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

[2025] SGHCR 29

Originating Summons No 1193 of 2021
(Summons Nos 3120 and 3121 of 2024)

Between

GLAS SAS (London Branch)

… *Applicant*

And

(1) European TopSoho Sàrl
(2) Dynamic Treasure Group Limited

… *Respondents*

GROUNDS OF DECISION

[Civil Procedure — *Lis alibi pendens* — Powers — Lifting of case management stay]
[Conflict of Laws — *Lis alibi pendens* — Doctrine of forum election — Stay]
[Civil Procedure — Joinder of parties]
[Civil Procedure — Judgments and orders — Enforcement and execution]

TABLE OF CONTENTS

GLAS SAS (London Branch)
v
European TopSoho Sàrl and another

[2025] SGHCR 29

General Division of the High Court — Originating Summons No 1193 of 2021 (Summons Nos 3120 and 3121 of 2024)
AR Wong Hee Jinn
4 February, 7 March, 8 April 2025

27 August 2025

AR Wong Hee Jinn:

Introduction

1 A court may, in an appropriate case, grant a stay of the legal proceedings before it when there is a *lis alibi pendens*, that is to say, when there is a case pending elsewhere. Underpinning the court's exercise of its discretion to so order is the overarching aim of mitigating the risk of inconsistent findings by the courts in separate jurisdictions, where proceedings proceed in parallel. This is commonplace in the practice of international commercial litigation; corporations operate transnationally and have assets seeded in various jurisdictions. This decentralisation may lead to litigation sprouting, often concurrently, in multiple jurisdictions.

2 Such an application to stay proceedings when there is *lis alibi pendens* is not unfamiliar to a court and certainly, after the initiating party is made to

elect the jurisdiction in which it seeks to pursue its claims. Less frequent however, is when a party to the stayed proceedings later returns to the court seeking to lift the stay. This infrequency is perhaps unsurprising. It rarely arises in practice because once proceedings in the foreign jurisdiction run their course and a judgment is obtained, enforcement proceedings, whether in the jurisdiction that rendered the judgment or otherwise, will likely ensue if the judgment is left unsatisfied. Put otherwise, it is usually of fairly limited utility for a party to resume proceedings in the jurisdiction where the stay was granted. But what happens when, for one reason or the other, the foreign judgment obtained is incapable of being recognised or enforced such that the party is compelled to continue the proceedings previously stayed? Does the court possess the power to lift the stay previously granted? And if it does, under what circumstances should the court exercise its power to lift the stay?

3 These, in a nutshell, are the questions presented here.

4 In March 2022, I granted, on the applicant's application, a stay of proceedings in HC/OS 1193/2021 ("OS 1193"), having accepted that there was a *lis alibi pendens*. At that time, the applicant had elected to pursue its claims in the Commercial Division of the English High Court, where proceedings were already afoot. The claims there substantially mirrored the claim in OS 1193, the latter of which is based on an alleged transaction at an undervalue pursuant to s 438 of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ("IRDA"). The English court later rendered judgment on certain claims. Returning to the Singapore court, the applicant filed two applications in OS 1193:

(a) First, by HC/SUM 3121/2024, the applicant sought to lift the stay previously imposed on OS 1193 (the "Lifting Application"). The

first respondent supported the application while the second respondent contested the application.

(b) Second, by HC/SUM 3120/2024, the applicant sought to join the non-party, J.P. Morgan Chase N.A. Singapore ("JPM"), as a respondent to OS 1193 (the "Joinder Application"). JPM contested the application.

5 I heard both applications. Having considered the parties' submissions, I granted both the Lifting Application and Joinder Application with brief oral remarks. Correspondingly, I ordered that the stay imposed on OS 1193 be lifted and that JPM be joined to OS 1193 as the third respondent. I also allowed consequential amendments to OS 1193 in order to reflect the orders made.

6 In summary, I accepted the applicant's submission that there was a legitimate basis to lift the case management stay that had previously been imposed and that the operative basis of the stay – a duplication of proceedings – had since ceased. Further, I was satisfied that it would be just and convenient for JPM to be joined as a party to the proceedings. In my view, that did not amount to an impermissible attempt to circumvent the normal enforcement process.

7 Alongside the oral remarks delivered then, I indicated to the parties that I would provide my full grounds of decision in due course. This, I now do.

Factual background and procedural history

8 The dispute between the parties arises from the first respondent's alleged default to repay €250m of secured exchangeable bonds bearing a coupon of 4% per annum ("Bonds") that it had issued.

The parties

9 The applicant, GLAS SAS (London Branch), is the London branch of a company incorporated in France. Among other things, the applicant provides trustee and loan administration services as well as a range of institutional debt administration to domestic and international debt funds.

10 The first respondent, European TopSoho Sàrl, is a company incorporated in Luxembourg. It is a wholly-owned subsidiary of Ruyi International Fashion (China) Limited ("Ruyi International"), which is in turn ultimately owned by Shandong Ruyi Technology Group Co., Ltd ("Shandong Ruyi"), a company incorporated in the People's Republic of China ("PRC") and headquartered in Shandong province. A key representative is Ms Qiu Chenran ("Ms Qiu"), who is the first respondent's manager.[1] She also serves as Vice-President of Ruyi International.[2] I elaborate on Ms Qiu's involvement in the litigation below.

11 The second respondent, Dynamic Treasure Group Limited, is a company incorporated in the British Virgin Islands. It was founded by Ms Qiu sometime in April 2017. As of 9 December 2021, it appeared that the director and shareholder of the second respondent was Grendall International Holding Ltd and Precious Pearl Candy Holding Limited respectively, with Ms Qiu being the ultimate beneficial owner of the second respondent.[3]

---

1 Qiu Chenran's Affidavit in HC/S 941/2021 dated 13 January 2022, para 1

2 Mark Fennessy's Affidavit dated 20 November 2021, p133

3 Answer to Interrogatories Pursuant to Order of Court in HC/OS 1205/2021 dated 10 December 2021

12 For reasons that will become apparent later, it is necessary to rehearse some of the procedural history leading up to the present applications.

The execution of the Deed and the issuance of the Bonds

13 On 21 September 2018, the first respondent, Forever Winner International Development Limited ("Forever Winner") and BNP Paribas Trust Corporation UK Limited ("BNP") executed a trust deed ("Deed").[4] The Deed also contained various terms and conditions ("T&Cs"). The Deed constituted the Bonds (see [8] above).

14 I highlight several key terms of the Deed and the nature of the transaction as between the relevant stakeholders:[5]

(a) The first respondent was the issuer of the Bonds. The Bonds had a maturity date of 21 September 2021.

(b) Forever Winner was the guarantor of the Bonds. It guaranteed the due and punctual payment by the first respondent in respect of the Bonds.

(c) BNP was appointed as trustee for the holder of the Bonds (the "Bondholders"). The first respondent was to pay to or to the order of the trustee the principal amount of any Bonds which had become due to be redeemed or repaid, or had otherwise become payable. The covenant was to be held on trust for the benefit of Bondholders by the trustee.

---

4 Mark Fennessy's Affidavit dated 20 November 2021, p197 to 305

5 Mark Fennessy's Affidavit dated 20 November 2021, para 14

(d) Prior to the maturity date of the Bonds, the first respondent held 28,028,126 shares in SMCP S.A. ("SMCP") that were secured in favour of the Bondholders (the "Pledged Shares"). The Pledged Shares were held in an identified security account with BNP Paribas Securities Services (London Branch). The first respondent further held 12,016,939 shares in SMCP that were not secured in favour of the Bondholders (the "Unpledged Shares"). The Unpledged Shares, which represent an approximately 16% stake in SMCP, were beneficially owned by the first respondent and did not comprise part of the security under the Deed.[6] The first respondent's only substantial asset is its shareholding in SMCP.

SMCP is a company incorporated in France. It is in the business of accessible luxury fashion, with a presence in some 43 countries. SMCP's shares are publicly tradeable and listed on the Euronext Paris Exchange.[7]

15 On 24 December 2020, a majority of the Bondholders passed a written resolution resolving that the applicant be appointed as trustee for the Bondholders and for BNP to be replaced.[8] On the same day, the applicant and BNP entered into a deed of appointment, under which BNP appointed the applicant as trustee for the Bondholders and BNP consequently retired from its position as trustee. This is how the applicant came to be part of the dispute. In effect, the applicant, as trustee for the Bondholders, acts in the interests of and on behalf of the Bondholders.

---

6 Mark Fennessy's Affidavit dated 20 November 2021, para 35

7 Mark Fennessy's Affidavit dated 20 November 2021, p382

8 Mark Fennessy's Affidavit dated 20 November 2021, p306 to 319

16 By 21 September 2021, the maturity date of the Bonds, the first respondent did not redeem the Bonds in full in cash at their principal amount. The first respondent also did not pay the requisite interest on the Bonds. By the applicant's account, these constituted defaults under the T&Cs. The following day, the applicant delivered a written notice to the first respondent setting out the various defaults and notified the first respondent that it had five business days from the receipt of the written notice to remedy the outstanding defaults. The first respondent did not do so.

17 On 4 October 2021, the applicant served a default notice ("Notice") on the first respondent, reiterating that various defaults under the Deed and the T&Cs had occurred and were continuing. As a result of the first respondent's failure to remedy the defaults as specified in the Notice, the acceleration date occurred on 19 October 2021 and the Bonds outstanding became immediately due and payable.

18 As the value of the Pledged Shares, which the applicant has already taken possession of, falls below the total sum due under the Bonds, the litigation between the parties has focussed on the Unpledged Shares.[9]

The bankruptcy petition in Luxembourg and the transfer of the Unpledged Shares

19 On 22 October 2021, the applicant, acting on the instructions of the *ad hoc* group of a majority of Bondholders pursuant to the terms of the Deed and T&Cs, served a bankruptcy petition (*assignation en faillite)* on the first defendant.[10] The applicant filed the bankruptcy petition in the District Court of

---

9 Jason Mark Yardley's Affidavit dated 23 October 2024, para 11(a); Mark Fennessy's Affidavit dated 20 November 2021, para 19

10 Mark Fennessy's Affidavit dated 20 November 2021, p509

Luxembourg on 9 November 2021.[11] While the bankruptcy petition was denied initially on 26 November 2021, the Luxembourg Court of Appeal later declared the first respondent bankrupt on 28 February 2023 and appointed Ms Valérie Kopéra as curator (the "Curator") of the first respondent. Mr Max Maillet subsequently replaced Ms Kopéra as Curator.[12] The Curator performs a role akin to that of a liquidator or trustee-in-bankruptcy and discharges her duties under the supervision of a Luxembourg judge, Mr Änder Prost.[13] For all intents and purposes, the Curator is in charge of the first respondent's conduct of legal proceedings.

20 On 4 November 2021, SMCP issued a press release stating that the trustee (*ie,* the applicant) had taken possession of the Pledged Shares and that the first respondent had disposed of the Unpledged Shares.[14] Neither the identity of the party to whom the Unpledged Shares were disposed nor the consideration for their disposal, if any, was disclosed in the press release.

21 On 13 November 2021, the first respondent issued a press release stating, among other things, that the disposal of the Unpledged Shares "was made by [the first respondent] pursuant to its obligations under a financial arrangement with an undisclosed third party".[15]

---

11 Mark Fennessy's Affidavit dated 20 November 2021, p511

12 Jason Mark Yardley's Affidavit dated 25 October 2024, para 11(b)

13 First Respondent's Written Submissions dated 24 January 2025, para 22

14 Mark Fennessy's Affidavit dated 20 November 2021, p507

15 Mark Fennessy's Affidavit dated 20 November 2021, p571

22 Following proceedings commenced by the applicant in the Paris Commercial Court, several details emerged regarding the transfer of the Unpledged Shares:[16]

(a) Prior to the transfer, the Unpledged Shares were held by BNP Paribas Securities Services Paris ("BNPSS"). BNPSS was the holder of SMCP's share register and the manager of SMCP's shareholder accounts, in which the shares were held in pure registered form.

(b) The first respondent transferred the Unpledged Shares to the second respondent on 27 October 2021 for a purchase price of €1. BNPSS disclosed a copy of a Share Sale Agreement dated 22 October 2021 ("Share Agreement"), which BNPSS understood as the instrument by which the transfer occurred. While not entirely clear, this is presumably what was referred to by the first respondent as "a financial arrangement" in its press release on 13 November 2021 (see [21] above).

(c) The second respondent received the Unpledged Shares in a pure registered account managed by BNPSS. The Unpledged Shares were converted into bearer form on 3 November 2021 on instruction from the second respondent.

(d) Upon the conversion of the Unpledged Shares into bearer form, they were transferred by the second respondent to its custodian, JPM.

With the disclosure of the above information, the applicant's solicitors wrote to JPM to request that it refrain from effecting any further transfer or disposal of the Unpledged Shares.

---

16 Mark Fennessy's Affidavit dated 20 November 2021, p513 to 514

The applicant commences proceedings in England and Singapore

23 During this time, the applicant took out various legal proceedings in England and in Singapore. I begin with the former.

Proceedings in England

24 On 10 November 2021, the applicant commenced proceedings in the Commercial Division of the English High Court, pursuing the following claims:

(a) First, a claim in debt against the first respondent for outstanding sums due and payable under the Bonds and a deferred fee letter dated 17 June 2021 (the "UK Debt Claim").

(b) Second, a claim against the first and second respondents for relief under s 423 of the UK Insolvency Act 1986 (c 45), seeking damages and a transfer of the Unpledged Shares from the second respondent back to the first respondent (the "s 423 UKIA Claim").

(c) Third, a claim against the respondents and Ms Qiu for unlawful means conspiracy in relation to the transfer of the Unpledged Shares (the "UK Conspiracy Claim").

Proceedings in Singapore

25 On 18 November 2021, the applicant commenced HC/S 941/2021 ("Suit 941") against the respondents. Broadly, Suit 941 involved the following claims, mirroring closely those brought in the English High Court:

(a) First, a claim against the first respondent for outstanding sums due and payable under the Bonds and a deferred fee letter dated 17 June 2021 (the "SG Debt Claim").

(b) Second, a claim against the first and second respondents for relief under s 438 of the IRDA, seeking a transfer of the Unpledged Shares from the second respondent back to the first respondent; in the alternative, payment of a sum from the second respondent for a sum equivalent to the benefit it had received from the transfer of the Unpledged Shares (the "s 438 IRDA Claim").

(c) Third, a claim against the first and second respondents for unlawful means conspiracy in relation to the transfer of the Unpledged Shares (the "SG Conspiracy Claim").

The applicant concurrently applied for a *Mareva* injunction against the respondents *vide* HC/SUM 5272/2021 ("SUM 5272").

26 On 19 November 2021, Pang Khang Chau J heard SUM 5272 on an urgent *ex parte* basis. Pang J granted a *Mareva* injunction prohibiting the respondents from disposing of assets up to the value of €138.2m in Singapore, including the Unpledged Shares held in the second respondent's account with JPM (the "Injunction"). The Injunction was made on the applicant's undertaking that it would file an originating summons in respect of the s 438 IRDA Claim (instead of it being pursued in Suit 941 as part of a writ action). Pursuant to that undertaking and to regularise the procedural defect identified by the court, the applicant took out OS 1193 on the same day. The Injunction was to be treated as having been granted as part of both Suit 941 and OS 1193. This was the context in which OS 1193 came to be filed.

27 The applicant informed JPM of the Injunction. JPM confirmed that it had put in place internal measures freezing the second respondent's account,

including freezing the Unpledged Shares. To date, the Unpledged Shares remain held in the second respondent's account maintained by JPM.[17]

The applicant applies to stay OS 1193 and elects to proceed in the English High Court

28 On 14 December 2021, the applicant filed HC/SUM 5759/2021 ("SUM 5759"), seeking a stay of OS 1193 on *lis alibi pendens* grounds. Neither of the respondents objected to the applications. Neither of the respondents filed any written submissions for the applications. And neither of the respondents submitted that OS 1193 ought to be discontinued instead of being stayed.[18] SUM 5759 hence proceeded on an uncontested basis.

