at para 39.

25 5-GGW at para 41; 13th affidavit of Roger Arnold Hancock ("13-RAH").

> which correspond to the specific legal work and the particular Mexican legal action, application, hearing, appeal and/or proceedings that Sainz Abogados is alleged to have undertaken in relation to the Plaintiffs' *concurso*.
>
> (b) In relation to [the Dechert Legal Fees], which was claimed as a head of damages in the 1 April Letter, please state:
>
> (i) a breakdown of the specific legal work allegedly performed by [Dechert] which relate to the Plaintiffs' *concurso*;
>
> (ii) the specific action, application, hearing, appeal and/or proceedings in which the aforesaid works were allegedly undertaken; and
>
> (iii) The quantum of the professional fees, specific disbursements and identity of the invoices which correspond to the abovementioned work.

36 It would be apparent, from the wording of the 'unless' order sought, that Mr Gonzalo took issue with the sufficiency of the answers provided by the plaintiffs to the following interrogatories in ORC 1753 (which I hereafter refer to as the "Identified Interrogatories"):

(a) In relation to SA Interrogatories (see [22]–[23] above), *part (c) of the interrogatories*, which asked the plaintiffs to state "[t]he quantum of the professional fees, specific disbursements and identity of the invoices which correspond to" the work which the plaintiffs identified Sainz Abogados as having undertaken in each of the Mexico proceedings.

(b) In relation to the Dechert Interrogatories (see also [22]–[23] above), *the entirety of those interrogatories except for part (d)*.

37 On 9 May 2025, the plaintiffs filed their reply affidavit in SUM 1028 ("the 9 May Affidavit").[26] It was in the 9 May Affidavit that the plaintiffs disclosed, for the first time, (a) unredacted copies of the Dechert Invoices; and (b) unredacted copies of the Further SA Invoices.

The issues

38 There were two key issues to be decided in SUM 1028:

(a) Whether the Identified Interrogatories have been sufficiently answered by the plaintiffs?

(b) If not, whether an 'unless' order is warranted to compel the plaintiffs' full compliance with ORC 1753?

Whether the Identified Interrogatories have been sufficiently answered?

39 Before turning to the issue proper, let me set out the contents of the 15 Jan Affidavit and the 21 Mar Affidavit, which contain the plaintiffs' responses to the SA Interrogatories and the Dechert Interrogatories.

The contents of the plaintiffs' responses to the SA Interrogatories and the Dechert Interrogatories

40 The 15 Jan Affidavit consists of two annexes (Annex A and Annex B) which enclosed the plaintiffs' responses to the SA Interrogatories and the Dechert Interrogatories, respectively.

41 Annex A of the 15 Jan Affidavit consists of the following:

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[26] 14-RAH.

(a) A table ("the Mexico Proceedings Timetable") with three columns respectively titled "date", "proceeding" and "action/motion".[27] There are several row entries in the Mexico Proceedings Timetable. The contents of each row entry consist of the following:

(i) A calendar month (*eg*, March 2019), which is stated in the "date" column.

(ii) The "proceeding" column identifies certain legal proceedings in the Mexico courts. Two examples are "Concurso Rig Owners 395/2017", which appears to be a reference to *Concurso* 395 (*ie*, the Plaintiffs' *Concursos*), and "Perforadora and Integradora Concurso Proceeding 345/2017", which appears to be a reference to *Concurso* 345 (encompassing both Perforadora's *Concurso* and Integradora's *Concurso*) (see also [11] above).

(iii) The "action/motion" column contains a brief description of the work done by Sainz Abogados (with individuals from the team at Sainz Abogados specifically mentioned for most entries) in relation to the legal proceeding identified in the previous column.

(b) A table listing all the SA Invoices ("the Table of Invoices"),[28] with details such as the date of the invoice, fees and disbursements charged, the period for which work was done and billed under that invoice (the second rightmost column), and the date on which each of the invoices were paid (the rightmost column).

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27 12-RAH at pp 8–44.

28 12-RAH at pp 45–46.

42 Although not specifically stated, it appears that each calendar month entry in the Mexico Proceedings Timetable corresponds to each line entry in the Table of Invoices. In other words, each calendar month entry in the Mexico Proceedings Timetable relates to a distinct SA Invoice.

43 Annex B of the 15 Jan Affidavit consists of a document which sets out, in relation to each distinct proceeding in the US courts, a table of the key events which took place in each of those proceedings and the dates on which they occurred ("the US Proceedings Timetable").[29] These key events include the filing of certain applications, hearings, the filing of documents in court (such as letters and legal memoranda), the raising of objections by certain parties, and the making of certain orders. However, on the face of the US Proceedings Timetable, it is unclear whether each of these events were attributable to work done by Dechert or if they had even occasioned work on the part of Dechert. This is because, unlike the Mexico Proceedings Timetable, it is not stated in the US Proceedings Timetable as to who had brought about each of these events, for example, whether it had been the lawyers at Dechert or other parties, or how the lawyers at Dechert had been involved at all in connection with these events.

44 Mr Gonzalo's solicitors considered the contents of the 15 Jan Affidavit inadequate. In the 25 Feb Letter, his solicitors wrote to the plaintiffs' solicitors, identifying the following deficiencies in the plaintiffs' responses:

(a) The plaintiffs had wholly failed to provide any answers in relation to the Further SA Invoices. At that time, the Further SA Invoices were completely redacted.

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[29] 12-RAH at pp 48–56.

(b) The plaintiffs' responses to the SA Interrogatories were inadequate because, among other things: (i) two of the row entries in the Mexico Proceedings Timetable (which correspond to the August 2017 and September 2017 SA Invoices respectively) did not identify the legal proceeding for which fees in those invoices had been incurred; and (ii) for several of the other row entries of the Mexico Proceedings Timetable, although there was some description of the work done and the proceeding in which such work was done was also identified, there was no indication as to the amount of fees in each invoice that was attributable to each of the identified proceeding(s). In other words, the breakdown of the quantum of fees in each invoice, which part (c) of the SA Interrogatories sought, remain unanswered.

(c) The US Proceedings Timetable was a "wholly meaningless document" that went nowhere towards answering the Dechert Interrogatories.

45 The plaintiffs provided their further response by way of the 21 Mar Affidavit. The 21 Mar Affidavit consisted of the following:

(a) A table similar to the Mexico Proceedings Timetable but consisting of row entries for the calendar months of February 2024 to June 2024 ("the Further Mexico Proceedings Timetable").[30] It appears that each calendar month entry relates to each distinct Further SA Invoice. At that time, all of the Further SA Invoices were completely redacted.

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30 13-RAH at pp 14–15.

(b) A note setting out details of the various actions or proceedings which took place in the Mexico courts in relation to *Concurso* 345 and *Concurso* 395 ("the Mexico Proceedings Note"),[31] such as the appeals brought to the *amparo* court and certain enforcement proceedings which were brought.

(c) A revised version of the US Proceedings Timetable ("the Revised US Proceedings Timetable").[32] Similar to the US Proceedings Timetable, the Revised US Proceedings Timetable also lists the various events in each of the US proceedings, but this time correlating each of them with a corresponding Dechert Invoice and also states the date on which each of these invoices were paid. At that time, all of the Dechert Invoices were completely redacted.

46 In the 9 May Affidavit, the plaintiffs disclosed unredacted versions of the Further SA Invoices as well as the Dechert Invoices. The plaintiffs also annexed a timetable which is identical in content to the Revised US Proceedings Timetable, but which includes additional information like docket and proceeding numbers and the title of each of the US proceedings involved.[33] I will refer to this as "the Further Revised US Proceedings Timetable".

The plaintiffs failed to provide any answer to part (c) of the SA Interrogatories

47 Based on the wording of the 'unless' order sought in SUM 1028, Mr Gonzalo does not appear to dispute that the plaintiffs have provided sufficient

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31 13-RAH at pp 17–25.