29 I heard SUM 5759 on 9 March 2022 and granted an order in terms. I accepted the applicant's submission that the English proceedings were *lis alibi pendens* (and specifically, a common plaintiff *lis alibi pendens* situation). There was a clear identity of parties, similar causes of action as well as similar reliefs sought in both sets of pending proceedings. Owing to the applicant's express election to prosecute its claims in the English High Court and the Injunction having been granted, I ordered that OS 1193 be stayed, with liberty to the applicant to apply to lift the stay. Suit 941, which consists of the SG Debt Claim and the SG Conspiracy Claim, was separately stayed on *forum non conveniens* grounds. That stay remains in place.

---

17 Kanchana Boopalan and Song Yongtao's Affidavit dated 7 February 2022, para 5

18 Applicant's Written Submissions for HC/SUM 5759/2021 dated 3 March 2022, para 12

Developments in the English proceedings after the stay of OS 1193

30 There were several developments following the stay of OS 1193, most notably of the proceedings in England, which I now set out in some detail.

31 On 23 February 2022, the applicant applied for summary judgment in respect of the UK Debt Claim for the sum of approximately €263m.

32 On 27 October 2022, Mr Simon Salzedo KC, sitting as a Deputy Judge of the High Court, granted summary judgment in terms of the UK Debt Claim against the first respondent, save for the claim in respect of the deferred fee letter dated 17 June 2021 (see [24(a)] above).[19]

33 On 29 August 2023, the applicant filed an application to amend its pleadings and made a further application for summary judgment in respect of the s 423 UKIA Claim, the UK Conspiracy Claim and the UK Debt Claim, in so far as it pertained to the deferred fee letter dated 17 June 2021.

34 By this time, the Luxembourg court had appointed the Curator over the first respondent (see [19] above). The Curator had, following certain investigations, concluded that the first respondent ought not to advance the positive case pleaded in its Defence and would not actively resist the applicant's claims in the English proceedings.[20] Among other things, this was because the Curator took the view that Ms Qiu had no authority to enter into the Share Agreement and there was no resolution passed by the first respondent or delegation of power by the board granting Ms Qiu such a power.[21]

---

19 Jason Mark Yardley's Affidavit dated 25 October 2024, para 14

20 Jason Mark Yardley's Affidavit dated 25 October 2024, para 15

21 First Respondent's Written Submissions dated 24 January 2025, paras 5 and 6

35 On 26 January 2024, Mr Justice Robert Bright granted summary judgment in respect of the deferred fee letter but dismissed the remainder of the applicant's application. Observing that the defence raised was "weak and unlikely to succeed" and that the second respondent and Ms Qiu had opted not to participate in the proceedings for a significant period of time, Bright J imposed conditions on their ability to defend the proceedings. In particular, this was on the condition that they each pay €9m into court (see *GLAS SAS (London Branch) v European TopSoho Sàrl and others* [2024] EWHC 83 (Comm)). The second respondent and Ms Qiu sought permission to appeal against the imposition of the condition. Bright J dismissed the application and a subsequent application to the English Court of Appeal was also dismissed. Neither the second respondent nor Ms Qiu paid the stipulated sum into court. The second respondent's failure to do so meant that the applicant was entitled to judgment on the s 423 UKIA Claim for the return of the Unpledged Shares to the first respondent.

36 On 9 and 12 April 2024, the applicant filed additional applications to amend its pleadings and for summary judgment on the s 423 UKIA Claim. This was done on the basis that, among other things, neither the first nor second respondent had a real prospect of successfully defending these claims, consistent with the Curator's indication to withdraw the first respondent's Defence (see [34] above).[22]

37 On 12 July 2024, Mr Justice Robin Knowles CBE allowed the applicant's amendment application and granted summary judgment on the applicant's s 423 UKIA Claim for the return of the Unpledged Shares held in the second respondent's account with JPM (the "English Summary Judgment").

---

22 Jason Mark Yardley's Affidavit dated 25 October 2024, para 24

Save for certain declarations sought by the applicant, Knowles J ordered the Unpledged Shares to be transferred from the second respondent to the first respondent by 4pm on 26 July 2024.[23] The issue of whether further relief should be granted against the respondents in respect of the s 423 UKIA claim, including damages or monetary relief, was reserved to the trial of the action.[24] I reproduce the salient portions of Knowles J's judgment:[25]

> …
>
> 9. The position, of course, is that the [second respondent and Ms Qiu] are without permission to defend the case, they having failed to satisfy the condition imposed by Mr Justice Bright.
>
> 10. I, looking at the case presented by the claimant, find myself satisfied that the transfer of shares for €1 consideration did not have the required consents. Further, there was not the actual or valid signature of the professional trustees. **In the circumstances detailed in the [applicant's] evidence, the challenge to the transfer is clearly, to my mind, good on the basis, first, of absence of authority and, second, by applying section 423 and following of the Insolvency Act.**
>
> 17. … The only matter that is being concluded between the [applicant] and the second [respondent] is the validity of the disposal [of the Unpledged Shares] to the second [respondent]. **That is effectively to be reversed and that, it seems to me, is not inappropriate to resolve at this point, even though other issues lie to be determined.**
>
> 18. In all the circumstances … **I grant the summary judgment sought.** I grant it by reference to reasoning that refers both to the authority point and the section 423 point, but I decline to make declarations on those points. They are instead the reasons for the order which will **restore the shares and**

---

23 Jason Mark Yardley's Affidavit dated 25 October 2024, p298, paras 3 and 4

24 Jason Mark Yardley's Affidavit dated 25 October 2024, p298, para 5

25 Chen Jian's Affidavit dated 20 November 2024, para 9

> **restore them into the account that [counsel for the applicant] indicated.**
>
> [emphasis added in bold]

The second respondent applied for permission to appeal against Knowles J's decision.

38 On 2 September 2024, the English Court of Appeal, by way of an order made by Stephen Males LJ, refused permission to appeal against the English Summary Judgment on the basis that "[a]n appeal would not have a real prospect of success and there is no other compelling reason why permission should be given".[26] The avenues for appeal having been exhausted, the English Summary Judgment therefore is a final and conclusive decision on the merits.[27] The second respondent does not suggest otherwise.

39 What remains outstanding in the English proceedings is thus the UK Conspiracy Claim and the s 423 UKIA Claim, in so far as it seeks an order for damages and/or compensation (see [24] above).[28]

40 Despite the English Summary Judgment, the second respondent did not transfer the Unpledged Shares – or strictly, the bearer share certificates – to the first respondent (see [22] above).[29] This inactivity was the impetus for the applicant's present applications.

---

26 Jason Mark Yardley's Affidavit dated 25 October 2024, p283

27 Applicant's Written Submissions dated 24 January 2025, para 17

28 Jason Mark Yardley's Affidavit dated 25 October 2024, para 15

29 Jason Mark Yardley's Affidavit dated 25 October 2024, para 38; Applicant's Written Submissions dated 24 January 2025, para 42

The applicant takes out the present set of applications

41 On 23 October 2024, the applicant took out the Lifting Application and the Joinder Application.

42 Before me, Mr Keith Han appeared as lead counsel for the applicant, Mr Ngo Wei Shing appeared as lead counsel for the first respondent, Mr Jordan Tan appeared as instructed lead counsel for the second respondent and Ms Lee May Ling appeared as lead counsel for JPM.

The parties' arguments

43 I summarise the parties' respective arguments on the Lifting Application and the Joinder Application.

44 On the Lifting Application:

(a) The applicant submitted that the stay imposed on OS 1193 ought to be lifted as the English proceedings were no longer *lis alibi pendens* as far as the s 438 IRDA Claim was concerned. The applicant concomitantly sought permission to amend OS 1193 in order to limit the relief sought *vide* the s 438 IRDA Claim to that of a transfer of the Unpledged Shares back to the first respondent. Put differently, it would no longer seek damages and/or compensation.[30] The applicant also submitted that lifting of the stay was necessitated by the second respondent's ongoing non-compliance with the English Summary Judgment.[31]

---

30 Applicant's Written Submissions dated 24 January 2025, para 39

31 Applicant's Written Submissions dated 24 January 2025, para 43

(b) The first respondent supported the application, deeming it as a necessary step to obtain the orders in OS 1193, *ie,* for the second respondent to return to it the Unpledged Shares.[32] The reason for its support is that the first respondent was now controlled by the Curator and had since taken the position that the Sale Agreement was a sham and not binding as Ms Qiu had no authority to enter into the Sale Agreement (see [22(b)] above).

(c) The second respondent's riposte was that this was not the appropriate juncture for the stay of OS 1193 to be lifted for two key reasons. This was because (i) first, there remained ongoing proceedings in England that remained *lis alibi pendens*; and (ii) second, there also remained ongoing enforcement proceedings in Singapore in respect of an arbitral award ("Award") rendered in favour of Wuhu Ruyi Xinbo Investment Partnership (Limited Partnership) ("Xinbo"), which was the culmination of arbitral proceedings (the "Arbitration") between the first respondent, Xinbo and Shandong Ruyi (see [10] above).[33] I trace the circumstances leading to Award as well as the subsequent enforcement proceedings related to the Award in greater detail at [97] to [105] below.

45 On the Joinder Application:

(a) The applicant submitted that it would be just and convenient for JPM to be joined as a party to OS 1193. Its argument was straightforward. While there were no allegations of wrongdoing levied against JPM, a joinder would ensure that any order that the court may ultimately make in OS 1193 against the second respondent, as the owner

---

32 First Respondent's Written Submissions dated 24 January 2025, para 2

33 Wei Ziqiang's Affidavit dated 27 December 2024, paras 7 to 12

of the Unpledged Shares, would be enforceable against JPM *qua* custodian.[34] This was in light of the second respondent's persistent non-compliance and a joinder would avoid further prejudice to the applicant and eliminate the inefficiency of multiple proceedings that would otherwise be necessary.[35] Should JPM be joined as the third respondent in OS 1193, consequential amendments to OS 1193 would be required.

(b) JPM's submission in response was that it should not be joined as a party to OS 1193 because it is not involved in the substantive dispute to which OS 1193 relates. And in any event, the applicant would be able to effectively enforce any court order obtained in OS 1193 even in the absence of a joinder by way of various post-judgment enforcement mechanisms.[36] JPM made three arguments from circumvention, case law and costs (see [133] below).

(c) The first and second respondents took no position on the Joinder Application and did not make any substantive arguments.

46 I consider the applications in turn.

My decision on the Lifting Application

47 It would be helpful to understand the context in which the Lifting Application was brought.

48 Naturally, one might wonder what had necessitated the Lifting Application, given that the applicant was armed with the English Summary

---

34 Jason Mark Yardley's Affidavit dated 25 October 2024, para 7

35 Applicant's Written Submissions dated 24 January 2025, para 36

36 Chen Jian's Affidavit dated 20 November 2024, paras 6 and 10

Judgment expressly ordering the transfer of the Unpledged Shares from the second respondent to the first respondent (see [37] above). Why then has the applicant applied to lift the stay of OS 1193, presumably with the intention of obtaining a separate order for the transfer of the Unpledged Shares, instead of seeking to recognise and enforce the English Summary Judgment in Singapore?

49 The legal impediment to this course is that the English Summary Judgment was not capable of recognition and enforcement in Singapore as a foreign judgment, either at common law or by statute. This is because it was not a money judgment.[37] I explain.

50 A foreign judgment is enforceable at common law, by way of a plaintiff commencing a fresh action to claim the judgment sum as a debt (*Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd* [2014] 2 SLR 545 ("*Giant Light Metal*") at [62], citing Adrian Briggs and Peter Rees QC, *Civil Jurisdiction and Judgments* (Informa London, 5th Ed, 2009) at para 7.70). An *in personam* foreign judgment that is final and conclusive, and which is rendered by a court of competent jurisdiction, may be enforced by an action for the amount due under it (*Poh Soon Kiat v Desert Place Inc (trading as Caesars Palace)* [2010] 1 SLR 1129 at [14]). Only foreign judgments for a fixed sum of money can be enforced since the "proper action for the enforcement of a foreign judgment was an action in *assumpsit*", such that "an action for the enforcement of non-money foreign judgments cannot be countenanced" (*Giant Light Metal* at [63]). By the by, it is strictly a misnomer that the common law is said to allow for the enforcement of foreign judgments because any judgment enforced in Singapore under the common law is ultimately one given by the Singapore courts (*Giant Light Metal* at [60]), so any use of the term is simply a shorthand.

---

37 Applicant's Written Submissions dated 24 January 2025, para 43

51 A foreign judgment is also enforceable under the Reciprocal Enforcement of Foreign Judgments Act 1959 (2020 Rev Ed) ("REFJA"), which is based on and was intended to replace the common law action on a foreign judgment (*Merck Sharp & Dohme Corp (formerly known as Merck & Co, Inc) v Merck KGaA (formerly known as E Merck)* [2021] 1 SLR 1102 ("*Merck*") at [37]). The REFJA was amended in 2019 to encompass certain Commonwealth judgments that were previously the remit of the now revoked Reciprocal Enforcement of Commonwealth Judgments Act 1921 (2020 Rev Ed). So too, did the amendments broaden the scope of the types of foreign judgments that could be registered under the REFJA, namely, non-money judgments. But this came with limitations.

52 As has been noted, the amendments "provided a framework for non-money judgments to be registered … but *did not have the effect* of making non-money judgments of all descriptions *immediately registrable*" [emphasis added] (*Ha Chi Kut (suing as the sole executrix of the estate of Khoo Ee Liam, deceased) v Chen Aun-Li Andrew* [2023] 3 SLR 283 at [51]). To this end, s 3(1) of the REFJA provides that the precise scope of enforceable court orders from any foreign court ultimately lies to be decided by the Minister (*DGX v DGY* [2024] 4 SLR 1486 at [6] and [9]). An order published in the Gazette must be made by the Minister before the REFJA applies to a particular type of judgment in a particular court of a particular foreign country. Thus, s 3(1) of the REFJA is to be read in conjunction with the Reciprocal Enforcement of Foreign Judgments (United Kingdom and the Commonwealth) Order 2023, which specifies in its Schedule the recognised foreign countries, foreign courts and the nature of judgments for the purposes of s 3(1) of the REFJA. The first and second columns of the Schedule specify the United Kingdom of Great Britain and Northern Ireland and the Senior Courts of England and Wales as an applicable foreign country and court, respectively. However, the third column

of the Schedule further specifies that for the purposes of s 3(1)(*c*) of the REFJA, recognition extends only to "[a]ny money judgment that is final and conclusive as between the parties to it". And the term "money judgment" is defined in s 2 of the REFJA as a "judgment under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty". Absent recognition, there can be no enforcement to speak of (*Giant Light Metal* at [15]–[16]).

53 The applicant accepted, quite rightly, that the English Summary Judgment was not a money judgment; it contains no order for the second respondent to make payment of any moneys. Faced with an impasse on recognition and enforcement, and with the transfer of the Unpledged Shares yet to be effected pursuant to the English Summary Judgment, the applicant took out the Lifting Application.

54 With that background in mind, I move to the question of when a court should lift a case management stay imposed when there has been a common plaintiff *lis alibi pendens* shown, with an attendant election by a plaintiff to pursue proceedings in a foreign jurisdiction.

When should a court lift a case management stay granted when a plaintiff has been put to forum election owing to a common plaintiff **lis alibi pendens**

55 To answer the question of when a case management stay should be lifted, it requires me to first consider when such a stay will be granted on a *lis alibi pendens* grounds. The predicate to lifting a stay is, after all, a subsisting stay that is in place. I shall start my analysis there.