32 13-RAH at pp 27–33.

33 14-RAH at pp 268–270.

answers in relation to parts (a), (b) and (d) of the SA Interrogatories. I generally agree that this position was rightly taken, for the reasons explained below. For illustration, I accompany my reasons with the following extract taken from the Mexico Proceedings Timetable for the month of March 2019:[34]

Date	Proceeding	Action/Motion
March 2019	Concurso Rig Owners 395/2017	• On March 6, 2019, MRC [Manuel Ruiz de Chavez Gutierrez de Velasco, a lawyer at Sainz Abogados] filed a motion to notify the revocation of powers granted to the Guerra Lawyers and to affirm that the sole legal representatives of the Rig Owners are the members of [Sainz Abogados]
	Perforadora and Integradora Concurso Proceeding 345/2017	• On March 4, 2019, MRC on behalf of the Singapore Entities filed a revocation motion against the 25 February 2019 Court Order which order the Trustee to pay Perforadora the Charter Assets.

48 As mentioned above (at [42] and [45(a)]), each calendar month entry in the Mexico Proceedings Timetable as well the Further Mexico Proceedings Timetable relates to a distinct SA Invoice and Further SA Invoice, respectively. In connection with each SA Invoice, the Mexico Proceedings Timetable and the Further Mexico Proceedings Timetable identify the legal proceeding for which work was done (under the "proceeding" column) and contains a brief description of the work done by Sainz Abogados in each identified legal proceeding (under the "action/motion" column). The work which Sainz

[34] 12-RAH at p 17.

Abogados is said to have undertaken include the drafting of legal opinions and memoranda, the filing of motions and documents as well as appearance in court hearings. Most of these entries also identify the relevant individual from the team at Sainz Abogados that had carried out the work described, and the date on which such work was carried out.

49 Reading the Mexico Proceedings Timetable and the Further Mexico Proceedings Timetable, one can identify, for each SA Invoice or Further SA Invoice, the specific Mexico action or proceeding to which that invoice relates, and the work that was done within each proceeding. On this basis, I accept that the plaintiffs have provided a sufficient response to parts (a) and (b) of the SA Interrogatories which respectively seek: (a) a breakdown of the specific legal work performed by Sainz Abogados in the Mexico proceedings; and (b) the specific Mexico action or proceeding for which such work was undertaken.

50 Notwithstanding my view that the Mexico Proceedings Timetable and the Further Mexico Proceedings Timetable disclose a sufficient answer to parts (a) and (b) of the SA Interrogatories, I would observe that the manner in which the plaintiffs have prepared the Mexico Proceedings Timetable as a matter of compliance with ORC 1753 is far from satisfactory. I highlight three points.

(a) First, in the descriptions of work done in the "action/motion" column, various individuals are identified as having completed work which Sainz Abogados is said to have undertaken in the relevant Mexico proceeding, but there is no explanation in the Mexico Proceedings Timetable as to who these individuals were, though it appears that these individuals are lawyers at Sainz Abogados or legal professionals engaged by the plaintiffs.

(b) Secondly, there are several abbreviated terms used in the Mexico Proceedings Timetable for which the abbreviation is not set out in full at first instance, to list a few, "the Rig Owners",[35] "the Singapore Entities",[36] "the Inefficiency and Punitive Damages Action"[37] and "the 11 October 2018 Court Order".[38] Although one can expect Mr Gonzalo to be aware of what these terms mean since he had been involved in the Mexico proceedings, given that the Mexico Proceedings Timetable consisted of answers to interrogatories which the plaintiffs were providing pursuant to an order of court, the least that could be expected is for abbreviations to be defined in a systematic manner so that the answers to which they relate can be understood without ambiguity.

(c) Finally, there are obvious typographical errors in the Mexico Proceedings Timetable, such as the third bullet point in the "action/motion" column for February 2018[39] and the third bullet point in the "action/motion" column for August 2019,[40] both of which appear to be incomplete sentences. I do not think it is unreasonable to expect the Mexico Proceedings Timetable to be prepared with greater clarity and without such errors, given that it is intended to particularise the plaintiffs' case and lay the requisite foundation for the AD Proceedings, and needless to say, comply with ORC 1753.

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35 12-RAH at p 8.

36 12-RAH at p 17.

37 12-RAH at p 9.

38 12-RAH at p 15.

39 12-RAH at p 12.

40 12-RAH at p 22.

51 Part (d) of the SA Interrogatories asked for the date on which each SA Invoices and Further SA Invoice was paid. As mentioned above (at [41(b)]), all the SA Invoices were listed in the Table of Invoices, which also identified the date on which each of them was paid. As such, I accept that the plaintiffs have provided a sufficient response to part (d) of the SA Interrogatories, in so far as the SA Invoices are concerned. However, the Further SA Invoices are not listed in the Table of Invoices and no other response or material adduced by the plaintiffs in SUM 1028 disclosed information relating to the when the Further SA Invoices were paid. Part (d) of the SA Interrogatories therefore remain unanswered in so far as the Further SA Invoices are concerned. Mr Gonzalo flagged this issue in his written submissions[41] but did not pursue this as part of his application for an 'unless' order in SUM 1028. Nonetheless, this is revealing of the unsatisfactory manner in which the plaintiffs have attempted to comply with the orders made in ORC 1753 and has a bearing on whether an 'unless' order ought to be made, which I will address below (at [75]–[76]).

52 However, part (c) of the SA Interrogatories remain completely unanswered. To recap, part (c) sought:

> (c) The quantum of the professional fees, specific disbursements and identity of the invoices which correspond to the abovementioned work;

53 Given the phrase "which correspond to the *abovementioned* work" [emphasis added], part (c) of the SA Interrogatories must be read together with parts (a) and (b). When so read together, part (c) essentially asks for the fees and disbursements charged in each SA Invoice (as well as Further SA Invoice) to be broken down with reference to the work for which those fees and disbursements were incurred (*ie*, answers furnished in response to part (a) of the

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41 Third defendant's written submissions at para 39.

SA Interrogatories) *and* the specific Mexico action or proceeding in respect of which that work was undertaken (*ie*, answers furnished in response to part (b) of the SA Interrogatories). In other words, to answer part (c) of the SA Interrogatories, the plaintiffs must break down the fees charged in each invoice with reference to the specific Mexico action or proceeding for which those fees were incurred, and additionally, they should also break down those fees with reference to the work which is said to have been undertaken in the identified Mexico action or proceeding, *ie*, the answers which they furnish in response to parts (a) and (b) of the SA Interrogatories.

54 None of the responses provided by the plaintiffs – whether in the 15 Jan Affidavit, the 21 Jan Affidavit, or the 9 May Affidavit filed in reply for SUM 1028 – provide any clue as to how the fees in each SA Invoice or Further SA Invoice are to be broken down, whether in terms of the specific Mexico action or proceeding for which fees were incurred or the work done in those proceedings. Let me illustrate this using the entry for March 2019 from the Mexico Proceedings Timetable (extracted at [47] above), which relates to SA Invoice no. 33076 issued on 3 April 2019,[42] for which a sum of US$189,786.59 was charged.[43] As the entry for March 2019 in the Mexico Proceedings Timetable identifies two sets of Mexico proceedings in respect of which work was done (namely, *Concurso* 395 (*ie*, the Plaintiffs' *Concursos*) and *Concurso* 345 (encompassing both Perforadora's *Concurso* and Integradora's *Concurso*)), this means that the fees in invoice no. 33076 were charged in respect of two sets of Mexico proceedings. However, there is nothing in the Mexico Proceedings Timetable (or in any of the other responses provided by the plaintiffs) which

42 12-RAH at p 45.