Lis alibi pendens *and the doctrine of forum election*

56 The Singapore court may be asked to stay proceedings pending before it is when there are simultaneous proceedings in a foreign jurisdiction between the same parties and involving the same or similar issues. When this occurs, the foreign proceedings are considered *lis alibi pendens*. Here, a *lis* simply refers to a cause of action. In this regard, the concept of *lis alibi pendens* is concerned with ascertaining not just a *multiplicity* of proceedings but rather a *duplicity* of proceedings. These are distinct. The latter necessarily encompasses the former. But a multiplicity of proceedings itself imports no guarantee of a duplicity of proceedings, which requires a scrutiny of whether the issues involved are the same or at least substantially similar.

57 The concept of *lis alibi pendens* and the doctrine of forum election were considered by the Court of Appeal in *Virsagi Management (S) Pte Ltd v Welltech Construction Pte Ltd and another appeal* [2013] 4 SLR 1097 ("*Virsagi*"). The following six points may be distilled from *Virsagi* and from the various cases both preceding and subsequent to it.

58 First, is how to determine whether a foreign proceeding constitutes a *lis alibi pendens.* In determining whether there is a *lis alibi pendens*, the court will have regard to (a) the identity of the parties; (b) the causes of action mounted; and (c) the nature of reliefs sought in the proceedings both in Singapore and in the foreign jurisdiction, in order to ascertain whether there is are same or similar issues arising from the factual matrix and the extent of the similarities. As to (c), the fact that reliefs sought in both proceedings are similar is not dispositive of whether the issues before the courts are similar (*Virsagi* at [47]). But the converse is true too, in that the mere fact that different reliefs are sought does not mean that the issues arising for determination by both courts are different

(*Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra* [2019] 2 SLR 372 at [65]). It is likewise key to appreciate that a party seeking to demonstrate there is a *lis alibi pendens* is not bound to show a total correspondence of issues in the proceedings, although the greater the degree of similarity in the issues, the greater the willingness of the court to find that there is a *lis alibi pendens* (*Virsagi* at [47]).

59 Second, is the nature of a *lis alibi pendens.* A *lis alibi pendens* may arise in two broad situations (*Virsagi* at [27], citing *Yusen Air & Sea Service (S) Pte Ltd v KLM Royal Dutch Airlines* [1999] 2 SLR(R) 955 ("*Yusen*") at [16] and J D McClean, "Jurisdiction and Judicial Discretion" (1969) 18 ICLQ 931 at 934):

> (a) The common plaintiff *lis alibi pendens* situation, *ie,* when the same plaintiff sues the same defendant in Singapore and in the foreign jurisdiction.
>
> (b) The reversed parties *lis alibi pendens* situation, *ie,* when the plaintiff sues the defendant in Singapore and the defendant sues the plaintiff in the foreign jurisdiction or *vice versa*.

60 Third, is the effect of a *lis alibi pendens*, and specifically how it affects the court's exercise of jurisdiction over proceedings seised in Singapore. A *lis alibi pendens* "operates as a *fact* to which our rules on private international law accord *legal significance* by reference to two (and only two separate legal doctrines)", that being the doctrine of forum election and the doctrine of *forum non conveniens* (*Virsagi* at [29] and [41]). Demonstrating a *lis alibi pendens* is hence not an end to itself, but rather a means through which a party will seek a desired outcome in either set of proceedings mounted. Various avenues to address a *lis alibi pendens* are available to the court. This includes staying the

proceedings before it, restraining the foreign proceedings by way of an anti-suit injunction or requiring the plaintiff to elect which proceedings to pursue. The effect of a *lis alibi pendens* in a given case turns on the type of *lis alibi pendens*, as identified above at [59]:

> (a) On one hand, the doctrine of forum election arises "*only* in a *common plaintiff* [*lis alibi pendens*] situation" [emphasis in original] (*Virsagi* at [30]). In other words, establishing a common plaintiff *lis alibi pendens* is the *sine qua non* for the doctrine of forum election to be invoked. Once that is successfully shown, the burden of proof shifts to the plaintiff to justify the continuance of the concurrent proceedings by showing very unusual circumstances (*Virsagi* at [30]–[31], citing *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2009) ("*Halsbury's*) at para 75.094; *Ang Ming Chuang v Singapore Airlines Ltd (Civil Aeronautics Administration, third party)* [2005] 1 SLR(R) 409 at [9]). If the plaintiff is unable to do so, it comes to a crossroad: it has to elect whether it wishes to pursue its claims in Singapore *or* in the foreign jurisdiction. When a plaintiff is put to such election, "any questions regarding which forum is the more appropriate, or natural, forum for the dispute to be tried are irrelevant" (*Virsagi* at [30]). Rather, the doctrine of forum election operates as a "mechanism of case management" (*Virsagi* at [37]).
>
> > (i) Procedurally, a defendant may apply to the court to compel a plaintiff to elect the jurisdiction in which to proceed with its claims (*Yusen* at [27]; *Transtech Electronics Pte Ltd v Choe Jerry* [1998] 1 SLR(R) 1014 at [16]). As a matter of prudent practice however, when faced with a common plaintiff *lis alibi pendens*, a defendant is well-advised to first request the

plaintiff to voluntarily elect the jurisdiction in which to pursue its proceedings. This may obviate the need for a formal application, which may instead needlessly incur time, judicial resources and escalate costs (see Joel Lee Tye Beng, Leow Wei Xiang Joel and Marcus Teo Wei Ren, "Conflict of Laws" (2021) 22 SAL Ann Rev 268 at para 12.27). For example, if a plaintiff elects to continue proceedings in Singapore (and the defendant has no objections to this course of action), the court will enjoin the plaintiff to stop all foreign proceedings by way of an injunction (*Virsagi* at [35]). In this respect, plaintiff can evince its election either expressly or by its conduct. Doubtless, the straightforward way to do so is to simply make an affirmative and express election addressed to both the court and the defendant. This will ensure the plaintiff's election is clear and indeed, be placed on record. While election may be evinced by a party's conduct, it ought to be borne in mind that in the absence of an affirmative election, "the mere commencement of one set of proceedings does not *per se* amount to an election to proceed in that jurisdiction" and the "lack of diligence *per se* does not amount to an election" (*Yusen* at [42]).

(ii) Nevertheless, a defendant is not confined only to apply to court to compel a plaintiff to elect. If a defendant wishes for the plaintiff to have the proceedings proceed in Singapore instead of the foreign jurisdiction (and the plaintiff disagrees with this course of action), it may apply for an anti-suit injunction to restrain the plaintiff from continuing proceedings in the foreign jurisdiction (*Yusen* at [34]). Whether an anti-suit injunction should be granted involves a multi-factorial enquiry

(*PT Karya Indo Batam v Wang Zhenwen and others (Wang Zhenwen and others, third parties)* [2021] 5 SLR 1381 ("*PT Karya*") at [18]). Unlike the forum of doctrine election, an anti-suit injunction may be granted in both a common plaintiff *lis alibi pendens* situation or a reversed parties *lis alibi pendens* situation. To this extent, a *lis alibi pendens* can be probative of whether the foreign proceedings are vexatious or oppressive behavior, which is one of the relevant factors that the court considers. The court will consider all the circumstances of the case, including the manner in which the proceedings were commenced, the presence of oppressive foreign procedures and bad faith in the conduct of the proceedings (*UBS AG v Telesto Investments Ltd* [2011] 4 SLR 503 at [128]; *Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 2 SLR(R) 148 ("*Koh Kay Yew*") at [19])). As a starting point, an applicant seeking an anti-suit injunction bears the burden of proving that the foreign proceedings are vexatious or oppressive (*PT Karya* at [48]). That said, it has been held that "in an application for an anti-suit injunction, where the applicant can show the existence of a *lis alibi pendens*, the burden of proof would shift to the respondent to prove the existence of very unusual circumstances showing that the concurrent proceedings are *not* vexatious or oppressive, to displace the *prima facie* finding that the concurrent proceedings are vexatious or oppressive" (*PT Karya* at [56]). This, in substance, mirrors the approach when the doctrine of forum election applies, which is justified on the basis that the "common plaintiff [*lis alibi pendens*] situation carries the same undesirable consequences in both the legal contexts of forum

election and the granting of anti-suit injunctions" (*PT Karya* at [56]).

(b) On the other hand, the doctrine of *forum non conveniens* can apply in both a common plaintiff *lis alibi pendens* situation and a reversed parties *lis alibi pendens* situation (*Virsagi* at [38]). In a reversed parties situation, the doctrine of *forum non conveniens* "is the *only* way a *lis alibi pendens* can have any legal significance for the purposes of jurisdiction" [emphasis added] (*Virsagi* at [38]). It has been observed that "*lis alibi pendens* used to be a separate ground for the staying of proceedings" (Joel Lee Tye Beng, "Conflict of Laws" (2007) 8 SAL Ann Rev 133 at 134). But this position has changed and indeed, was put beyond doubt by the Court of Appeal in *Virsagi*. With the development of the common law, *lis alibi pendens* (or more accurately, just a *lis pendens*) gradually became a factor taken into account as part of the two-stage test as set out in *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 ("*Spiliada*") to determine whether the doctrine of *forum non conveniens* applied. The weight to be accorded to a *lis pendens* as part of the *Spiliada* test depends on the circumstances of each case, including the degree to which the respective proceedings have advanced and the degree of overlap of issues (see *Manharlal Trikamdas Mody v Sumikin Bussan International (H.K.) Ltd.* [2014] 3 SLR 1161 at [132]). There is no requirement however that there must be a strict *lis alibi pendens* in the sense that the proceedings involve the same parties and same or similar issues (*Virsagi* at [39]–[40], citing *Halsbury's* at para 75.094). This means that a *lis pendens* can suffice for the purposes of it being taken into consideration as a factor in determining the more appropriate forum. That said, little or no weight will be accorded to the fact of multiple proceedings if the foreign proceedings have only been

commenced for strategic reasons to demonstrate the existence of a competing jurisdiction and bolster the case of a more appropriate forum elsewhere (*Trisuryo Garuda Nusa Pte Ltd v SKP Pradiksi (North) Sdn Bhd and another and another appeal* [2017] 2 SLR 814 at [63]). Given that the existence of a *lis pendens* is never dispositive of the issue of the natural forum, it is important to note that an invocation of the doctrine of *forum non conveniens* need not wait until proceedings in a foreign jurisdiction have commenced (unlike the doctrine of forum election).

61 Fourth, is the rationale for a plaintiff to be made to elect a forum in a common plaintiff *lis alibi pendens* situation. To allow both sets of proceedings to proceed in tandem would mean that "[n]ot only would the same issue be litigated twice but there would also be the risk of having two different results, each conflicting with the other" (*Koh Kay Yew* at [22]). An election will mitigate considerably the distinct risk of inconsistent findings. Further, the court's intervention is justified on the basis that "it is unfair or unconscionable for the defendant to have to fight the same battle twice" and such conduct may be regarded as a "vexatious harassing of the opposite party" (*PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd and others* [2015] 5 SLR 873 at [112]). To require the same parties to engage in multiple sets of proceedings on both fronts simultaneously is generally undesirable. The doctrine of forum election functions as a mechanism to "prevent the inherent abuse of the different judicial systems in different jurisdictions" (*Koh Kay Yew* at [22]).

62 Fifth, is the interplay between the concept of *lis alibi pendens,* the doctrine of forum election and the doctrine of *forum non conveniens.* While the doctrine of forum election and *forum non conveniens* "do *not* operate in any way on a conceptual level", they can "operate alongside each other" and

"practically speaking, it is perhaps inevitable that the two doctrines will interface with one another" (*Virsagi* at [34]). This interplay has been touched upon at [60] above but one further observation is pertinent. Because the doctrines are conceptually distinct, a defendant is permitted to object on cumulative bases that a plaintiff should be made to elect between proceedings it has commenced *and* that if the plaintiff has decided to elected in Singapore, these proceedings should nevertheless be stayed in favour of foreign proceedings on the ground of *forum non conveniens* (*Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 ("*Rappo*") at [65]). As a practical matter, it would be prudent for a court, when faced with such cumulative objections, to determine first whether Singapore is *forum non conveniens*. An affirmative finding would put an end to the inquiry. Only if the court determines the foreign jurisdiction is not clearly the more appropriate forum compared to Singapore that the plaintiff would then be put to an election between the proceedings, provided that there is a common plaintiff *lis alibi pendens* (*Rappo* at [67]).

63 Sixth, the manner in which a court gives effect to a plaintiff's decision to elect the jurisdiction in which it wishes to pursue proceedings. The question that naturally follows is the order that a court should make after an election has been made by a plaintiff. There is little issue when a plaintiff elects to pursue proceedings in Singapore. The outcome is straightforward: the proceedings in Singapore will continue and run its natural course. Somewhat less straightforward is when a plaintiff elects to pursue proceedings in a foreign jurisdiction other than Singapore. What then happens to the proceedings in Singapore? Should the Singapore court stay the action before it or instead mandate its discontinuance?

(a) The English position is strict and appears to adopt dismissal as a default position, with a stay being warranted only in exceptional circumstances (*Yusen* at [32], citing Smart P.S.J, "Lis Alibi Pendens: Staying or Discontinuing English Proceedings" (1990) LMCLQ 326 at 329; see also *Bouygues Offshore SA v Caspian Shipping Company (No. 5)* [1997] 2 Lloyd's Rep 533). As an aside, should a plaintiff fail to make an election despite there being a common plaintiff *lis alibi pendens*, the defendant is at liberty to strike out one set of proceedings (*Ledra Fisheries Ltd v Turner* [2003] EWCA 1049 at [12]).

(b) The position in Singapore provides for somewhat greater latitude. The Court of Appeal in *Virsagi* opined that the court "is not restricted to discontinuing the local proceedings, and may, in the *appropriate circumstances*, grant a stay of proceedings instead" [emphasis in original] (*Virsagi* at [36]). Circumstances in which a stay of proceedings in Singapore may be appropriate include when there may be some obstacle to the foreign court's ability to determine the case on its merits, such as a challenge to its jurisdiction (*Yusen* at [32], citing *AG v Arthur Andersen & Co* [1989] ECC 224) or when the proceedings in Singapore has been brought to obtain security by way of an attachment of assets or a *Mareva* injunction now referred to as a freezing order (*Yusen* at [36], citing *Multi-Code Electronics Industries (M) Bhd and another v Toh Chun Toh Gordon and others* [2009] 1 SLR(R) 1000 ("*Multi-Code*")). The latter comports with the court's residual and ancillary jurisdiction over the underlying cause of action that is *per se* sufficient to ground the court's jurisdiction *in personam* over the dispute to allow the continuation of an injunction (*Bi Xiaoqiong (in her personal capacity and as trustee of the Xiao Quing Bi Trust and the Alisa Wu Irrevocable Trust) v China Medical Technologies, Inc (in liquidation)*

and another [2019] 2 SLR 595 ("*Bi Xiaoqiong*") at [104]–[109]; *Multi-Code* at [79] and [86]). This understandably ensures that assets are not dissipated pending the substantive determination of the dispute so as to render any subsequent judgment that may be obtained, be it in a foreign or domestic court, futile.

64 *Belbana N.V v APL Co Pte Ltd and another* [2014] SGHCR 17 ("*Belbana*") provides a useful illustration of the principles outlined above. In that case, the parties entered into a contract for the defendants to ship bananas from Ecuador to Belgium. Disputes arose, with the plaintiff alleging that the defendants had breached their duties in the stowing, handling, custody, care and discharge of the cargoes. The plaintiff commenced two sets of proceedings against the defendants, first in Belgium and later in Singapore. The defendants applied to challenge the jurisdiction of the Belgian court but their application was dismissed. The parties then took out cross-applications before the Singapore court, both with the common purpose of holding a set of proceedings in abeyance. The plaintiff applied to stay the Singapore proceedings while the defendant applied to compel the plaintiff to elect between the proceedings on the basis that the proceedings in Belgium were *lis alibi pendens*.