43 3D BOD, Vol 2, Tab 21.

purport to breakdown the total sum of fees in SA Invoice no. 33076 with reference to each of these proceedings.

55 SA Invoice no. 33076 itself does not provide any further clue. The invoice itself simply consists of line entries with descriptions of work done (and some entries consist of generic repetitions)[44] which specify the fee earner, the time spent, and the fee charged. Nothing in the descriptions of work in SA Invoice no. 33076 correspond to the various descriptions of work done in the March 2019 entry of the Mexico Proceedings Timetable such that it is possible to deduce, by reading SA Invoice no. 33076 together with the Mexico Proceedings Timetable, the amount of fees charged in connection with *Concurso* 395 and *Concurso* 345 respectively, and the work that is said to have been undertaken in each of these proceedings. For example, several entries in SA Invoice no. 33076 state "Continued representation … in order to prepare/discuss legal motions filed". However, based on the Mexico Proceedings Timetable, a total of three motions were filed in both *Concurso* 395 and *Concurso* 345 during the relevant period, and several other motions had also been filed in the months before. Except for the plaintiffs who had provided instructions to Sainz Abogados to undertake the relevant work, no one else is in a position to provide an answer as to what those "legal motions" referenced in SA Invoice no. 33076 are, and how they relate to the motions identified in the March 2019 entry of the Mexico Proceedings Timetable.

56 With the exception of the entries for August and September 2017, all the other calendar month entries of the Mexico Proceedings Timetable and the Further Mexico Proceedings Timetable are of similar nature to the entry for March 2019, which I have described earlier. It is also undisputed that the

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44 3rd defendant's written submissions at para 37(d).

structure of SA Invoice no. 33076 which I have described is similar to all of the other SA Invoices. Thus, the deficiency explained above (at [54]) apply equally to all these other entries of the Mexico Proceedings Timetable and the Further Mexico Proceedings Timetable, for the purposes of part (c) of the SA Interrogatories.

57 As for the entries for August and September 2017 in the Mexico Proceedings Timetable, they contain a brief description of work done in the "action/motion" column but the "proceeding" column is left blank. The work which is said to have been done in August and September 2017 consists of "[d]rafting legal opinions and memorandum regarding the legal framework of the *concurso* proceeding". To recap, the *concursos* were only filed in September 2017 – the petition for Perforadora's *Concurso* was filed on 11 September 2017, and petitions for Integradora's *Concurso* and the Plaintiffs' *Concursos* were filed on 29 September 2017 (see [8]–[10] above). By not specifying the relevant Mexico proceeding in respect of which such work was done, it would appear that the plaintiffs take the position that the *same* work was done in relation to *all* of the Mexico proceedings which Sainz Abogados had represented the plaintiffs for during the relevant period of time. To this extent, parts (a) and (b) of the SA Interrogatories have been answered in respect of the entries for August and September 2017 in the Mexico Proceedings Timetable, for reasons similar to those explained above (at [49]). However, the deficiency which I have identified above (at [54]) in relation to part (c) of the SA Interrogatories applies equally here because there is similarly no breakdown of the fees charged in the SA Invoices for August and September 2017 with reference to the specific Mexico action or proceeding for which work was done. The fact that the *same* work was done in all of the Mexico actions or proceedings does not excuse the plaintiffs from providing such a breakdown, since distinct fees for doing the

same work would have been incurred in connection with *each* Mexico action or proceeding.

58 It should be highlighted that part (c) of the SA Interrogatories is fundamental to the entire set of interrogatories which were ordered in ORC 1753. The entire purpose of the interrogatories was for the plaintiffs to particularise the *sums of legal fees* which they were seeking to claim as damages in the AD Proceedings. For any such particularisation to be meaningful, the plaintiffs must obviously provide a breakdown of the sums charged in each of the SA Invoices and the Further SA Invoices, which form the basis of the damages claim for the SA Legal Fees. In other words, if there is no sufficient answer to part (c) of the SA Interrogatories, any answer given in respect of parts (a) and (b) of the SA Interrogatories would be meaningless because Mr Gonzalo is similarly left to speculate the quantum of legal fees in each invoice that are attributable to each Mexico action or proceeding identified in the Mexico Proceedings Timetable and the Further Mexico Proceedings Timetable, as well as the work done in each of those proceedings. Put another way, by failing to provide a sufficient answer – indeed, *any* answer – to part (c) of the SA Interrogatories, the plaintiffs have defeated the entire purpose for which interrogatories were ordered in the first place in ORC 1753.

59 In response to the deficiencies identified by Mr Gonzalo's solicitors in the 25 Feb Letter, the plaintiffs filed the 21 Mar Affidavit, which enclosed the Mexico Proceedings Note.[45] This provides a more detailed description of the procedural history in the Mexico proceedings, but it does not go anywhere closer towards answering the interrogatories ordered in ORC 1753. In particular, it does not provide any suggestion as to how the fees charged in each

[45] 14-RAH at p 17.

SA Invoice and Further SA Invoice are to be broken down with reference to the specific Mexico action or proceeding for which fees were incurred under that invoice or the work done in each of those proceedings. There is also nothing in the Mexico Proceedings Note which indicates the date on which the Further SA Invoices were paid. Therefore, the contents of the Mexico Proceedings Note do not detract from my earlier conclusion that the plaintiffs have not provided any answer to part (c) of the SA Interrogatories, as well as part (d) of the SA Interrogatories in respect of the Further SA Invoices.

The plaintiffs provided insufficient answers to parts (a)–(b), and failed to provide any answer to part (c), of the Dechert Interrogatories

60 The Revised US Proceedings Timetable exhibited by the plaintiffs in the 21 Mar Affidavit identifies the dates on which each of the Dechert Invoices was paid. On this basis, I accept that the plaintiffs have answered part (d) of the Dechert Interrogatories, which therefore rightly did not come within the scope of the 'unless' order that Mr Gonzalo sought in SUM 1028.

61 For ease of discussion, I set out an extract of the Revised US Proceedings Timetable below,[46] which is similar to other sections of the Revised US Proceedings Timetable. I do not consider the Further Revised US Proceedings Timetable (see [46] above) separately as its contents appear to be identical to the Revised US Proceedings Timetable and do not contain any further information which the Revised US Proceedings Timetable does not already provide, for the purposes of responding to the Dechert Interrogatories.

Case No.	Date	Event	Chapter 15 Proceedings: Procedural Steps and Corresponding Dechert Invoices			
			Date	Description	Date of Payment	Amount (USD)

[46] 13-RAH at p 31.

Case No.	Date	Event	Chapter 15 Proceedings: Procedural Steps and Corresponding Dechert Invoices			
			Date	Description	Date of Payment	Amount (USD)
18-11094	August 5, 2019	Rig Owners' Memorandum of Law re 'Which Court Should Go First'	30-Sep-2019			
18-11094	August 5, 2019	Declaration of Shmuel Vasser in Support of Rig Owners' Memorandum of Law re 'Which Court Should Go First'	30-Sep-2019			
18-11094	August 5, 2019	Interested Parties' Memorandum of Law in Support of Adjournment of Foreign Representative's Sale Motion	30-Sep-2019			
18-11094	August 12, 2019	Reply in Support of Foreign Representative Motion to Authorize Entry into Litigation Interest Agreement	30-Sep-2019			
19-01294	August 26, 2019	Singapore Defendants' Motion to Dismiss	30-Sep-2019			
19-01294	August 26, 2019	Foreign Defendants' Motion to Dismiss	30-Sep-2019			
19-01294	August 26, 2019	Ad Hoc Defendants' Motion to Dismiss	30-Sep-2019			
19-01294	August 27, 2019	Fintech Advisory and Seadrill Memorandum of Law in Support of Joint Motion to Dismiss Complaint	30-Sep-2019	Invoice No. 1433128 for professional services/disbursements incurred during August 2019		
…						
…				Dechert – July to September 2019	22-Nov-2019	721,021.68

62 The Revised US Proceedings Timetable identifies, in relation to each Dechert Invoice, the following: (a) the date of payment (as indicated by the final

row in the extract above); (b) the different *US proceedings* for which work was done during the period of the invoice, as identified by the case numbers identified in the leftmost column; and (c) the "events" that took place in each of those proceedings.

63 In my view, the Revised US Proceedings Timetable does not disclose any sufficient answer to part (a) of the Dechert Interrogatories, which requires that the plaintiffs provide:

> (a) A breakdown of the specific legal work allegedly performed by [Dechert] which relate to the Plaintiff's *concurso*.

64 To be clear, while the descriptions of work contained in the Mexico Proceedings Timetable and the Further Mexico Proceedings Timetable are also somewhat generic (see [47]–[48] above), they are quite different in character from the descriptions listed in the "event" column of the Revised US Proceedings Timetable. In the Mexico Proceedings Timetable and the Further Mexico Proceedings Timetable, those descriptions relate to *work* which Sainz Abogados is said to have carried out. However, in the Revised US Proceedings Timetable, there is no indication of what work (if any) Dechert had undertaken in respect of each of those events. Without the latter piece of information, the entries in the "event" column are meaningless and abstract descriptions of the procedural timelines in the US proceedings that come nowhere close to providing a breakdown of what work *Dechert* had performed in the US proceedings, and whether (if at all) they related to the Plaintiffs' *Concursos*.

65 To illustrate using the extract above (the fifth row), in relation to the entry dated August 26, 2019 for case number 19-01294 titled "Singapore Defendants' Motion to Dismiss", it is unclear whether that motion was filed by Dechert or if Dechert had been required to respond in a motion filed by another

party, or whether that motion was related to the Plaintiffs' *Concursos*. To be clear, I do not think it is open to the plaintiffs to take the position that Mr Gonzalo can deduce for himself how Dechert had been involved in each of those events on account of Mr Gonzalo's knowledge of what had taken place in the US proceedings – the terms of part (a) of the Dechert Interrogatories are unambiguous and nothing therein suggests that the plaintiffs can answer those interrogatories by having Mr Gonzalo read the plaintiffs' responses with what they believe Mr Gonzalo knew about the US proceedings. In any case, as part of my decision in SUM 2725 where the Dechert Interrogatories were ordered, I have already considered any such knowledge Mr Gonzalo had of the US proceedings to be irrelevant to the necessity of these interrogatories (see [27] above; see also [86] below).

66 As for part (b) of the Dechert Interrogatories, I accept that the plaintiffs have correlated the various descriptions in the "event" column with the corresponding US proceeding in which that event is said to have taken place. For example, in relation to the same fifth row entry from the extract above dated August 26, 2019, one can understand the event described as "Singapore Defendants' Motion to Dismiss" as having taken place in the US proceeding involving case number 19-01294. However, for any such correlation to disclose a sufficient answer to part (b) of the Dechert Interrogatories, there must be some meaningful description of work done that qualifies as a sufficient answer to part (a) of the Dechert Interrogatories, in the first place. Given the conclusion I have arrived at in relation to part (a) of the Dechert Interrogatories, it follows that none of the correlations provided by the plaintiffs constitute a sufficient answer for the purposes of part (b) of the Dechert Interrogatories.

67 In the 9 May Affidavit, the plaintiffs finally disclosed unredacted versions of the Dechert Invoices. Even if the Revised US Proceedings Timetable

is read together with the Dechert Invoices, they similarly do not disclose any sufficient answer to parts (a) and (b) of the Dechert Interrogatories. I illustrate this using Dechert Invoice no. 1433128,[47] which is the subject of the extract from the Revised US Proceedings Timetable above. The line entries of Dechert Invoice no. 1433128 consist of brief descriptions of work done, such as working on briefs, review of materials and telephone calls with certain parties, and the time spent for each item of work done. Each Dechert Invoice also lists at its third page a "time and fee summary" which identifies the lawyers working on the matter and their respective hourly rates. As such, it is possible to calculate the fees charged for every item of work done that is listed in each Dechert Invoice. However:

(a) There is nothing in the invoice which indicates that all of the work done by Dechert and for which each Dechert Invoice was issued all relate to the Plaintiffs' *Concursos*. It is a disputed issue as to whether the work for which the Dechert Invoices were issued exclusively relate to the Plaintiffs' *Concursos* or also encompassed other proceedings which Mr Gonzalo says the plaintiffs ought not to be entitled to claim damages for.[48] This also explains why part (a) of the Dechert Interrogatories require the plaintiffs to provide a breakdown of the work done and "which relate to the Plaintiff's *concurso*". As such, the descriptions in the invoice are similarly abstract and meaningless descriptions that came nowhere close to providing a breakdown of the work that Dechert had performed in a manner that answers part (a) of the Dechert Interrogatories.

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47 14-RAH at p 89; 3D BOD, Vol 2, Tab 18.

48 Third defendant's written submissions at para 34(f); Plaintiffs' written submissions at para 57.

(b) The invoice itself makes no reference to the various US case numbers that are referred to in the Revised US Proceedings Timetable. For each item of work listed in the invoice, there is also no indication of the relevant US proceeding in which that work was undertaken. As such, the contents of each Dechert Invoice similarly do not provide any answer to part (b) of the Dechert Interrogatories.

68 Similar to the SA Interrogatories (see [53] above), part (c) of the Dechert Interrogatories should be read together with parts (a) and (b) of the same because the breakdown of fees which part (c) of the Dechert Interrogatories sought is meant to be specific to the work relating to the Plaintiffs' *Concursos* for which the fees in each Dechert Invoice were incurred (*ie*, answers furnished in response to part (a) of the Dechert Interrogatories) and the specific US proceeding in respect of which that work was undertaken (*ie*, answers furnished in response to part (b) of the Dechert Interrogatories). Quite clearly, the Revised US Proceedings Timetable does not provide any answer for part (c) of the Dechert Interrogatories. While the Revised US Proceedings Timetable does identify, for each Dechert Invoice, the specific US proceeding dealt with by that invoice, as well as events in the relevant US proceedings which come within the scope of that invoice, there is no breakdown of the fees whatsoever with reference to each specific US proceeding and the various events within each proceeding that are said to have occurred (putting aside the deficiencies in these descriptions which I have explained above at [64]–[67]). To use the extract above (at [61]) as an illustration, the sum of US$721,021.68 paid to Dechert in respect of invoices issued from July to September 2019 would encompass the various US proceedings and events listed in the corresponding parts of the Revised US Proceedings Timetable, but there is nothing in the Revised US

Proceedings Timetable which breaks down this sum with reference to each of those listed US proceedings and events.

Summary

69 For the reasons above, having considered the contents of the 15 Jan Affidavit, the 21 Mar Affidavit as well as the 9 May Affidavit, I conclude that the plaintiffs' answers to the Identified Interrogatories are plainly deficient and thus ORC 1753 has not been fully complied with. Specifically:

(a) The plaintiffs have failed to provide *any answer* to part (c) of the SA Interrogatories as well as part (c) of the Dechert Interrogatories.

(b) The answers which the plaintiffs purported to provide in response to parts (a) and (b) of the Dechert Interrogatories are plainly insufficient.

Whether an 'unless' order stipulating dismissal of the plaintiffs' claim in the AD Proceedings as the consequence of breach is warranted to compel the plaintiffs' full compliance with ORC 1753?

70 Given my conclusion above, the remaining issue is whether an 'unless' order is the appropriate response to the plaintiffs' failure to fully comply with ORC 1753.