65 The learned Assistant Registrar Paul Tan held that there was a common plaintiff *lis alibi pendens* situation, such that there was a distinct risk of inconsistent decisions should the actions in Belgium and Singapore proceed concurrently (*Belbana* at [18] and [35]). There was an identity of parties and the nature of reliefs. Moreover, it was clear that both sets of proceedings involved similar causes of action, specifically alleged breach of contractual duties. The court correspondingly put the plaintiff to an election and the plaintiff elected to pursue its claim in the Belgian courts. However, the parties disagreed on the consequence of the election. The plaintiff argued that the Singapore proceedings

should be stayed but the defendants contended that the Singapore proceedings ought to be discontinued.

66 AR Tan ordered that the Singapore proceedings be stayed. This was even though the bills of lading contained an exclusive jurisdiction clause in favour of the Singapore court. And on the face of it, it did appear that the plaintiff had breached the clause in commencing proceedings in Belgium (*Belbana* at [33]). That notwithstanding, the court took cognisance of the possibility that the Belgium court's decision on jurisdiction may be the subject of appeal. What proved persuasive was the concern that should the Singapore proceedings be discontinued and if the defendants' challenge to the Belgian courts' jurisdiction later succeed, the plaintiff would find itself potentially without recourse as it would not be able to bring fresh proceedings due to its claim being time-barred (*Belbana* at [33]). The court also observed that there was a real issue as to which forum had jurisdiction over the claim and there was no evidence that the plaintiff had waited until the last minute to commence proceedings in Singapore just so it could argue that a discontinuance would lead to its claim being time-barred (*Belbana* at [43]). The order for the stay was coupled with an order that the plaintiff's election was final and irrevocable unless the Belgian court found that it had no jurisdiction to determine the plaintiff's claim (*Belbana* at [44]).

67 What may be surmised from *Belbana* is that the two examples highlighted at [63(b)] above where proceedings in Singapore may be stayed, *ie,* where a foreign court is unable to determine the claim or where an action has been brought in Singapore for the purposes of obtaining security, are merely illustrative and do not circumscribe the circumstances in which a stay may be ordered in preference to discontinuing an action after a plaintiff elects to pursue its claims in the foreign jurisdiction. There, after all, may be various reasons

why a foreign court is unable to determine the claim, apart from jurisdictional reasons. Whether a stay should be granted in any given case is undoubtedly fact-centric and is to be determined on a case-by-case basis. The court will undertake the course of action which would, in the final analysis, best serve the ends of justice.

The court has a discretionary power to lift a stay previously granted after a plaintiff's election to proceed in a foreign jurisdiction

68 I turn now to the issue of whether the court has the power to lift a stay imposed as a result of the plaintiff's election to pursue proceedings in a foreign jurisdiction because of a common plaintiff *lis alibi pendens.*

69 In my judgment, there is no question of the court's power to lift a stay. I say this for two related reasons.

70 The first is to do with the *inherent* nature of a stay: a "stay is suspensory only, and is conceptually distinct from a dismissal or discontinuance". This means that "the court granting a stay remains seised of the proceedings and may in principle lift the stay at a later date" (*Rotary Engineering Ltd and others v Kioumji & Eslim Law Firm and another and another appeal* [2017] 1 SLR 907 ("*Rotary Engineering*") at [24], citing *Rofa Sport Management AG v DHL International (UK) Ltd* [1989] 1 WLR 902 at 911).

71 To similar effect is the Court of Appeal's emphasis in *Bi Xiaoqiong* of the temporary nature of a stay, such that it envisages there to be something left to be done in the action, be it the determination of the action on the merits or a discontinuance of the action itself (at [107]):

> … An order by the court to stay an action or proceedings before it is simply an order given by the court to indicate that the proceedings will be halted for the time being. It is *temporary*,

> and always so. By definition, the nature of a stay implies that the court contemplates, and leaves open the possibility, that at some stage, the matter would be revived and fully dealt with. It may be dealt with by being revived and proceeding to judgment. But it may also be dealt with by being revived and eventually discontinued. Regardless of what might happen, until such time, the action remains on the court's record, and is alive though asleep. A stay cannot be permanent because that would mean that the action remains indefinitely on the court's record. If no further action is *ever* contemplated in the action, then the proper course is to have the proceedings discontinued or struck out. [emphasis in original]

There being something left to be done in the action, it necessarily follows that the court must retain the discretionary power to lift the stay previously imposed, in order to facilitate the disposition of the action.

72 The second is to do with the *particular* nature of the stay imposed. Where a plaintiff elects to pursue proceedings in a foreign jurisdiction in a common plaintiff *lis alibi pendens* situation, a case management stay is imposed in respect of the proceedings in Singapore. This contrasts with a stay grounded on *forum non conveniens* in that the court in ordering a case management stay does not consider whether Singapore is the natural forum (see *Brinkerhoff Maritime Drilling Corp v PT Airfast Services Indonesia* [1992] 2 SLR(R) 345 at [35(a)]). *Virsagi* says much the same (at [32]):

> … **In a common plaintiff lis alibi pendens situation, the court, when asking the plaintiff to elect which forum he wishes to proceed in, is not deciding on the appropriateness of the court in exercising its jurisdiction over the dispute** – unlike in the situation relating to a stay of proceedings where the doctrine of *forum non conveniens* is applied. That is the reason why the question of whether Singapore is the natural forum to hear the dispute is not relevant when the plaintiff is

> asked to make an election. **The court is merely managing its own process**. … [emphasis in bold]

Given that the court's power to grant a case management stay is sited in its inherent powers to manage its internal processes, that same power must enable the court to lift the stay.

73 The existence of the court's power to lift a case management stay finds further support in the High Court's observations in *Gulf Hibiscus Ltd v Rex International Holding Ltd and another* [2019] SGHC 15, in which Aidan Xu @ Aedit Abdullah J held that the court does not become *functus officio* after imposing a case management stay (at [25]):

> As a case management stay is imposed by the court pending a particular determination or outcome, the court does not become *functus officio* after the stay is granted. As such, a stay is not circumscribed by the conditions explicitly laid down at the time of its imposition. *Matters arising after a stay has been granted may affect its continued operation, and may be material for the court's consideration.* … [emphasis added]

74 In this vein, there are many circumstances in which a court may exercise its discretion to lift a stay. Most commonly, this may be due to a material change in circumstances. In the context of a stay granted on *forum non conveniens* grounds for example, it has been observed that a plaintiff may seek to lift a stay where the other jurisdiction is not willing to take jurisdiction for some reason (*Rotary Engineering* at [24]). The key point to draw from this is that whether a stay should be lifted is ultimately an exercise of the court's discretion.

A prospective applicant seeking to lift a stay should provide cogent reasons

75 This brings me neatly to the question of when a court should exercise its discretion to lift a stay granted on *lis alibi pendens* grounds (or more accurately,

a stay ordered after a plaintiff has been put to forum election). In my view, the court may approach this issue by considering the following questions:

(a) What is the basis on which the case management stay was initially granted?

(b) Has the basis on which the case management stay was initially granted since fallen away or has there been a change in circumstances?

(c) At the point in which the case management stay was granted, was the plaintiff made to elect the forum in which to pursue its claims?

(d) If the plaintiff has so elected, what reasons has it now provided in support of its application seeking to lift the case management stay?

(e) Are there any countervailing factors that weigh against lifting the case management stay?

I explain why these are material considerations.

76 In respect of (a) and (b), the court is clearly empowered to lift a stay previously made where the premise of the stay no longer holds (*Sia Chin Sun v Yong Wai Poh (Sia Tze Ming, non-party)* [2019] 3 SLR 1168 at [40]). As alluded to at [74] above, in the context of a stay granted on *forum non conveniens* grounds, the court's discretion to lift such a stay is exercised only when there are exceptional circumstances striking at the very basis on which the stay was granted, for example, if the premise on which the stay was granted turns out to be mistaken (*Rotary* at [25]). It is apposite to consider here the Court of Appeal's decisions in *Xitrans Finance Ltd v Rappo, Tania and another matter*

[2023] SGCA 22 ("*Xitrans*") and *The "Sea Justice"* [2024] 1 SLR 1118 (*"The Sea Justice*"), both of which touched upon the issue of lifting a *forum non conveniens* stay.

77 *Xitrans* involved applications to partially lift a *forum non conveniens* stay previously imposed by the Court of Appeal in *Rappo* (see [62] above). In *Rappo,* the court held that Switzerland was the more appropriate forum for the parties' dispute, which centered around the sale of artworks and the alleged inflation of sale prices. The court arrived at its conclusion having regard to undertakings provided by the appellants that they would recognise and accept the jurisdiction of the civil courts of Geneva, Switzerland, in respect of any dispute in connection with the sale of artwork to the respondents (the "Undertakings"), the wording of which was broad enough to encompass the claims brought by the respondents (*Rappo* at [96] and [97]). There were developments in Switzerland, triggered by the respondents' filing of a criminal complaint with the Swiss Public Prosecutor's Office against the appellants in respect of various acquisitions of artworks. This is because under Swiss law, a person who has suffered harm due to an alleged criminal offence may obtain civil compensation by attaching their civil action to the criminal proceedings. The Swiss Public Prosecutor investigated the complaint and decided to discontinue the criminal proceedings by way of a dismissal order. The appellants appealed to the Geneva Court of Appeal, which annulled the dismissal order in respect of transactions that fell within the 15-year limitation period. However, investigations could not be continued for transactions outside of the 15-year limitation period (the "Discontinued Claims"). The parties agreed that the Discontinued Claims could no longer be pursued as part of the Swiss criminal proceedings.

78 The respondents then filed applications before the Court of Appeal, seeking to partially lift the *forum non conveniens* stay in respect of the Discontinued Claims. Specifically, the respondents took issue with the appellants' unwillingness to confirm if the appellants accepted that the Discontinued Claims could still be the subject of independent civil proceedings in Switzerland, without the appellants raising objections on the basis that the claims were time-barred. The Court of Appeal dismissed the applications for three main reasons. First, the appellants had not reneged on the Undertakings because the Undertakings only precluded a jurisdictional challenge from the appellants but did not (and could not) compel the appellants to give up any substantive defences to the claim. A challenge based on time-bar was not jurisdictional in nature and did not put in jeopardy the Swiss court's jurisdiction over the Discontinued Claims (*Xitrans* at [33], [56] and [57]). Thus, there was no departure from the basis upon which the stay was granted (*Xitrans* at [58]). Second, the delay experienced by the respondents in the Swiss criminal proceedings did not amount to a denial of substantial justice, especially given the Geneva Court of Appeal's express finding that there was no unjustified delay on the part of the Swiss Public Prosecutor (*Xitrans* at [60]). Finally, the effect of lifting the stay in relation to the Discontinued Claims would mean splitting the litigation across Singapore and Switzerland, which would be an undesirable state of affairs given the legal and factual overlap between the sets of claims. In the court's view, this potential outcome militated against lifting the stay in the manner sought by the respondents (*Xitrans* at [62]).

79 *The Sea Justice* concerned a collision between two vessels, *A Symphony* and *Sea Justice* off the coast of Qingdao, in the People's Republic of China ("PRC") that resulted in a marine pollution incident. The appellant, the owner of *A Symphony*, commenced an action *in rem* for collision damage and consequential losses, including a declaration for it to be indemnified against all

pollution claims. The appellant simultaneously arrested *Sea Justice*. By the time of arrest, several sets of proceedings had been commenced in the Qingdao Maritime Court ("QMC"), including the respondent's constitution of a limitation fund pursuant to the tonnage limitation regime under the Maritime Law of the PRC (the "Fund"). The *Sea Justice* was later released, upon the respondent furnishing security by way of payment into court and a letter of undertaking issued by The Swedish Club (the "Security"). The respondent applied for and was granted a stay of the Singapore proceedings on the grounds of *forum non conveniens,* alongside an order for the Security furnished to be returned to the respondent. The appellant appealed against the order for the Security to be returned, arguing instead that the court should have granted a conditional stay of the proceedings with the Security to be retained in the meantime.

80 The Court of Appeal dismissed the appeal and held that the loss of the Security was not a legitimate juridical advantage because there was already a Fund in the PRC available for the appellant's claims mirroring those in the Singapore proceedings and the appellant had already lodged a claim against that Fund (*The Sea Justice* at [13]). As to the appellant's point that the Security ought to be retained as the appellant indicated its intention to lift the *forum non conveniens* stay after obtaining judgment from the QMC and to rely on the findings to establish liability in the Singapore proceedings should the respondent fail to satisfy in full any judgment obtained from the QMC, the Court of Appeal expressed scepticism that such a course to lift the stay would even be open to the appellant. This was because the stay was granted on a multi-factorial analysis that pointed to the QMC being the more appropriate forum for the trial of the action and not on the basis of whether the Fund or the respondent would be able to satisfy in full any judgment issued by the QMC. This meant that the

"fact that any Chinese judgment might not be satisfied in full would not strike at the very basis on which the stay was granted" (*The Sea Justice* at [19(b)]).

81 Guidance may be drawn from those cases to the extent that they stand for the uncontroversial proposition that in determining whether a stay should be lifted, the court should determine as an anterior question, the basis upon which the stay was initially granted and thereafter, whether that basis still holds or has since fallen away. In the context of a stay granted because of a plaintiff's election to pursue proceedings in the foreign jurisdiction, this means in practical terms that the court will have to determine whether there remains a *lis alibi pendens vis-à-vis* the Singapore proceedings that have been stayed. Of course, how the foreign proceedings may cease to be a *lis alibi pendens* can arise in myriad situations, such as the foreign court's determination that it lacks jurisdiction to determine the dispute, as alluded to in *Belbana* (see [66] above) or more straightforwardly, by the foreign court's conclusive determination of the dispute. Each case will turn on its own facts.

82 To that however, I propose one caveat. That is the threshold that an applicant seeking to lift a stay granted as a result of forum election has to meet. As the cases above have held, it is incumbent on a party seeking to lift a *forum non conveniens* stay to demonstrate exceptional circumstances (see [76] above). While not expressly stated, that high threshold is justified on the basis that the court, in ordering such a stay, has done so because of its finding that there is some available forum other than Singapore that is clearly or more distinctly appropriate to try the action. The court does not come to such a conclusion lightly; it arrives at this only after undertaking a multi-factorial analysis that establishes the forum with the closest connection to the material elements of dispute before it decides to decline jurisdiction (see [60(b)] above). This is why that the *forum non conveniens* inquiry is described as "often a complicated and

unpredictable exercise" (*CXG and another v CXI and others* [2024] 3 SLR 1282 at [66]). It should come as no surprise that given the gravity of a court's decision to decline jurisdiction, any subsequent decision to lift a stay granted on that basis requires exceptional circumstances. In comparison, the nature of the stay arising from forum election is not analogous. It is a case management stay. And in deciding whether such a stay is imposed, the court is not concerned with questions of the more appropriate, or natural, forum for the dispute to be tried in (see [60(a)] and [72] above). This animating concern in does not feature in lifting a case management stay. So, while it remains imperative that an applicant seeking to lift a stay granted as a result of forum election establish that the basis of the stay has since fallen away, the same degree of exceptionality as required in the case of lifting a *forum non conveniens* stay may not be required.