71 It is of paramount importance that parties respect and obey orders of court, because the efficient and prompt administration of justice proceeds on the basis that orders of court would and should be observed (see, in a slightly different context, *Lee Shieh-Peen Clement and another v Ho Chin Nguang and others* [2010] 4 SLR 801 at [15]–[16]). To this end, one of the case management tools the court has to secure a defaulting party's compliance with court orders

is the making of an 'unless order'. The making of such an order is not intended to punish the defaulting party's misconduct and to compel compliance as an end in itself – rather, the underlying aim is to secure a fair trial in accordance with the due process of the law (see *Mitora Pte Ltd v Agritrade International (Pte) Ltd* [2013] 3 SLR 1179 ("*Mitora*") at [45]).

72 Given the potency of an 'unless' order, it is to be scrupulously used, and further: (a) it was only to be made as a last resort when the defaulter's conduct is inexcusable; (b) its conditions should as far as possible be tailored to the prejudice which would be suffered should there be non-compliance; and (c) in prescribing the consequence which a further breach of an 'unless' order would trigger, the court should consider alternative means of penalising contumelious or persistent breaches, other than striking out or dismissal of the defaulting party's claim or defence alone (see *Mitora* at [45]). The last point is of particular importance because, if an 'unless' order is not complied with, the stipulated consequence necessarily comes into effect , and the court has no discretion to assess the proportionality of such an outcome in deciding whether to enforce the consequences stemming from the breach of an 'unless order' (see *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European Topsoho Sarl* [2025] SGCA 32 at [36]–[40]; *DNG FZE v PayPal Pte Ltd* [2024] SGHC 65 at [100]).

73 Based on these principles, whether a party's breach of a prior court order ought to attract an 'unless' order stipulating dismissal as the consequence of further default entails two key considerations. The first consideration centres on the *conduct* of the defaulting party and asks whether the defaulting party's conduct is so inexcusable that it should warrant the gravest of all sanctions – dismissal or striking out – to secure its proper compliance with court orders going forward (see also *DFD v DFE and another* [2025] 3 SLR 362 at [63]).

The second consideration centres on the *subject matter* of the court order breached and asks whether a further breach would risk prejudicing a fair adjudication of the matter in accordance with the due process of the law, such that an 'unless' order stipulating dismissal is necessary as the appropriate sanction to deter a further breach.

An 'unless' order is warranted given the plaintiffs' conduct and the necessity of full compliance with ORC 1753 to secure a fair trial of the AD Proceedings

74 With these considerations in mind, I find that an 'unless' order which stipulated dismissal of the plaintiffs' claim for damages in the AD Proceedings as the consequence of default is warranted, for the following reasons.

75 First, the plaintiffs' breach of ORC 1753 was intentional and thus inexcusable. I have earlier recited the plaintiffs' attempts at compliance with ORC 1753 – the plaintiffs first filed the 15 Jan Affidavit, later the 21 Mar Affidavit *after* Mr Gonzalo's solicitors wrote to the plaintiffs' solicitors to highlight deficiencies in the plaintiffs' previous responses and finally, after SUM 1028 was filed, the plaintiffs disclosed unredacted versions of the Further SA Invoices and the Dechert Invoices, as well as the Further Revised US Proceedings Timetable, in the 9 May Affidavit (see [30]–[33] and [40]–[46] above). It is telling that the plaintiffs appear to have filed the 21 Mar Affidavit without contest or objection and even included in that affidavit materials which were intended to provide further responses to the SA Interrogatories and the Dechert Interrogatories. This shows that the plaintiffs were fully aware that the answers in the 15 Jan Affidavit were deficient in the first place. The plaintiffs' subsequent disclosure of unredacted versions of the Further SA Invoices and the Dechert Invoices in the 9 May Affidavit, despite their earlier position that these

invoices were privileged and thus could not be disclosed,[49] is also telling. It shows that the plaintiffs knew that the responses which they provided in the 21 Mar Affidavit remained deficient, which they then sought to remedy by disclosing unredacted versions of the invoices in an attempt to stave off the 'unless' order sought in SUM 1028. Indeed, the plaintiffs submitted that Mr Gonzalo would be able to decipher from all the materials they have provided so far (which would include these unredacted invoices) the plaintiffs' answers to the interrogatories in ORC 1753.

76 The 15 Jan Affidavit, being the plaintiffs' first attempt at compliance with ORC 1753 after they were granted a six-week extension of time, ought to have contained *all* of the plaintiffs' responses to the interrogatories. Notably, the plaintiffs had sought the six-week extension of time on the ground that they required more time to obtain information from Sainz Abogados to provide a "comprehensive response" to the interrogatories.[50] Yet, the 15 Jan Affidavit is deficient, a fact which the plaintiffs were fully aware of when they filed that affidavit. The plaintiffs therefore intentionally breached ORC 1753 at first instance. When Mr Gonzalo's solicitors wrote the 25 Feb Letter to the plaintiffs' solicitors to highlight the deficiencies in the 15 Jan Affidavit, the plaintiffs were put on notice of these deficiencies and thus given an opportunity remedy their breach. Yet, the further responses in the 21 Mar Affidavit remained deficient, a fact which the plaintiffs also well knew when they filed that affidavit. The plaintiffs therefore intentionally maintained their breach of ORC 1753 despite being forewarned of the same.

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49 14-RAH at para 20; Plaintiffs' written submissions in HC/SUM 2725/2024 at para 24.

50 Other Hearing Related Requests filed by the plaintiffs dated 4 December 2024 6.08pm.

77 A party's breach of a court order can well be characterised as excusable if he had made positive attempts at compliance but was prevented from doing so by extraneous circumstances beyond his control (see, for example, *Syed Mohamed Abdul Muthaliff v Arjan Bhisham Chotrani* [1999] 1 SLR(R) 361 at [14]). This case comes far from that because the plaintiffs *intentionally* made a deficient first attempt at compliance with ORC 1753 and then *intentionally* maintained that deficiency in their second attempt at compliance with ORC 1753. I should also highlight that it is *not* the plaintiffs' case that they were unable to obtain the required information from Sainz Abogados and Dechert to answer the interrogatories.[51] The intentional character of the plaintiffs' breach and the manner in which they maintained that breach despite being forewarned of the same shows that their conduct fully warrants an 'unless' order stipulating dismissal as the consequence of default.

78 Secondly, the plaintiffs' full compliance with ORC 1753 is necessary to secure a fair trial of the AD Proceedings. The interrogatories in ORC 1753 are ordered to ensure that the plaintiffs particularise their case on damages so that Mr Gonzalo could meaningfully put forward a defence. OS 126, being a proceeding commenced by way of originating summons, had no pleadings which operate as the four corners of the parties' cases in the litigation. While the plaintiffs did identify "damages" as one of the reliefs sought in the originating summons for OS 126, Mr Gonzalo would have no inkling as to what these claimed damages entail, until after the High Court found Mr Gonzalo liable for breach of Art 115A and after the plaintiffs wrote in with their letter on 1 April 2024 identifying the three heads of damages which they intended to pursue in the AD Proceedings (see [15]–[17] above).

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[51] 14-RAH at paras 8, 13, 14 and 19.

79 Therefore, the interrogatories in ORC 1753 are meant to level the playing field between the plaintiffs and Mr Gonzalo in the AD Proceedings and to avoid Mr Gonzalo being taken by surprise at trial regarding the plaintiffs' claimed damages and the bases on which these damages are quantified. The plaintiffs might well take a different view of the necessity of these interrogatories and whether ORC 1753 had been correctly granted, but having not appealed against my decision in SUM 2725 (see [29] above), they must be taken to have accepted the merits of that decision, and any subjective view they might hold on these issues cannot provide justification for their non-compliance with ORC 1753. The plaintiffs' breach of ORC 1753 risked prejudicing a fair trial of the AD Proceedings and an 'unless' order stipulating dismissal as the consequence of default is an appropriate response to that breach.

80 I should further add that, apart from an 'unless' order, Mr Gonzalo could have immediately sought striking out of the plaintiffs' claim for damages on account of their breach of ORC 1753 pursuant to O 26 r 6(1) of the ROC 2014. The availability of such an option reinforces the appropriateness of an 'unless' order stipulating dismissal of the plaintiffs' claim for damages in the AD Proceedings as the consequence of default. For the avoidance of doubt, I only reference O 26 r 6(1) to emphasise the appropriateness of the 'unless' order made, and I do not intend to express a view on any such application under O 26 r 6(1) which Mr Gonzalo could have brought.

The justifications provided by the plaintiffs for their failure to fully comply with ORC 1753 are without merit

81 The plaintiffs put forward two justifications for why an 'unless' order should not be made. First, the plaintiffs argued that Mr Gonzalo would be able to decipher, from the responses provided and the documents disclosed, their answers to the Identified Interrogatories, especially since Mr Gonzalo was

intimately involved in the Mexico and US proceedings himself and knows the process through which those proceedings have journeyed.[52] Secondly, the various *concursos* in Mexico and the US proceedings arising therefrom had proceeded simultaneously and the plaintiffs had treated these proceedings as a single action without distinguishing between them, and at the material time, they also did not require Sainz Abogados and Dechert to record or document any such distinction in the fees charged. Therefore, it is not possible for the plaintiffs to *now* provide the breakdown of fees as sought by part (c) of the SA Interrogatories and part (c) of the Dechert Interrogatories. In any case, it would not be "commercially feasible" for such a breakdown to be provided as it would effectively require the plaintiffs to dissect and rework each of the invoices in a manner that was inconsistent with how the Mexico and US proceedings had actually been conducted.[53]

82 As I explain below, both these justifications are without merit, and more fundamentally, because they constitute an impermissible attempt by the plaintiffs to relitigate matters which either have been decided or which ought to have been raised in SUM 2725 (pursuant to which ORC 1753 was granted), principles within the doctrine of *res judicata* operate to preclude the plaintiffs from relying on these justifications as grounds for resisting the 'unless' order sought.

Mr Gonzalo's ability to make out for himself the plaintiffs' case on damages

83 Implicit in the first justification relied on by the plaintiffs is that the deficient answers which they have provided to the Identified Interrogatories is

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52 Plaintiffs' written submissions at para 55.

53 Plaintiffs' written submissions at paras 53–57.

somewhat *excusable* because Mr Gonzalo can make out for himself what the plaintiffs' case on damages is. Effectively, what the plaintiffs are saying is that their breach of ORC 1753 is *inconsequential* and thus an 'unless' order is an unnecessary sanction. This cannot be correct. It goes without saying that a party in default of a prior court order should not be entitled rely on what he *subjectively* believes are trivial or insignificant consequences of his breach as grounds for that breach to be excused. Whether a party's breach of a prior court order is excusable involves an *objective* assessment of whether he had been prevented from full compliance as a result of extraneous circumstances beyond his control (see [77] above). If the plaintiffs' submission were countenanced, it effectively means that a party is free to dictate the extent to which he complies with an order of court depending on what he subjectively believes are matters requiring compliance or what he believes could acceptably be breached. This flies in the face of the starting point that all orders of court are to be respected and complied with (see [71] above).

84 More fundamentally, however, I find that the plaintiffs are precluded by the doctrine of issue estoppel from relying on what they claim Mr Gonzalo knew of the Mexico and US Proceedings as a justification for providing insufficient answers to the Identified Interrogatories.

85 Where a court of competent jurisdiction has determined some question of fact or law, either in the course of the same litigation or in other litigation which raises the same point between the parties, the doctrine of issue estoppel operates to preclude a litigant from advancing that same point, except in the special circumstance where there has become available to that litigant further material relevant to the correct determination of the point involved in the earlier proceedings, provided that the further material in question could not by reasonable diligence have been adduced in those earlier proceedings (see *The*

Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal [2015] 5 SLR 1104 ("*TT International Ltd*") at [100]; *Beh Chew Boo v Public Prosecutor* [2021] 2 SLR 180 at [39]). There are four distinct requirements that have to be met for an issue estoppel to be established: (a) there must be a final and conclusive judgment on the merits; (b) that judgment must be of a court of competent jurisdiction; (c) there must be identity between the parties to the two sets of litigation; and (d) there must be an identity of subject matter in the two proceedings (see *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 ("*Goh Nellie*") at [26]).

86 In SUM 2725, where ORC 1753 was granted, the plaintiffs had argued that the interrogatories were not necessary because Mr Gonzalo would be fully aware as to what their claimed damages are since Mr Gonzalo himself knew what had taken place in the Mexico and US proceedings, which were brought about by him through his lawyers.[54] Therefore, one issue which I had to decide in SUM 2725 was whether Mr Gonzalo's knowledge of the Mexico and US proceedings would show that the interrogatories sought are unnecessary. I answered that issue in the negative because, even if it were assumed that Mr Gonzalo knew of what went on the Mexico and US proceedings, the interrogatories pertained to work which the plaintiffs had instructed their *own* lawyers at Sainz Abogados and Dechert to undertake, which Mr Gonzalo would obviously not be privy to (see [27] above). By now relying on what Mr Gonzalo knew of the Mexico and US proceedings as a justification for their insufficient and deficient answers to the Identified Interrogatories, the plaintiffs are essentially seeking to relitigate that same issue which I had already decided, the

[54] See, for example, plaintiffs' written submissions in HC/SUM 2725/2024 at paras 25 and 27.

merits of which they also appear to have accepted as no appeal was brought against my decision in SUM 2725. For completeness, the plaintiffs did not cite any change in circumstance whether generally or in terms of what they believed Mr Gonzalo knew of the Mexico and US Proceedings to warrant them relitigating the same issue despite my previous determination in SUM 2725.

87 Further, the requirements for the invocation of the doctrine of issue estoppel are plainly satisfied:

(a) My decision in SUM 2725 constitutes a final and conclusive judgment on the merits in relation to the necessity of the interrogatories in ORC 1753, and the fact that SUM 2725 was an interlocutory decision is immaterial (see *Goh Nellie* at [28]).

(b) SUM 2725 was decided by a court of competent jurisdiction, and there is also an identity of parties between SUM 2725 and the present proceedings in SUM 1028.

(c) The requirement of identity of subject matter is considered in relation to the issues decided in the earlier proceeding and the issues argued in the later proceeding (see *Goh Nellie* at [34]; KR Handley, *Spencer Bower and Handley: Res Judicata* (5th Ed, LexisNexis, 2019) at para 8.05). It is not a requirement that the two sets of litigation involve the identical dispute (and if that were the case, the doctrine of cause of action estoppel would be relevant instead: see *TT International Ltd* at [99]). From what I have explained earlier (at [86]), it is clear that the issue which the plaintiffs now seek to argue by their first justification for non-compliance with ORC 1753 overlaps entirely with an issue which had been raised and decided in SUM 2725 (the bearing of Mr Gonzalo's knowledge on the necessity of the interrogatories sought).

> That issue was also fundamental, and not merely collateral, to my previous decision in SUM 2725 regarding the necessity of those interrogatories.

88 Indeed, it is consistent with the public interest in securing finality and in ensuring that the same issues are not repeatedly litigated – which underlies the doctrine of issue estoppel (see *Goh Nellie* at [37]) – that a party in default of a prior court order should not be permitted to reargue issues relating to whether that court order ought to have been made or whether it was correctly made (where no appeal was brought against that order, or where the order continues to stand after the conclusion of any such appeal), where those same issues had already been raised and decided in the earlier proceeding pursuant to which that court order was made.