83 There is yet another distinguishing feature, which segues into (c) and (d). A plaintiff's election to pursue claims in a certain jurisdiction is necessarily a considered one, not only because the choice of jurisdiction often informs a party's litigation strategy, but more importantly because it also carries with it certain legal consequences. This point was touched upon in *Belbana* (see [64]–[66] above). As mentioned above, the plaintiff there had elected to pursue its claims against the defendant in the Belgian court. The Singapore court then granted a stay of the proceedings before it. In deciding if a stay (as opposed to a discontinuance) was the proper course, an issue of concern was whether a plaintiff, having elected to proceed in the Belgian courts, could then seek to lift the stay imposed on the Singapore proceedings and re-litigate the merits of the action should the Belgian court not rule in its favour. AR Tan answered this in the negative, observing as follows (*Belbana* at [40]):

> I am of the opinion that having elected for Belgium proceedings, *the Plaintiff cannot then resurrect the Singapore proceedings to re-litigate the issue*. The Plaintiff would be bound by its election and the doctrine of approbation and reprobation would

> preclude the Plaintiff having exercised its right to elect for Belgian proceedings from exercising a right which is alternative to or inconsistent with the right he has exercised (see *Treasure Valley Group Ltd v Saputra Teddy* [2006] 1 SLR(R) 358 at para 31). The stay of the local proceedings is only granted because there is a challenge to the Belgian Court's jurisdiction and is necessary to ensure that the Plaintiff is not left without recourse if the Belgian Court's jurisdiction is successfully challenged. This further buttresses my decision that the Plaintiff should be put to election and not merely be granted a stay without having made a choice. [emphasis added]

84 I respectfully adopt this analysis. The doctrine of approbation and reprobation is a principle of equity that precludes a party who has exercised a right from exercising another right which is alternative and inconsistent with the right it has exercised. A party who accepts a benefit by virtue of its exercise of a right must adopt it in its entirety and renounce any other rights inconsistent with that prior right (see *BWG v BWF* [2020] 1 SLR 1296 at [101]–[118]). In my view, this doctrine can apply when a plaintiff elects to proceed in a foreign jurisdiction instead of Singapore owing to a common plaintiff *lis alibi pendens*. This is particularly when the court orders a stay of proceedings in Singapore instead of mandating a discontinuance of the same. In such a case, the benefit that a plaintiff accrues is clear. A plaintiff, whilst electing to proceed in a foreign jurisdiction, obtains the benefit of its proceedings in Singapore not being discontinued. For example, a stay may preserve a plaintiff's claims from being time-barred should the plaintiff's action in the foreign court be unable to proceed for some reason or another. The utility of a stay is even more apparent when it has been ordered to allow an injunction granted by the Singapore court to continue to stand. When that happens, a plaintiff is able to proceed with its action in a foreign jurisdiction, while reaping the benefit of the subsisting injunction in Singapore, which preserves a defendant's assets for any subsequent enforcement action later on if it succeeds in obtaining an enforceable judgment in its favour (see [63(b)] above). So, to that extent, it cannot be

doubted that a plaintiff who has obtained a stay of proceedings in Singapore notwithstanding its election to pursue its claims in a foreign jurisdiction has, through its conduct, obtained and accepted a benefit.

85 What this means is that once a plaintiff has elected to pursue its claims in a particular jurisdiction for such claims to be conclusively determined on its merits in that jurisdiction, it should be held to that election. A plaintiff should not thereafter be allowed to approbate and reprobate by seeking to resile from its election. There are two points in time that the issue of approbation and reprobation may conceivably arise:

(a) The first is when a plaintiff applies to lift the stay *before* the foreign court has come to a substantive determination of the dispute on its merits. This could be due to the foreign court deciding that it lacks jurisdiction to adjudicate the claims such that it need not even consider the action on its merits before it or simply that the proceedings before the foreign court are still pending. As to the latter scenario, it is clear that the foreign proceedings will still be considered *lis alibi pendens* and the plaintiff will invariably have to provide good reasons why the stay should be lifted in spite of this given that the basis of the stay quite obviously remains operative. As to the former scenario, *Belbana* alludes to this being a possibility (see [66] above). In such a case, it may be open to a plaintiff to argue that the stay should be lifted and it should be allowed to proceed with its claims in the Singapore court because there is no longer a *lis alibi pendens* and the expectation that the claims will be conclusively determined in the foreign jurisdiction has not come to fruition. Of course, to pre-empt any objections that may be raised that the plaintiff is seeking to resile from its election, a plaintiff may well seek for the court's initial stay order to expressly provide that such

election is final and irrevocable unless the foreign court decides that it has no jurisdiction to determine the plaintiff's claims (see *Belbana* at [44]).

(b) The second is when a plaintiff applies to lift the stay *after* the foreign court has come to a substantive determination of the dispute on its merits. It is in this scenario where claims have been conclusively determined in the foreign court, such that the causes of action (or *lis*) merge with the judgment and are extinguished, that the issue of approbation and reprobation comes to the fore. If a plaintiff has succeeded in obtaining the relief that it has sought in the foreign court, it may seek to recognise and enforce that foreign judgment in Singapore, provided it satisfies the common law or statutory requirements (see [50] and [51] above). Alternatively, a plaintiff may rely on the foreign judgment to assert a transnational issue estoppel before the Singapore court. If, however, a plaintiff has failed to obtain the relief it has sought in the foreign court, it is precluded from seeking to re-litigate the merits of the action before the Singapore court to try to obtain a different outcome. A plaintiff does not have *carte blanche* to try to subvert an outcome on the merits obtained in a foreign jurisdiction that it has itself elected to pursue its claims only because it now deems to the outcome to be unfavourable to it. To allow this would be plainly contrary to the rationale of having a plaintiff elect in the first place, that is to mitigate the risk of inconsistent and incompatible findings between two different *fora* (see [61] above). Such conduct will not be countenanced, and a plaintiff will be barred from doing so by the doctrine of approbation and reprobation.

In simple terms, once the plaintiff has elected to pursue its claims in the foreign jurisdiction and the court in that foreign jurisdiction has substantively determined the claims on the merits, a plaintiff will not be permitted to re-litigate the merits of the action before the Singapore court. In considering whether to lift a stay in such a case, the court should scrutinise the reasons proffered by the applicant to ascertain whether in substance, the plaintiff is in fact seeking to re-litigate the merits of the proceedings in Singapore.

86 Finally, as to (e), given that the power to lift a stay is discretionary, the court should consider whether there are any other factors that may weigh against lifting the stay, as part of a holistic inquiry (see also *Xitrans* at [47]).

The stay imposed on OS 1193 should be lifted

87 Having regard to the principles above, I concluded that the stay previously imposed on OS 1193 ought to be lifted in the present circumstances. None of the second respondent's objections passed muster. I arrived at this conclusion for three reasons, which I expound on below.

88 I note at the outset that as between the parties, there was no dispute that the court had the power to lift the stay imposed on OS 1193. As a matter of law, this must be correct, as I have explained at [68] to [73] above. In any case, the applicant was also given expressly liberty to apply to lift the stay at the hearing of SUM 5759 (see [29] above). As against this, the second respondent's position was that the stay ought not to be lifted *now* but rather, *later*. To this extent, there was an element of inevitably implicit in the second respondent's submission: namely, an acknowledgment that the stay imposed on OS 1193 would eventually be lifted. The question really was *when* the stay should be lifted. In my judgment, this was an appropriate juncture to do so.

There was no longer any lis alibi pendens *in so far as OS 1193 was concerned*

89 First, I held that there was no longer any *lis alibi pendens* in so far as OS 1193 was concerned owing to the conclusive effect of the English Summary Judgment. It followed then that the basis of the stay imposed on OS 1193 had fallen away.

90 Before me, the applicant sought permission to amend OS 1193. In particular, the applicant sought to amend its s 438 IRDA Claim to effectively abandon its relief for damages and its alternative prayer for a payment of a sum equivalent to the benefit obtained by the second respondent (see [25(b)] and [44(a)] above).[38] In so doing, it would limit the relief in the s 438 IRDA Claim only to the transfer of the Unpledged Shares.

91 The second respondent objected to the amendment on the basis that to permit the amendment would effectively denude, impermissibly, the basis on which the stay of OS 1193 had previously been granted.[39]

92 In my judgment, there was no cogent basis upon which the second respondent could reasonably contend that the applicant should be denied such permission. I found it difficult to see in what way the applicant's request to abandon various heads of relief sought against the respondents in the s 438 IRDA Claim could be said to be adverse to the second respondent and in what way the second respondent could seek to resist it. Permitting the applicant to amend OS 1193 in the manner it sought would narrow the scope of issues that the second respondent would have to traverse in its defence. I accepted the applicant's submission that allowing OS 1193 to be amended would allow for

---

38 Applicant's Written Submissions dated 24 January 2025, para

39 Certified Transcript of the Hearing on 4 February 2025, p16

the determination of the real question in controversy between the parties to the proceedings, namely, whether the transfer of the Unpledged Shares from the first respondent to the second respondent ought to be unwound on the basis of it being a transaction to defraud its creditors.

93 Moreover, I did not agree with the second respondent's characterisation that allowing the amendment would effectively denude the basis on which the stay of proceedings in OS 1193 had initially been granted. There might have been force to this argument had the effect of the proposed amendment been to substantially change the complexion of the claim in OS 1193. But this was not the case. A counterfactual was most helpful here: had OS 1193 been phrased in the amended manner as proposed at the time SUM 5759 was heard (see [28] above), would the stay have still been granted? If it were so, then it could not be said that the proposed amendment would erode the basis on which the stay had been granted. When presented with this counterfactual, the second respondent accepted that it was likely that the stay of OS 1193 would still have been granted.[40] This was a fair concession. It could hardly be gainsaid that there would still be a considerable correspondence of issues between the s 423 UKIA Claim and the s 438 IRDA Claim even if the latter was amended to narrow the relief sought to only the transfer of the Unpledged Shares. In either case, the court would, in determining liability and fashioning relief, have to be satisfied that the transaction was entered into at an undervalue. In those circumstances, the court determining SUM 5759 would in all likelihood still been satisfied that the English proceedings were *lis alibi pendens* given the overlap of similar causes of action and would have correspondingly put the applicant to forum election.

---

40 Certified Transcript of the Hearing on 4 February 2025, p17

94 Thus, I granted the applicant permission to amend OS 1193 to limit its relief sought in its s 438 IRDA Claim only to the transfer of the Unpledged Shares from the second respondent to the first respondent. Having permitted the amendment, it followed that the English proceedings were no longer *lis alibi pendens* in so far as OS 1193 was concerned, as the English Summary Judgment was a final and conclusive determination of the merits pertaining to the transfer of the Unpledged Shares (see [38] above).

The enforcement proceedings in respect of the Award rendered in favour of Xinbo posed no impediment to the stay of OS 1193 being lifted

95 Second, the enforcement proceedings commenced by Xinbo in respect of the Award posed no impediment to the lifting of the stay of OS 1193.

(1) The Award made in favour of Xinbo

96 Given the centrality of the Award to the second respondent's argument resisting the Lifting Application (see [44(c)] above), I outline the circumstances leading to arbitral tribunal's (the "Tribunal") issue of the Award and the subsequent proceedings taken out by Xinbo *vide* HC/OA 222/2023 ("OA 222") to enforce the Award in Singapore. For background, Xinbo is the indirect majority shareholder of the first respondent and since May 2023, the indirect majority shareholder of the second respondent as well.[41] Shandong Ruyi is also the majority shareholder of Xinbo.

97 The genesis of the Arbitration, at least based on Xinbo's account of the facts in OA 222, is a tri-partite agreement entered into between Xinbo, Shandong Ruyi and the first respondent, in which shares were pledged as security by the first respondent for a debt owed by Shandong Ruyi to Xinbo (the

[41] Jason Mark Yardley's Affidavit dated 25 October 2024, para 21

"Guarantee"). These shares, as it turned out, were in fact the Unpledged Shares. The Guarantee contained an arbitration agreement providing for disputes to be resolved by way of arbitration at the Jining Arbitration Commission ("JAC") in the PRC. According to Xinbo, the parties later entered into a memorandum (the "Memorandum") intended to vary the arbitral institution from JAC to the Beihai Court of International Arbitration ("BCIA").

98 On 18 November 2022, Xinbo commenced the Arbitration in the BCIA against Shandong Ruyi and the first respondent. The Arbitration proceeded by way of a private hearing on 30 December 2022. Among other things, the first respondent had no objection to the arbitration procedure, to the facts alleged and evidence presented by Xinbo as well as to the reliefs sought by Xinbo.

99 On 10 January 2023, some 11 days after the hearing, the Tribunal rendered the Award, which affirmed the validity of the both the debt owed by Shandong Ruyi to Xinbo and the Guarantee. Among other things, the Award also provided that Xinbo had a priority right of compensation from the sale proceeds of the Unpledged Shares (see [110] below).

100 On 13 March 2023, Xinbo filed OA 222 without notice, seeking permission to enforce the Award. OA 222 was granted on 14 March 2023.

101 On 20 April 2023, the first respondent filed HC/SUM 952/2023 in OA 222, seeking to challenge the Award on the basis that, among other things, the Award was procured by fraud and that the arbitration agreement was invalid. The first respondent later applied for, and was granted, a production order against Xinbo for several categories of documents pertaining to the Guarantee and the Memorandum (the "Production Order").

102 On 8 March 2024, the first respondent filed HC/SUM 643/2024 ("SUM 643") for an unless order granted to compel Xinbo's compliance with the Production Order to take effect, with the consequence that OA 222 be dismissed and the order granting permission for enforcement of the Award be set aside should Xinbo continue to fail to comply with the Production Order.

103 On 15 July 2024, the learned Assistant Registrar Perry Peh allowed SUM 643, having been satisfied that Xinbo had failed to comply with the Production Order previously made and that the breach had been intentional and contumelious. AR Peh held that there was no reason for the unless order not to take effect and dismissed OA 222, effectively setting aside the permission to enforce the Award (see *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Coo, Ltd and another* [2024] SGHCR 7). Xinbo appealed against AR Peh's decision in SUM 643.

104 On 3 December 2024, S Mohan J dismissed the appeal against SUM 643 (see *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co, Ltd and another* [2024] SGHC 308). Xinbo lodged a further appeal to the Court of Appeal against Mohan J's decision *vide* CA/CA 71/2024 ("CA 71").

105 At the time the present applications were heard and decided, CA 71 remained pending before the Court of Appeal. I do note, as a postscript, that CA 71 was later dismissed by the Court of Appeal on 27 May 2025 (see *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v European TopSoho S.À R.L* [2025] SGCA 32). Nevertheless, that development does not and indeed cannot change the reasons for my decision that I had given to the parties on 8 April 2025.

(2) The Award did not confer on Xinbo any proprietary rights or security interest in the Unpledged Shares

106 The second respondent argued that the court should take cognisance of the procedural history of enforcement challenge to the Award, and in particular, the fact that the issue of the enforceability of the Award remained pending before the Court of Appeal. According to the second respondent, ensuring the stay imposed on OS 1193 remained in place would avoid conflicting judgments in relation to CA 71 and OS 1193.[42] It thus urged the court to preserve the *status quo* by leaving the stay in place.

107 I rejected this argument and held that the pendency of CA 71 furnished no basis for the stay to remain in place. Let me elaborate.

108 For starters, the tenor of the argument was inexplicable to the extent that it appeared that the second respondent was effectively advocating for Xinbo's rights. Xinbo was a distinct entity. This was curious because Xinbo was not a party to OS 1193 and there was no application for Xinbo to be joined as a party to OS 1193. There was also no indication that Xinbo wished to participate in OS 1193. Xinbo was not before the court in the Lifting Application to contend that its rights, if any, would be prejudiced by a transfer of the Unpledged Shares. Xinbo's conspicuous absence was striking also because it had been joined to the English proceedings since September 2024, in which the transfer of the Unpledged Shares was too the subject of dispute, but yet it had not been joined to OS 1193.[43] The curiosity was compounded when one further considered that the second respondent did not participate in the Arbitration, was not a party to

---

42 Second Respondent's Written Submissions dated 24 January 2025, para 40(b)

43 Jason Mark Yardley's Affidavit dated 23 October 2024, para 55

the Award and had no standing to rely on the Award.[44] The second respondent's objection was hence without merit.