The impossibility or commercial unfeasibility of compliance with ORC 1753 given the reality of how the Mexico and US Proceedings were conducted

89 Turning now to the plaintiffs' second justification, having looked at copies of the SA Invoices, Further SA Invoices and Dechert Invoices which were adduced in the affidavits in these proceedings, it does appear that the individual line items in each of these invoices, which correspond to work done by Sainz Abogados and Dechert, do not identify the specific proceeding for which that work was undertaken. As such, I think there is some truth in the plaintiffs' claim that, if they were required to answer the interrogatories in ORC 1753 (and specifically, part (c) of the SA Interrogatories as well as part (c) of the Dechert Interrogatories), the information which they require goes beyond the four corners of the various invoices.

90 Even then, and even if I were to accept the plaintiffs' claim that Sainz Abogados and Dechert had undertaken work in the Mexico and US proceedings

without any distinction as to the specific proceeding for which work was done, I do not think this makes it *impossible* for the plaintiffs to provide answers to the Identified Interrogatories. What the interrogatories in ORC 1753 seek is not *proof* of how each of the sums stated in the invoices had been incurred. For instance, the plaintiffs are *not* asked to provide contemporaneous time sheets or documentary records maintained by Sainz Abogados or Dechert relating to how each of those sums in the invoices had been incurred. Rather, the purpose of the interrogatories is to commit the plaintiffs to a position regarding the amount of legal fees which are attributable to the different sets of legal proceedings in Mexico and the US, and the amount of those fees which they seek to recover as damages for Mr Gonzalo's breach of Art 115A. This is something which the plaintiffs can arrive at by revisiting the history of those proceedings and obtaining input from their lawyers at Sainz Abogados and Dechert. Indeed, in the Mexico Proceedings Timetable and the Revised US Proceedings Timetable, the plaintiffs knew to draw a distinction between the various sets of proceedings in each jurisdiction (see [48]–[49] and [62] above). Requiring the plaintiffs to state the amount in each invoice that is attributable to each of those identified proceedings and the work done within each proceeding is the logical next step.

91 In my view, the plaintiffs' real complaint is that they would face practical difficulties and incur significant expense in undertaking the relevant exercise to work out answers to the Identified Interrogatories. That might well be the case, given the protracted history of the Mexico proceedings, which is likely applicable to any US proceedings that were brought in consequence of the Mexico proceedings. However, I do not think this provides any justification for the plaintiffs' failure to fully comply with ORC 1753, for two reasons.

92 First, any difficulty or expense associated with such an exercise is a necessary incident of how the plaintiffs have pitched their case on damages in

the AD Proceedings. Based on the judgments delivered in the earlier tranche of the proceedings in OS 126, both the High Court as well as the Court of Appeal drew a distinction between the Plaintiffs' *Concursos*, Perforadora's *Concurso* and Integradora's *Concurso* (see *Oro Negro (HC)* ([4] above) at [55] and [62] and *Oro Negro (CA)* ([4] above) at [2] and [19]–[23]) and Mr Gonzalo was found liable for breach of Art 115A in respect of the Plaintiffs' *Concursos* which he had caused each plaintiff to commence. As stated by the High Court (see *Oro Negro (HC)* at [109]):

> I find that the third defendant did cause *each plaintiff* to file a *concurso* petition without Mr Cochrane's vote of approval. The third defendant has accordingly breached the implied contract between himself and each plaintiff. He is liable in the usual way for damages to *each plaintiff* for the loss he has caused it to suffer by reason of his breach ….
>
> [emphasis added]

93 As such, any claim for damages which the plaintiffs have against Mr Gonzalo for breach of Art 115A would necessarily encompass legal fees associated with the Plaintiffs' *Concursos*, and to the extent that proceedings were brought in the US as a result of the Plaintiffs' *Concursos*, the corresponding US proceedings. If the invoices presented and the sums claimed as damages consisted of legal fees arising *exclusively* from the Plaintiffs' *Concursos*, then any argument about the commercial unfeasibility of providing a further breakdown might be viewed more charitably, given that in such a situation, the parameters of the plaintiffs' case on damages would have been laid down more clearly and there is less room for surprise at trial.

94 However, the plaintiffs are seeking to recover as damages legal fees associated with proceedings *other than* the Plaintiffs' *Concursos*. It is not in dispute that the various invoices which form the subject of the plaintiffs' damages claim also relate to proceedings involving Perforadora's *Concurso* and

Integradora's *Concurso*. As such, the plaintiffs must obviously be prepared to state the quantum of legal fees attributable to each of these legal proceedings (*ie*, provide the breakdown sought by part (c) of the SA Interrogatories and part (c) of the Dechert Interrogatories) because, based on the liability judgment, it is as yet uncertain whether the plaintiffs' damages would necessarily encompass fees incurred in those other proceedings. It is a live issue in the AD Proceedings as to whether Mr Gonzalo's liability for damages would also encompass those other legal fees, and if this issue is to be meaningfully contested, the breakdown sought by the Identified Interrogatories is fundamental. Therefore, any expense which the plaintiffs may incur in answering the Identified Interrogatories, whether by reason of the reality of how the Mexico and US proceedings were conducted or otherwise, is a necessary consequence of how the plaintiffs have pitched their case for damages in the AD Proceedings, and cannot operate as an excuse for the plaintiffs' failure to fully comply with ORC 1753.

95 I accept, as the plaintiffs submitted, that in the liability tranche of these proceedings, Mr Gonzalo's submissions had regarded the various proceedings in Mexico (*ie*, Perforadora's *Concurso*, Integradora's *Concurso* and the Plaintiffs' *Concurso*) as being linked and related.[55] Specifically, Mr Gonzalo had argued that, if the reliefs sought in OS 126 were granted, that would nullify the decisions of the Mexican courts relating to the *concursos* (as a whole) and raise issues of judicial comity (see *Oro Negro (HC)* at [85]). However, I do not think the fact that Mr Gonzalo had made this submission previously precludes him from now arguing that proceedings arising from or relating to the Plaintiffs' *Concursos* are distinct from the proceedings involving Perforadora's *Concurso* and Integradora's *Concurso* for the purposes of the AD Proceedings. Mr

[55] Plaintiffs' written submissions at para 52.

Gonzalo's earlier submissions had been made in connection with the issue of whether the grant of the reliefs sought in OS 126 would impact on judicial comity by nullifying the decisions of the Mexico courts on similar issues which those courts have decided (see *Oro Negro (HC)* at [155]). Mr Gonzalo was not maintaining, for all intents and purposes, that the various proceedings in Mexico are to be regarded as one and the same and importantly, that was also not the view taken by the High Court and the Court of Appeal, which both drew a distinction between each of those proceedings (see [92] above). As such, I do not think it can be said that Mr Gonzalo is, as the plaintiffs submitted, "disingenuous" or seeking to "create further confusion" by insisting on a distinction between each of the US and Mexico proceedings for present purposes.

96 Secondly, and more fundamentally, I find that the plaintiffs are precluded by the extended doctrine of *res judicata* from arguing that the reality of how the Mexico and US proceedings were conducted prevents them from providing the breakdown sought by the Identified Interrogatories and thus justifies their failure to fully comply with ORC 1753.

97 Unlike issue estoppel, which is engaged where a party seeks to re-argue points which were the subject of a previous judicial decision in earlier proceedings between the same parties, the extended doctrine of *res judicata* prevents a party from arguing points in later proceedings even when they had not been raised in the earlier proceedings, provided that those points properly belonged to the subject of the earlier proceedings and which the parties exercising reasonable diligence could and should have raised in the earlier proceedings (see *TT International Ltd* ([85] above) at [101]–[102]). The essence of the extended doctrine is to prevent litigants from mounting collateral attacks

against prior decisions in subsequent proceedings (see *CIX v CGN* [2025] 1 SLR 272 ("*CIX*") at [57]).

98 Where an order of court is made pursuant to contested proceedings to compel a party to comply with certain rules of civil procedure (such as to provide answers to interrogatories or to disclose documents), the court, in making the order, would obviously hear from both parties, including the party against whom the order is made (hereafter referred to as "the complying party"). In deciding whether the order should be made at all and if so, what terms are appropriate, the court would factor in any difficulties or impediments which the complying party claims it would face in compliance, provided that these issues are genuinely raised and relevant as a matter of law. If punctilious compliance with orders of court is to be insisted upon, then the court obviously does not make an order which it knows the complying party would be legally entitled to refuse compliance with, having regard to the materials put before the court at the time when the order is to be made. It therefore follows that, if a complying party is of the view that it would face difficulties or impediments that entitle it to refuse compliance with the order and so warrant the court *not* making that order, the onus is on the complying party to raise those issues at the contested proceedings at which that order is to be made.

99 Therefore, any difficulties or impediments that a complying party believes would entitle it to refuse compliance with an order of court made properly belong to the contested proceedings where that order is to be made, and which the complying party exercising reasonable diligence ought to have raised in those proceedings. If the complying party subsequently cites any such difficulties or impediments which it did not earlier raise, either as a justification for its non-compliance with the order, or as a reason for why it should not be sanctioned for its non-compliance with the order (for example, by the making

of an 'unless' order), that is an impermissible collateral attack on the outcome of those earlier proceedings pursuant to which that order was made. The only exception is where these alleged difficulties or impediments are attributable to circumstances which arose after the order had been made, or where the complying party provides a reasonable explanation for why those difficulties or impediments had not been cited earlier (see *CIX* at [62]). In my view, it is consistent with the public interest of finality in litigation, which underlies the extended doctrine of *res judicata* (see *TT International Ltd* at [98]), as well as the starting point that all orders of court are to be respected and complied with, that litigants are encouraged to ventilate any difficulties or impediments which they believe entitle them to refuse compliance with an order of court, at the stage of the contested proceedings where that order is sought by the other party, and not as an afterthought or *ex post facto* justification for their failure to comply with an order of court made.

100 Therefore, in a case like the present where a complying party, in an attempt to stave off the making of an 'unless' order, cites difficulties or impediments with compliance as a justification for its failure to fully comply with a prior court order, the legal burden is on the party demanding compliance and who seeks to invoke the extended doctrine of *res judicata* to demonstrate why those difficulties or impediments properly belonged to the earlier proceedings, and the evidential burden then shifts to the complying party to demonstrate why it is justified in not having raised those difficulties or impediments in the earlier proceedings.

101 In this case, the parties' submissions did not squarely deal with the extended doctrine of *res judicata,* but its relevance would have been apparent from Mr Gonzalo's submissions that the plaintiffs should not be allowed to relitigate and reopen objections pertaining to the making of ORC 1753 in their

attempts to resist the 'unless' order. In respect of the SA Interrogatories, Mr Gonzalo highlighted in his written submissions that the plaintiffs are not entitled to rely on the absence of a distinction between the various *concursos* as a justification for not providing the breakdown of legal fees sought by part (c) of those interrogatories, given the court's earlier view in SUM 2725 that the manner in which the plaintiffs pitched their case in the AD Proceedings (and that it encompassed legal fees incurred in all *concursos*) did not impact the necessity of these interrogatories.[56] As for the Dechert Interrogatories, Mr Gonzalo argued that the plaintiffs are not entitled to claim that answering those interrogatories would be commercially unfeasible, given that such an objection had already been rejected in SUM 2725.[57]

102 In SUM 2725, I concluded that any expense which the plaintiffs claim they would incur in answering interrogatories[58] which the court considered to be necessary for the AD Proceedings is not a ground which the plaintiffs could rely on for refusing to answer those interrogatories (see [28] above). Therefore, in so far as the plaintiffs are now seeking to rely on the alleged expense that they would incur in answering the Identified Interrogatories as a justification for not fully complying with ORC 1753, that surely constitutes an impermissible collateral attack on my decision in SUM 2725 (see, albeit in a different context, *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 at [51] and [91]). To the extent that it was an issue in SUM 2725 as to whether any such expense ought to have a bearing on whether the interrogatories sought by Mr Gonzalo should be allowed, the plaintiffs are similarly precluded by the doctrine of issue

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56 Third defendant's written submissions at para 49.

57 Third defendant's written submissions at para 52.

58 See, for example, plaintiffs' written submissions in HC/SUM 2725/2024 at paras 18, 21 and 23(c).

estoppel from for relying on this same argument about expense as a justification for their failure to fully comply with ORC 1753. Any such issue has already been determined as part of SUM 2725 and was also fundamental to the decision in SUM 2725 that Mr Gonzalo should be allowed to maintain those interrogatories.

103 However, there is a further dimension here in that, while the plaintiffs raise the same point about the expense of furnishing answers to the interrogatories in ORC 1753, they have now substantiated that submission with reference to what they say is the reality of how work was done by Sainz Abogados and Dechert in the Mexico and US proceedings, and that such work was undertaken without distinction as to the specific proceedings therein.[59] I accept that this was not a point specifically canvassed in SUM 2725, but in my view, the extended doctrine of *res judicata* squarely precludes the plaintiffs from now relying on this argument. During the proceedings in SUM 2725, the plaintiffs sought to persuade the court that the interrogatories be withdrawn given the expense which they would face if answers had to be provided. Any reason that went towards their case on the expense they would incur, such as the reality of how work in the Mexico and US Proceedings had been conducted without distinction as to the specific proceeding therein and how it would therefore occasion significant costs to now break down the fees in each invoice on the terms sought in the Identified Interrogatories, properly belonged to SUM 2725 and are circumstances which the plaintiffs could and should have raised then. Further, these are circumstances known to the plaintiffs from the outset and no explanation was given as to why they had not been raised in arguments during SUM 2725. The plaintiffs are therefore not entitled to rely on the reality of how work was done by Sainz Abogados and Dechert in the Mexico

[59] 14-RAH at para 8; Plaintiffs' written submissions at paras 50, 55 and 57.

and US proceedings as a ground for their inability to fully comply with ORC 1753 and in their attempt to stave off the 'unless' order sought in SUM 1028.

Conclusion

104 To summarise, I agree with Mr Gonzalo that the plaintiffs' responses to the Identified Interrogatories are deficient and thus they have failed to fully comply with ORC 1753. Having regard to the importance of the Identified Interrogatories in securing a fair trial of the AD Proceedings as well as the manner in which the plaintiffs had breached ORC 1753, an 'unless' order to compel the plaintiffs' full compliance with ORC 1753 is warranted. The justifications which the plaintiffs provided for their inability to fully comply with ORC 1753 are impermissible attempts at mounting a collateral attack on the outcome of SUM 2725 in which ORC 1753 was granted, the merits of which the plaintiffs appear to have fully accepted by not appealing against the decision in SUM 2725.

105 For the reasons above, I allowed SUM 1028 and with the agreement of parties, I granted the plaintiffs 28 days for compliance with the 'unless' order. I also ordered the plaintiffs to pay to Mr Gonzalo costs of $9,500 (all in) which I considered justified, especially given the amount of material which Mr Gonzalo's solicitors had to review in deciding whether to take out SUM 1028, bearing in mind that unredacted versions of the Further SA Invoices and the Dechert Invoices were only disclosed as part of the plaintiffs' reply affidavit in SUM 1028 (*ie*, the 9 May Affidavit), which would obviously have occasioned further work on Mr Gonzalo's part.

Perry Peh
Assistant Registrar

Brian Larry Khoo (Haridass Ho & Partners) for the plaintiffs;
Siew Guo Wei and Tyronne Toh (Tan Kok Quan Partnership) for the third defendant.