109 Putting that to one side, at the time the present application was heard and decided, the appeal against Mohan J's decision was pending before the Court of Appeal *vide* CA 71. As things stood, the Award was unenforceable in Singapore for the simple reason that CA 71 did not operate as a stay of proceedings. It was therefore inaccurate for the second respondent to contend that the issue of whether Xinbo is permitted to enforce the Award in Singapore was "unresolved".[45] It was one thing to say that it might be prudent to wait for the determination of CA 71, but that did not detract from the fact that the Award had already been adjudicated to be unenforceable in Singapore by way of Mohan J's decision to dismiss the appeal against SUM 643.

110 Crucially, the enforceability of the Award had no material bearing on whether the stay ought to be lifted. It followed that the second respondent's focus on the pendency of CA 71 was a red herring. To address this, I turn to the terms of the Award, the dispositive part of which provides:[46]

> For the reasons set forth above, in accordance with the provisions of Articles 5 and 7 of the Civil Code of the People's Republic of China, the Tribunal decides as follows:
>
> 1. … Shandong Ruyi Technology Group Co., Ltd., shall repay the loan principal of 600 million yuan and interest to the Claimant, Wuhu Ruyi Xinbo Investment Partnership (limited partnership) (interest calculated method: based on 600 million yuan, calculated from January 1, 2018 to the date of actual

---

44 Applicant's Written Submissions dated 24 January 2025, para 46

45 Second Respondent's Written Submissions dated 24 January 2025, para 43

46 Liang Liwen's Affidavit filed in HC/OA 222/2023 dated 13 March 2023, p32

> repayment of the loan principal according to the annual interest rate of 6.56%).
>
> 2. [Shandong Ruyi] … shall bear the arbitration fee 2,487,780 yuan. The arbitration fee has been prepaid by [Xinbo]. The Court will not refund it. It shall be paid directly by the [Shandong Ruyi] … to [Xinbo].
>
> 3. **[Xinbo] has the priority right of compensation for the proceeds from the discount, auction and sale of 12,027,751 shares of SMCP S.A. held by [the first respondent].**
>
> …
>
> [emphasis added in bold]

111 The second respondent submitted that the Award conferred on Xinbo "certain proprietary, priority right or security interest in the Unpledged Shares".[47] The thrust of the argument appeared to be that if CA 71 was subsequently allowed and the Award was found to be enforceable in Singapore, an order made in OS 1193 in the meantime for the transfer of the Unpledged Shares back to the first respondent would affect and prejudice Xinbo's rights. As such, the stay ought not to be lifted pending the determination of CA 71.

112 The submission was misplaced. Contrary to that were the pellucid words of the Award. It was clear that the Award did not confer on Xinbo any proprietary rights or security interest in the Unpledged Shares. All the Award did was to provide for Xinbo's priority right of compensation from the *proceeds of the sale* of the Unpledged Shares. It mattered not whether the Unpledged Shares lay in the legal possession of the first or second respondent as Xinbo's right of compensation lay only in the sale proceeds of the Unpledged Shares. Even assuming that the Award was later found to be enforceable by the Court of Appeal in CA 71, such a finding would not affect the operation of any orders made in OS 1193 for the transfer of the Unpledged Shares (if such an order were

---

47 Second Respondent's Written Submissions dated 24 January 2025, para 43

to be made). The terms of the Award were plainly not inconsistent with the prayers sought by the applicant in OS 1193; any transfer of the Unpledged Shares would not be attendant with a pronouncement on the priority to the proceeds to the sale of the Unpledged Shares. In fact, it could not. There was no relief to that effect sought by the applicant in OS 1193. As such, there was no possibility of any conflicting judgments in OS 1193 and CA 71 as they involved wholly distinct issues and different parties. Indeed, at the hearing before me, the second respondent did not seriously pursue this line of objection. And reasonably so, because the Award plainly did not purport to grant such right or interest.

113 I was fortified in my conclusion, having regard to the second respondent's *own* position taken in the English proceedings. As Males LJ observed in his order dismissing the second respondent's application for permission to appeal against the English Summary Judgment (see [38] above), it was "common ground" between the parties that if Xinbo indeed had a claim to the Unpledged Shares, it could assert such a claim in the Luxembourg insolvency proceedings, as would be "the appropriate course".[48]

114 I respectfully agreed. What happens to the Unpledged Shares must surely be a matter to be determined in the ongoing insolvency proceedings in Luxembourg should the Unpledged Shares be transferred back to the first respondent. There was no suggestion that Luxembourg was not the appropriate forum for the insolvency proceedings. The Curator is bound by Luxembourg law in administering the bankruptcy estate of the first respondent. If it was indeed the case that the Award is later found to be enforceable, it would be incumbent on Xinbo to present its claim to the Curator within the context of the

---

[48] Jason Mark Yardley's Affidavit dated 23 October 2024, p285

Luxembourg insolvency proceedings. It would then lie upon the Curator to adjudicate Xinbo's claim accordingly, under the supervisory control of the Luxembourg court.

115 Taken together, this meant that whether the Award is ultimately enforceable in Singapore was immaterial to the question of whether the applicant (or more accurately, the first respondent) is entitled to the relief sought in OS 1193 (*ie,* the transfer of the Unpledged Shares). The Award posed no impediment whatsoever to the stay of OS 1193 being lifted. Thus, the second respondent's objection on this ground held no water.

The applicant was not seeking to re-litigate the merits of OS 1193

116 Third, the applicant was not seeking to re-litigate the merits of OS 1193 in the event that the stay were lifted and OS 1193 were to proceed substantively.

117 Here, the point to consider was whether it would be appropriate to lift the stay imposed on OS 1193 because of the applicant's express election to pursue its claims in the English High Court and the fact that it had already obtained the English Summary Judgment (see [29] above). I held in the affirmative.

118 In so deciding, I took into account the fact that the English Summary Judgment, not being a money judgment, was not capable of recognition and enforcement in Singapore (see [53] above). And to this extent, the applicant had proffered a cogent reason as to why the stay ought to be lifted. The English Summary Judgment – as a foreign judgment – had no direct operation in Singapore and could not be enforced immediately without more in the Singapore courts. It did not afford the applicant any direct rights against the second respondent (and indeed, JPM), in Singapore. In order for the applicant

to obtain an order for a transfer of the Unpledged Shares that would bind all the parties to the proceedings in Singapore (including JPM) that would have immediate operation, it would have to seek a substantive determination of OS 1193 itself.

119 I was also satisfied that the applicant's application to lift the stay did not constitute an attempt to resile from its election to proceed with its claims in the English High Court. Neither did its intention to proceed with OS 1193 substantively now contravene the bar on re-litigating the merits of the claim notwithstanding the English Summary Judgment. The applicant had averred on affidavit and later confirmed in its submissions that should the stay be lifted, it would rely on the English Summary Judgment and thereafter assert issue estoppel based on its preclusive effect.[49] To put it another way, the applicant was not seeking to re-litigate the merits of the claim in OS 1193 and to obtain an outcome different from that of the English Summary Judgment. If anything, it was seeking an outcome entirely consistent with that. I would also note that in any event, at the hearing before me, both the applicant and the first respondent accepted that it would not be open for a plaintiff to re-litigate the merits of a claim after having elected to proceed in a foreign jurisdiction and thereafter obtaining judgment on that claim.[50] This, in my view, was a fair position, given the observations above at [84]–[85] above that a plaintiff, having elected to proceed with its claims in a foreign jurisdiction, is precluded from re-litigating the merits of an action before the Singapore court. Of course, whether or not the applicant could satisfy the relevant requirements so as to successful assert transnational issue estoppel based on the English Summary Judgment was a

---

49 Applicant's Written Submissions dated 24 January 2025, paras 42 and 52

50 Certified Transcript of the Hearing on 4 February 2025, p14

separate issue that would have to eventually be considered by the court hearing OS 1193. And I say no more on this.

120 For those reasons, therefore, and in the absence of any factors that would weigh against lifting the stay, I exercised my discretion and lifted the stay previously imposed on OS 1193.

My decision on the Joinder Application

The applicable legal principles

121 Next is the Joinder Application, which is brought pursuant to O 15 r 6(2)(*b*)(ii) of the Rules of Court (2014 Rev Ed) (the "Rules"). To the extent that its provisions are material for present purposes, O 15 r 6(2)(*b*)(ii) of the Rules reads as follows:

> **Misjoinder and nonjoinder of parties (O. 15, r. 6)**
>
> …
>
> (2) Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter, the Court may, on such terms as it thinks just and either of its own motion or on application —
>
> …
>
> (*b*) order any of the following persons to be added as a party, namely:
>
> (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon
>
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between

> him and that party as well as between the parties to the cause or matter.

122 The legal principles are well-established. The purpose of ordering a joinder is to "ensure that the right parties are before the court so as to minimise the delay, inconvenience and expense of multiple actions" (*Tan Yow Kon v Tan Swat Ping and others* [2006] 3 SLR 881 ("*Tan Yow Kon*") at [36]). In this regard, the court is "vested with a wide discretion in order to secure these objectives and it would be counter-productive to approach its exercise with fixed notions or ideas that might curb the court's ability to achieve the precisely appropriate solution in any given case" (*Tan Yow Kon* at [37]).

123 In determining whether a party should be joined to the proceedings on the basis of necessity or on the basis of it being just and convenient, the court undertakes a two-part enquiry: (a) the first involves determining whether the requirements of the particular limb in O 15 r 6(2)(*b*) of the Rules; and (b) second, if so, the court considers whether its discretionary power to allow joinder should be exercised in favour of the applicant (*Lim Oon Kuin and others v Rajah & Tann Singapore LLP and another appeal* [2022] 2 SLR 280 ("*Lim Oon Kuin*") at [25]). An applicant relying on the just and convenient limb in O 15 r 6(2)(*b*)(ii) of the Rules must satisfy the court that there exists a question or issue involving the party to be joined that relates to an existing question or issue between the existing parties. Once that has been shown, the court considers whether joinder for the purpose of deciding that question or issue would be just and convenient (*Lim Oon Kuin* at [27], citing *Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA and others and other appeals* [2018] 1 SLR 894 at [204]).

124 The applicant invited me to exercise my discretion to join JPM as a party to OS 1193 based on the just and convenient limb of O 15 r 6(2)(*b*)(ii) of the

Rules. The applicant argued that this would ensure the effective transfer of the Unpledged Shares should the second respondent refuse to provide the requisite instructions and/or consent to JPM. This, the applicant pointed out, was already the case, as evinced by the second respondent's subsisting non-compliance with the English Summary Judgment (see [40] above).[51]

A practical solution could have been achieved by way of an undertaking

125 Before delving into the Joinder Application proper, I make a preliminary observation.

126 At the first hearing of the Joinder Application on 4 February 2025, and in the course of oral submissions, it became apparent that JPM's primary concern was to ensure that it be named in any order of court made in OS 1193 if it were to facilitate the transfer of the Unpledged Shares presently held with it.[52] This concern was understandable. A non-party to the proceedings would be hesitant to act on an order of court if it was not certain that it is in fact bound by such an order and by extension, if it was in fact under any compulsion to comply with the same. An express reference to JPM and its obligations under an order of court would put to paid any subsequent allegation that it was not acting pursuant to an order of court or acting unilaterally without the second respondent's authorisation or instructions. That being said, it also appeared that JPM was trying to have it both ways. On one hand, JPM wished to ensure that it was named expressly in any order of court directing it to facilitate the transfer of the Unpledged Shares. On the other hand, when JPM was asked whether it would be willing to be named in such an order of court even whilst remaining a

---

51 Applicant's Written Submissions dated 24 January 2025, para 20

52 Certified Transcript of the Hearing on 4 February 2025, p27

non-party and not participating in OS 1193, there seemed to be some hesitation on its part.[53]

127 In view of this, I indicated to the parties provisionally that there may be a practical solution to JPM's concerns, which could well render the Joinder Application unnecessary. That practical solution could be achieved by way of an undertaking provided by JPM, in broadly the following terms: (a) whether JPM would undertake to be bound by an order of court in OS 1193 ordering the transfer of Unpledged Shares and to facilitate the transfer of the same, even if it were not expressly named; or (b) alternatively, whether JPM would undertake to be bound by an order of court in OS 1193 expressly naming it and requiring it to transfer the Unpledged Shares in the event of the second respondent's non-compliance, notwithstanding that it would remain a non-party to OS 1193 and that it would not raise any subsequent objections by virtue of the fact that it was not a named party to OS 1193.

128 I thus granted an adjournment for JPM to consider whether it would be able and willing to provide an undertaking broadly in the terms above. In part, I deemed an adjournment appropriate and potentially cost-effective because the applicant indicated that should JPM be prepared to undertake that it would comply with an order of court mandating the transfer of the Unpledged Shares and facilitate the transfer of the same, notwithstanding that JPM remained a non-party to OS 1193, it would be prepared to withdraw the Joinder Application.[54]

129 Unfortunately, JPM later confirmed by way of a letter to court that it was unable to provide an undertaking to that effect. JPM had instead conferred

---

53 Certified Transcript of the Hearing on 4 February 2025, p26

54 Certified Transcript of the Hearing on 4 February 2025, p24

with the applicant and in a letter addressed to the court dated 19 February 2025, JPM and the applicant jointly proposed the following course of action:[55]

> … [JPM] and the Applicant respectfully request for the hearing of the determination of [the Joinder Application] **be held over and adjourned until all existing parties to OS 1193 have made and completed their substantive arguments on the merits (including relief), but prior to the delivery of judgment on the merits (including relief) in OS 1193**. Subject to the Honourable Court's acceptance of the parties' joint request in this regard, our client will undertake to remain neutral (i.e., neither consenting to nor objecting to any of the prayers in [the Joinder Application]) in any resumed hearing of [the Joinder Application]. [emphasis added in bold]

130 With due respect to the parties, I did not find this to be a satisfactory solution.

131 The reasons for this were simple. The proposed course of action was neither practical nor feasible. I had already heard parties substantively, and indeed at length, on the Joinder Application. There was no good reason for me not to decide the Joinder Application or to defer my decision to a later date. OS 1193 would be heard before a Judge, if the stay were lifted. The parties' proposal would presumably entail having that Judge hear the Joinder Application, even though it had already been substantively heard in part by me. This would not be an efficient use of judicial resources. The alternative would effectively require the Judge to adjourn the proceedings in OS 1193 for the Joinder Application to be placed before me again, prior to deciding OS 1193 on its merits. This would be plainly impractical. The proposed approach would constrain the Judge determining OS 1193 if he or she so chose to issue an *ex tempore* decision shortly after hearing the parties' oral arguments. Operationally speaking, there was no good reason to tie the court's hands in such a manner.

---

55 Allen & Gledhill LLP's letter dated 19 February 2025

Further, to request that hearing of the Joinder Application be adjourned to after the substantive arguments in OS 1193 were heard but just prior to the delivery of judgment on the merits appeared to me to be impractical, if not entirely unprecedented.

132 I accordingly directed the applicant and JPM to tender further written submissions to specify the enforcement application (and specifically, the writs of execution) JPM had envisaged the applicant ought to take out to compel the return of the Unpledged Shares should an order be made in OS 1193, without JPM being joined as a party to the proceedings. They duly did so. And with the benefit of those submissions, I proceeded to determine the Joinder Application on its merits.

JPM should be joined as a party to OS 1193

133 In resisting the Joinder Application, JPM advanced three main arguments from (a) case law; (b) circumvention; and (c) costs.

134 I did not find these arguments persuasive and rejected them. I deal with each argument in turn.

A party may be joined to proceedings even when there is no cause of action asserted against it

135 First, the argument from case law.

136 As noted above at [45(a)], the applicant neither made allegations of wrongdoing against JPM nor asserted any independent cause of action against JPM.[56] But those facts *per se* did not prevent JPM from being joined as a party

[56] Jason Mark Yardley's Affidavit dated 25 October 2024, para 7

to OS 1193. The language of O 15 r 6(2)(*b*)(ii) of the Rules makes clear that the court's power to join a party to the proceedings is not fettered in such sense. It is apparent that a cause of action against the non-party is not a prerequisite to it being joined to the proceedings (*Tan Yow Kon* at [57]; *Teo Siew Har v Lee Kuan Yew* [1999] 3 SLR(R) 410 at [18]). JPM acknowledged this but submitted that the authorities did not support a joinder in the present situation. It referred to several cases and presented a broad taxonomy of the situations in which non-parties, which do not have any causes of action asserted against it, have nevertheless been joined to the proceedings:[57]

(a) When a plaintiff seeks a *Mareva* injunction against a non-party whom it believes holds property that is, in truth, beneficially owned by a pre-existing defendant to an action, in order to satisfy a judgment against the principal defendant (*Oro Negro Drilling Pte Ltd and others v Integradora de Servicios Petroleros Oro Negro SAPI de CV and others and another appeal (Jesus Angel Guerra Mendez, non-party)* [2020] 1 SLR 226 ("*Oro Negro*"); *Lee Kuan Yew v Tang Liang Hong* [1997] 1 SLR(R) 248). This is commonly referred to as a *Chabra* injunction, cognate with the English High Court's decision in *TSB Private International Bank SA v Chabra* [1992] 1 WLR 231 ("*Chabra*").

(b) When the effect of a judgment in favour of a plaintiff will result in a non-party incurring substantive liability to the plaintiff, such as a guarantor (*People's Parkway Development Pte Ltd v Ramanathan Yogendran* [1990] 2 SLR(R) 338).

(c) When a non-party, by virtue of its position, is capable of presenting a perspective on public interest considerations that is distinct

---

57 JPM's Written Submissions dated 24 January 2025, para 32

from the present parties to an action (*ARW v Comptroller of Income Tax and another and another appeal* [2019] 1 SLR 499).

JPM submitted that because the present case did not fall within the confines of any of the situations above, the Joinder Application ought to be dismissed.

137 With respect, I was not persuaded by JPM's argument.

138 In my view, the cases cited were illustrative, but not exhaustive. And more specifically, not exhaustive of the circumstances in which a court may order a joinder against a non-party to which to cause of action has been asserted. The upshot of JPM's argument appeared to be that while O 15 r 6(2)(*b*)(ii) of the Rules is phrased broadly, the discretion it creates is to be applied narrowly. This submission founded on taxonomy hewed too close to being prescriptive. The submission also ran against the express caution by the High Court in *Tan Yow Kon* (see [122] above). The court's discretion here to enable a joinder is a "relatively wide and broad one" (*Actis Excalibur Ltd v KS Distribution Pte Ltd and others* [2016] SGHCR 11 at [27]). This discretion ought not to be unduly curtailed.

139 After all, the touchstone to allow a joinder on the just and convenient limb is for a court simply to be satisfied of the two cumulative non-discretionary requirements set out in O 15 r 6(2)(*b*(ii) of the Rules. This is in contradistinction to the necessity limb in O 15 r 6(2)(*b*)(i) of the Rules, which requires there to be a *lis* between a party to the proceedings and the person to be joined (*Reignwood International Investment (Group) Co Ltd v Opus Tiger 1 Pte Ltd and other matters* [2021] SGHC 133 at [100]). Rather, I accepted the applicant's submission that there exists an issue and/or question as between JPM and the parties to OS 1193, namely, whether the Unpledged Shares – held in JPM's

custody – ought to be transferred from the second respondent to the first respondent. This had to be viewed in light of the second respondent's subsisting non-compliance with the English Summary Judgment. And in turn, that issue and/or question is inextricably linked to the main dispute in OS 1193 as it necessarily arises out of the same underlying factual matrix and is dependent on the nature of the specific orders made, if any, in OS 1193 itself.[58]

140 For completeness, I consider the Court of Appeal's decision in *Oro Negro*. While not canvassed at length by the parties, I think it appropriate to touch on the case given an observation made by the court there in respect of a potential joinder of a non-party for the purposes of enforcement.

141 *Oro Negro,* briefly stated, involved the grant of *ex parte* interim injunctions against the respondents who sought to set them aside. The appellants were a group of companies that owned oil rigs in Mexico. The respondents consisted of former directors of the appellants as well as the appellants' holding company. The respondents had caused the appellants to file a *concurso* petition in Mexico, a type of court-sanctioned debt restructuring process. The appellants commenced HC/OS 126/2018 ("OS 126"), seeking declarations that the respondents had no authority to represent the appellants and various permanent injunctions against them as well as their agents and/or servants from purporting to do so. At the same time, the appellants sought for and obtained *ex parte* interim injunctions against the respondents, enjoining them from purporting to act on the appellants' behalf.

142 The pertinent issue for present purposes was the involvement of a non-party, Mr Jesus Angel Guerra Mendez ("Mr Mendez"), a lawyer in a Mexican

---

58 Applicant's Written Submissions dated 24 January 2025, para 33

law firm. Mr Mendez claimed that the appellants had appointed him and other lawyers in his firm as their attorneys pursuant to powers of attorney granted by the appellants, allowing them to file all kinds of proceedings, including the *concurso* proceedings. The appellants, relying on *Chabra* submitted that Mr Mendez ought to be added as a defendant in OS 126 as his participation was "necessary for the purposes of enforcing any order in the event that they succeeded in OS 126" (*Oro Negro* at [106]).

143 The Court of Appeal rejected the appellants' argument. In declining to add Mr Mendez as a defendant to OS 126, the court held that Mr Mendez did not fall within either limb of O 15 r 6(2)(*b*) of the Rules. Notably, the court clarified the scope of *Chabra* and held as follows (*Oro Negro* at [112]:

> In our view, *Chabra* stood for the narrower principle that a third party against whom no cause of action is being asserted can be added as a defendant where there is good reason to suppose that the assets held by that third party are, in truth, the assets of the defendant against whom a cause of action is being asserted. The anticipated eventual enforcement must have been against assets rather than against persons for breaching a court order. We did not accept that the principle in Chabra could be extended to any situation in which eventual enforcement against a third party was contemplated.

144 It is clear that in declining to add Mr Mendez as a defendant to OS 126, the court was concerned with the limits of *Chabra.* In particular, the court unequivocally rejected appellants' argument that *Chabra* stood for the proposition that a person against whom no cause of action was being asserted can be added as a defendant in anticipation of eventual enforcement proceedings against that party (*Oro Negro* at [106]). Moreover, the court observed that there was no dispute that the interim injunctions extended to the first respondent's servants and agents and should the appellants be successful in OS 126 and should Mr Mendez breach any orders of court, "the appellants would be entitled to take out enforcement proceedings against Mr Mendez even without his

participation as a party in OS 126, provided he is found to be a servant or agent [of the first respondent]" (*Oro Negro* at [113]). These enforcement proceedings contemplated there must presumably refer to committal proceedings. And because the appellants had taken the position that Mr Mendez was such a servant or agent, "the addition of Mr Mendez as a defendant in OS 126 would have changed nothing" (*Oro Negro* at [113]).

145 The present case was quite different. The applicant was neither relying on *Chabra* nor seeking to expand its scope. JPM, as the non-party here, is in physical custody of property that forms the subject matter of OS 1193, *viz,* the Unpledged Shares. This was quite unlike *Oro Negro,* in which Mr Mendez was not holding any disputed assets. And unlike the ability of the appellants in *Oro Negro* to rely on the encompassing terms of the interim injunctions, it was clear that if JPM were not joined to OS 1193 and named in the order of court, there would be no recourse available to the applicant for JPM to facilitate the transfer of the Shares (and certainly, not committal proceedings against JPM). Ultimately, whether a joinder is just and convenient and satisfies the criteria in O 15 r 6(2)(*b*) of the Rules will ultimately depend on, among other things, whether the non-party holds any disputed assets, the scope and terms of the order of court as well as the nature of enforcement proceedings that may be contemplated against the non-party. This leads neatly into JPM's next objection.

The Joinder Application did not constitute an attempt to circumvent the normal execution process

146 Second, the argument from circumvention.

147 JPM's next argument was that even if it were not a party to the proceedings in OS 1193, it remained squarely within the applicant's powers "to apply *for an enforcement order directing JPM* … to arrange a transfer of the

Unpledged Shares without [the second respondent's] instructions and/or consent, upon succeeding on the merits of its claim(s) in OS 1193" [emphasis added].[59] According to JPM, "the more appropriate, just and convenient course of action is for [the applicant] to seek an enforcement". In other words, JPM's argument was that the applicant was impermissibly seeking by the Joinder Application to short-circuit the normal enforcement process that would come after the court makes an order but such order remains unsatisfied.

148 Leaving aside JPM's use of the term "enforcement order" that is appropriately the parlance of the Rules of Court 2021 (replacing the term "writ of execution" under the Rules, which applies to the present Joinder Application), this argument was nonetheless misconceived.

149 The argument was beset by the assumption that there were any writs of execution available to the applicant compel JPM, as a non-party to OS 1193, to facilitate the transfer of the Unpledged Shares. There were none.

150 When I sought clarification at the first hearing as to which writs of execution could be issued by the applicant against JPM, JPM initially indicated that it would be open to the applicant to take out a writ of sale and seizure in respect of the Unpledged Shares. It was apparent that this suggestion was unsustainable. Pursuant to O 45 r 1(1) of the Rules, a writ of seizure and sale can only be issued in the context of a money judgment. This was not the case here as the prayers in OS 1193 involved only the transfer of the Unpledged Shares, akin to the English Summary Judgment (see [37] above). There were also no prayers in OS 1193 for the Unpledged Shares to be sold; the intention

[59] Chen Jian's Affidavit dated 20 November 2024, para 10(2)

was for the Unpledged Shares to be returned to the first respondent to form part of its bankruptcy estate (see [114] above).

151 Likewise, a writ of delivery was inapplicable. Should the relief sought by the applicant be granted in OS 1193, the judgment debtor, properly identified, would be the second respondent and *only* the second respondent. The second respondent would hence be the "person against whom the judgment is given" within the meaning of O 45 r 4(1) of the Rules. JPM would not be the judgment debtor and the writ of delivery could not be issued against it, as a non-party who was simply the custodian of the Unpledged Shares.

152 By the time the applicant and JPM were directed to tender further written submissions (see [132] above), it was common ground that there were no writs of execution that could be issued against JPM to facilitate the transfer of the Unpledged Shares.[60] Garnishee proceedings, that being the only mode of execution that could involve a non-party (*viz*, the garnishee), were clearly inapplicable in the present case.

153 Be that as it may, both the applicant and JPM proffered what they considered to be two alternative enforcement mechanisms untethered to a specific writ of execution:

(a) First, by way of O 45 r 9(2) of the Rules allowing an order of court in OS 1193 to impose a positive obligation on JPM, notwithstanding its status as a non-party.

---

[60] Applicant's Written Submissions dated 7 March 2025, para 6; JPM's Written Submissions dated 7 March 2025, para 4

(b) Second, by way of s 14(1) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA") empowering the Registrar to execute transfer documents for the Unpledged Shares on behalf of the second respondent.

154 The applicant and JPM contended that either of these enforcement mechanisms would be able to ensure the transfer of the Unpledged Shares (in the event that it was so ordered in OS 1193) despite any potential non-compliance by the second respondent, without having to join JPM as a party to the proceedings. I make one observation in passing. The mechanisms highlighted by JPM and the applicant were not, *strictly* speaking, enforcement mechanisms, if they were to be understood in the sense of a "writ of execution" as defined in O 46 r 1 of the Rules. Unlike a writ of execution, which has the effect of binding or affecting the subject property, both these mechanisms do not involve the attachment and/or transfer of the judgment debtor's interest in the subject property to the judgment creditor (see *United Overseas Bank Ltd v Chia Kin Tuck* [2006] 3 SLR(R) 322 at [14]; *American Express Bank Ltd v Abdul Manaff bin Ahmad* [2003] 4 SLR(R) 780 at [27]). Further, these mechanisms may be employed by a court at the time an order or judgment is made by the court as opposed to subsequent to it (as is the case for a writ of execution). Having said that, however, it does no harm to use the phrase "enforcement mechanism" so long it is borne in mind that it is intended to refer *generally* to the various ways in which a successful party can employ the civil machinery of the court to ensure compliance and satisfaction of an order or judgment.

155 I appreciated that the applicant and JPM had made efforts to come to a consensus on a mechanism that could avoid joining JPM as a party to OS 1193.

But the applicant's support notwithstanding, I did not accept either proposed mechanism as being suitable for the reasons that follow.

(1) Order 45 r 9(2) of the Rules

156 The applicant submitted that instead of joining JPM to OS 1193, the prayers in OS 1193 could be amended to expressly name JPM and impose a positive obligation on it to transfer the Unpledged Shares should the second respondent fail to do so. A non-party, such as JPM, would nevertheless be bound by an order of court. The enabling provision for this, the applicant submitted, was O 45 r 9(2) of the Rules.[61] That provision reads as follows:

> **Execution by or against person not being a party (O. 45, r. 9)**
>
> …
>
> (2) Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

157 In so far as O 45 r 9(2) of the Rules contemplates that a court order may bind a non-party and impose obligations for compliance (and consequences for non-compliance), it is a departure from the general rule that only named parties to the proceedings can be bound by an order of court.

158 The general rule is, as Vinodh Coomaraswamy J put it in *Oro Negro Drilling Pte Ltd and others v Integradora de Servicios Petroleros Oro Negro SAPI de CV and others* [2023] SGHC 297 at [143]:

> **The utility of the concept of a party in civil proceedings is that it defines exclusively the universe of persons against whom the effects of a judgment are opposable.** A judgment in civil proceedings has four fundamental effects. First, it

---

61 Applicant's Written Submissions dated 7 March 2025, paras 8 and 9

> terminates the court's power to alter the parties' substantive rights and obligations in the proceedings, or in a defined phase of the proceedings, leaving the court to exercise only an ancillary or adjectival power relating to the interpretation or implementation of the judgment. Second, the judgment resolves the *lis* by adjudication and with finality, rendering its subject-matter *res judicata*. **Third, the judgment binds the parties to comply with its terms.** Fourth, the judgment merges the parties' pre-judgment substantive rights and obligations into the judgment. **The judgment has these four effects against, and *only* against, the parties to the proceedings.** [original emphasis in italics; emphasis added in bold]

The parties to the proceedings are simply the legal persons between whom the plaintiff asserts the *lis* to exist. It is therefore the plaintiff who defines the parties by choosing to name some but not other legal persons as a defendant upon commencement of an action.

159 The only reported case that discusses O 45 r 9(2) of the Rules appeared to be *Shankar's Emporium Pte Ltd and others v Jethanand Harkishindas Bhojwani and another* [2021] 3 SLR 1327 ("*Shankar's Emporium*").

160 In *Shankar's Emporium*, there was a prior order of court ordering the husband *qua* trustee to provide an account of various trust properties to his wife by furnishing documents listed in an annex to the court. The trust properties consisted of shares in various companies of which the husband was a director. The order of court listed certain documents relating to the companies' shares and finances that were to be furnished. The companies thereafter filed an application for the order of court to be varied to provide that nothing in the order should be taken as compelling them to produce the documents.

161 Tan Puay Boon JC dismissed the companies' application and held that there was no need to vary the order of court because it did not compel the companies, as non-parties, to produce or disclose any of the documents. Tan JC

observed that O 45 r 9(2) of the Rules "assumes that certain non-parties may be placed under obligations by court orders" and whether a non-party is indeed bound by an order of court ultimately "depends on the construction of the order" (*Shankar's Emporium* at [40], referring to *Singapore Civil Procedure 2020* vol 1 (Chua Lee Ming gen ed) (Sweet & Maxwell, 10th Ed, 2020) at para 45/9/1). On the facts of the case, the order of court only created a *personal* obligation for the husband to furnish documents in his role as a trustee and the mere fact that the companies may be involved in the husband's compliance did not mean that the companies were correspondingly obliged by the order of court to produce the documents. Whatever rights or obligations the companies had against the husband in relation to the production of documents was not governed by the order of court but instead by any rules governing the relationship between the companies and the husband (*Shankar's Emporium* at [41] at [42]).

162 I highlight two points following from *Shankar's Emporium.* The first is that O 45 r 9(2) of the Rules is not an enabling provision that confers on the court the power to make an order that can bind a non-party. Hence, the court's observation that the provision "*assumes*" that non-parties may be bound by an order of court. It thus clarifies, not confers. That power is known at common law and in our rules of civil procedure. For example, a court has the power to make costs orders against a non-party (see *DB Trustees (Hong Kong) Ltd v Consult Asia Pte Ltd and another appeal* [2010] 3 SLR 542). The second is that because it is an exception to the general rule, the court will necessarily exercise caution when it decides to impose an obligation on a non-party, which ostensibly has not participated in the proceedings. This is consistent with the orthodox understanding that "[n]o court can make a finding which affects the right of a person who is not properly a party before it" (*Rodeo Power Pte Ltd and others v Tong Seak Kan and another* [2023] SGHC(A) 1 at [23]).

163 As it stood here, only the applicant, the first respondent and the second respondent were named parties to OS 1193. They were the only parties included in the title to the proceedings. While I accepted that a non-party, such as JPM, could in theory be bound by an order of court, I was reluctant to consider this as being preferable to a joinder. JPM had itself refrained from raising O 45 r 9(2) of the Rules as a viable option, primarily out of a concern that there could be subsequent challenges, presumably from the second respondent, regarding the authority of JPM to transfer the Unpledged Shares as a non-party.[62] This concern could not be entirely precluded. *Shankar's Emporium* was itself one such example of a delay occasioned by protracted proceedings, in which a party seeks the court's deliberation on the appropriate construction of an order of court. Such an objection could well be unmeritorious but could nevertheless cause delays to the transfer of the Unpledged Shares, if so ordered. Finally, I also bore in mind the fact that JPM was unable to provide an undertaking to be bound by an order of court expressly naming it and directing it to facilitate the transfer of the Unpledged Shares, while remaining a non-party to OS 1193 (see [129] above). Should JPM be joined as a party to OS 1193, it would be given the opportunity to respond and address the court, if it so wished, as to any orders that could potentially affect its interests.

164 In light of these circumstances, in my view, a preferable option would be to add JPM as a party to OS 1193. Doing so would make it undoubtedly clear that JPM was bound by any of the obligations contained in an order of court expressly naming it. It would simultaneously avoid potential concerns regarding the naming of a non-party in an order of court.

---

62 Certified Transcript of the Hearing on 8 April 2025, p7

(2) Section 14(1) of the SCJA

165 Alternatively, the applicant and JPM also relied on s 14(1) of the SCJA. According to them, the court could include, as part of its orders in OS 1193, a specific order allowing the Registrar pursuant to s 14(1) of the SCJA to execute all necessary and incidental documents on the second respondent's behalf to effect the transfer of the Unpledged Shares to the first respondent should the second respondent fail to do so within a stipulated timeframe. This would neither require the applicant to obtain a writ of execution or for JPM to be joined as a party to OS 1193.[63]

166 Section 14(1) of the SCJA empowers the Registrar to sign or execute a document or deed on behalf of a non-compliant party if such an order of court requires such a document or deed to be signed or executed. It provides:

> **Execution of deed or indorsement of negotiable instrument**
>
> **14.**—(1) If —
>
> (*a*) a judgment or order is for the execution of a deed, or signing of a document, or for the indorsement of a negotiable instrument; and
>
> (*b*) the party ordered to execute, sign or indorse such instrument is absent, or neglects or refuses to do so,
>
> any party interested in having the same executed, signed or indorsed, may —
>
> (*c*) prepare a deed, or document, or indorsement of the instrument in accordance with the terms of the judgment or order; and
>
> (*d*) tender the same to the court for execution upon the proper stamp, if any is required by law,
>
> and the signature thereof by the Registrar, by order of the court, has the same effect as the execution, signing or indorsement thereof by the party ordered to execute.

---

63 JPM's Written Submissions dated 7 March 2025, para 4

167 This is a facilitative provision. Section 14(1) of the SCJA operates only *after* a relevant party has already been ordered to sign an instrument but has failed to do so. The provision allows the Registrar to step into the shoes of the non-compliant party, with the Registrar's signature on the instrument to be deemed as having the same effect as if the non-compliant party had itself signed the instrument (*Chan Yun Cheong (trustee of the will of the testator) v Chan Chi Cheong (trustee of the will of the testator)* [2021] 2 SLR 67 at [29]). It is, in effect, a mechanism to ensure that a court's orders are not frustrated by a party's non-compliance. This power of the High Court is commonly resorted as a back-up order in situations where one party subsequently fails to comply with an order of court to transfer certain rights, title and interest in property to another (*Salijah bte Ab Latef v Mohd irwan bin Abdullah Teo* [1995] 3 SLR(R) 233 at [12]; *Yeo Guan Chye Terence and another v Lau Siew Kim* [2007] 2 SLR(R) 1 at [75]). Contrary to the applicant's submission, there is no need for a party to take out a separate application under s 14(1) of the SCJA.[64] The court may, at its discretion or on the party's request, include as part its suite of orders, an ancillary order empowering the Registrar to execute a transfer instrument on behalf of a party that fails to comply with the original order.

168 The parties referred me to the decisions of the High Court in *Ho Soo Tong and others v Ho Soo Fong and others* [2023] SGHC 90, *P J Holdings Inc v Ariel Singapore Pte Ltd* [2009] 3 SLR(R) 582 and *Yong Ching See v Lee Kah Choo Karen* [2008] 3 SLR(R) 957 as examples where the court had exercised its powers under s 14(1) of the SCJA to facilitate the transfer of securities.[65]

---

64 Applicant's Written Submissions dated 7 March 2025, para 17

65 JPM's Written Submissions dated 7 March 2025, para 6

169 I accepted in principle, on the authority of those cases, that s 14(1) of the SCJA could be used as a mechanism to empower the Registrar to execute documents on behalf of a non-compliant party in order to direct a neutral custodian to facilitate the transfer of securities. However, the present case was slightly different. The cases cited by the parties all appeared to involve private shares in a Singapore-incorporated company. Unlike those cases, the Unpledged Shares here were publicly tradeable and listed on the Euronext Paris Exchange (see [14] above). Given this, I expressed some concern whether the Registrar's signature would suffice for the purposes recognising the transfer of the Unpledged Shares on the Euronext Paris Exchange or under French law more broadly. There was no guarantee that it would be sufficient. For example, it could well be the case that the Euronext Paris Exchange had various internal requirements that would have to be satisfied before it would recognise the validity of a transfer of publicly listed shares. In this regard, both the applicant and JPM were candid in noting that they had not adduced evidence on the practice of the Euronext Paris Exchange or on French law more generally.[66] Because of this, I considered that joining JPM to OS 1193 would be comparably straightforward and could avoid any potential uncertainties regarding the recognition of an order for transfer of the Unpledged Shares under French law and/or the Euronext Paris Exchange.

(3) The applicability of the alternative mechanisms did not preclude a joinder

170 Even if I was mistaken on the applicability of the two proffered mechanisms, I would still have concluded that JPM ought to be joined as a party to OS 1193. The co-existence of mechanisms may well have furnished grounds to resist a joinder application brought on the basis of necessity, but the

66 Certified Transcript of the Hearing on 8 April 2025, p5

application here was brought on the basis of it being just and convenient. It is important to recognise that these mechanisms are various tools in the court's enforcement toolkit. And just as a keystone is no more important than the surrounding voussoirs in an arch, these mechanisms may function in tandem and the existence of one does not necessarily preclude the application of another. As has been recently observed, a "claimant is permitted to add defendants for the purpose of ensuring that any reliefs that he seeks, if granted, will not be rendered ineffective and unenforceable because such nominal defendants are not bound by the findings and declarations of the court; adding such defendants to the claim on a nominal basis, even while no cause of action is asserted against them, ensures that the claimant does not find himself with no relief at the end of the day despite having a judgment in his favour" (*Prosetskii, Aleksandr Viktorovich v Smirnov, Igor and others* [2025] SGHCR 25 at [92]). I respectfully echo this observation.

171 On this point therefore, I rejected JPM's argument. I held that in light of the second respondent's subsisting non-compliance with the English Summary Judgment coupled with the potential volatility of the price of the Unpledged Shares, that it would be just and convenient for JPM to be joined as a party to OS 1193. This would ensure that any order made in OS 1193 for the transfer of Unpledged Shares could be effectuated as soon as was practicable and to avoid being stymied by any inaction or indolence on the part of the second respondent.

The concern that joining a neutral party would lead to unnecessary time and costs being expended should not be overstated

172 Third, the argument from costs. The last arrow in JPM's quiver was its submission that as a neutral party, it ought not to be joined as a party to OS 1193 as it would have to expend unnecessary time, costs and resources participating

in the proceedings.[67] Relatedly, JPM argued that the unfairness would be compounded by the distinct possibility that OS 1193 would be contested by the second respondent and other parties such as Ms Qiu and/or Xinbo.[68]

173 As to the latter point, this was to my mind, speculative. As I have observed above at [108], neither Ms Qiu nor Xinbo were parties to OS 1193. Nor had either of them intimated any intention to be joined as parties to contest OS 1193 substantively. Even if the second respondent ended up contesting OS 1193, it did not appear clear to me how that would lead to JPM having to participate substantively in OS 1193, given that it was a neutral party. The mere fact that OS 1193 might be contested did not answer to the issue of whether it would be just and convenient for JPM to be joined as a party to OS 1193. An argument of this nature, if accepted, would effectively preclude such joinder on grounds where there is *any* semblance of dispute as between the main parties. This position was, with respect, untenable as a matter of law.

174 As to the former point, I was of the view that any time and costs incurred by JPM, such as its attendance on watching brief, would generally be minimal. It was also unclear what unfairness would be occasioned to JPM even if there was a substantive contest of OS 1193, given that JPM was a neutral party. The purpose of it being joined to the proceedings was solely to ensure that any order against the second respondent for the transfer of the Unpledged Shares, if so made, could be expeditiously effected and would not be frustrated by non-compliance. There was but a soupçon of explanation from JPM what participating in the proceedings *substantively* as a neutral party would entail, apart from attending the hearings on a watching brief. After all, it did not appear

---

67 Chen Jian's Affidavit dated 20 November 2024, para 11

68 Chen Jian's Affidavit dated 20 November 2024, para 11

that JPM was either seeking to resist or support the transfer of the Unpledged Shares in any way.

175 In any case, I did not think that the issue of time and costs would tip the balance so as to militate against joining JPM as a party to OS 1193. Whether JPM wished to attend subsequent hearings of OS 1193 would entail an assessment on its part, no doubt with the benefit of legal advice. JPM explained that even as a neutral party, it would have to do its own due diligence to attend hearings, review the relevant submissions and documents, which would all contribute to costs being incurred as there is no certainty in litigation.[69] This could well be the case and most certainly within the prerogative of JPM to do so as a party to the proceedings, but I also observed that should JPM subsequently seek to recover costs from the other parties to OS 1193, it would have to satisfy the court of the reasonableness of the quantum of costs incurred and sought, and by extension, the degree of its participation on the proceedings.

176 Hence, I was not persuaded by JPM's argument from costs and rejected it.

177 I address one final but important point. JPM submitted that to allow the joinder may have unintended repercussions on future litigation where banks, who are neutral custodian of assets, become unnecessarily embroiled in substantive proceedings brought by a plaintiff seeking to achieve enforcement expedience.[70] I acknowledged that there was some force to this concern. However, a straightforward solution could have been to provide an undertaking, possibly in the broad terms outlined at [127] above. Such an undertaking, to my

---

69 JPM's Written Submissions dated 24 January 2025, paras 46 and 48

70 JPM's Written Submissions dated 24 January 2025, para 54

mind, would not be particularly controversial, especially when it is clear the custodian is a neutral party and no wrongdoing has been alleged against it. For all intents and purposes, the custodian may well be characterised as not just a neutral party, but also a nominal party; its participation in the proceedings would conceivably be limited as would be the resources it might have to employ in any participation. An undertaking of such nature would do much to allay the concern that there would be recourse where a party has failed to comply with the terms of an order of court. The inclusion of a custodian, who is in physical possession of the subject property, as part of the proceedings, will leave no doubt that it will be bound by the terms of such an order. So, in my view, the risk was more theoretical than real.

Conclusion

178 For the above reasons, I granted the Lifting Application and the Joinder Application. I consequently ordered that the case management stay imposed on OS 1193 be lifted and that JPM be joined as the third respondent in OS 1193. All things considered, I found this to be the appropriate course forward, bearing in mind the applicant's amenability to narrow the scope of relief being sought in OS 1193, coupled with the conclusion of the English proceedings in respect of the transfer of the Unpledged Shares *vide* the English Summary Judgment. As the *lis alibi pendens* – the operative concern underlying the case management stay – had now fallen away, the stay ought accordingly be lifted. And OS 1193 ought to proceed substantively.

179 Finally, the issue of costs:

(a) On the Lifting Application, there was no reason to depart from the general rule that costs follow the event. I was also satisfied that the first respondent, in supporting the Lifting Application, was entitled to

costs, given that it had filed any affidavit in support as well as written submissions. It was its prerogative to take that position given the second respondent's decision to resist the application, as well as the fact that the first respondent clearly had a vested interest in the outcome of the application (and indeed, OS 1193 more broadly). I therefore ordered the second respondent to pay to the applicant costs of and incidental to the Lifting Application, such costs fixed in the sum of $12,000, inclusive of disbursements. I also ordered the second respondent to pay to the first applicant costs of and incidental to the Lifting Application, such costs fixed in the sum of $10,000, inclusive of disbursements.

(b) On the Joinder Application, both the applicant and JPM submitted that no order as to costs ought to be made, despite the applicant having succeeded in the application. I considered this to be eminently fair as both parties had, to their credit, endeavoured to seek a practical solution that could have avoided the joinder. I also bore in mind that JPM was ultimately, a neutral party. I hence ordered the applicant and JPM to each bear their own costs of the Joinder Application.

180 I must, in conclusion, thank counsel for their comprehensive yet concise submissions, both written and oral. The thoughtful manner in which the parties' cases were presented ably delineated the issues that had to be determined by the court. Their submissions have aided significantly my preparation of these written grounds.

Wong Hee Jinn
Assistant Registrar

Han Guangyuan Keith, Teo Jin Yun Germaine and Ee Yong Chun Bernard (Oon & Bazul LLP) for the applicant;
Tan Zhengxian Jordan, Leong Hoi Seng Victor, Lim Jun Heng (Audent Chambers LLC) (Instructed) and Chan Michael Karfai (Breakpoint LLC) for the first respondent;
Ngo Wei Shing and Wei Ziqiang (Providence Law Asia LLC) for the second respondent;
Lee May Ling and Megan Chua (Allen & Gledhill LLP) for the non-party.
