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

[2025] SGHCR 30

Originating Claim No 273 of 2023 (Summons No 722 of 2025)

Between

JPL Industries Pte Ltd

… *Claimant*

And

Lanka Marine Services Pte Ltd

… *Defendant*

JUDGMENT

[Civil Procedure — Judgments and orders — Enforcement – Proceedings stayed *via* Tomlin order]
[Equity — Defences — Equitable set-off]

TABLE OF CONTENTS

JPL Industries Pte Ltd
v
Lanka Marine Services Pte Ltd

[2025] SGHCR 30

General Division of the High Court — Originating Claim No 273 of 2023
(Summons No 722 of 2025)
Assistant Registrar Kenneth Choo
28 April, 30 May and 18 July 2025

12 September 2025 Judgment reserved.

Assistant Registrar Kenneth Choo:

Introduction

1 This is a judgment largely on the law of Tomlin orders and equitable set-off. This case concerns a Tomlin order entered into by the parties' consent to settle their dispute in this suit[1] ("the Suit"). The defendant failed to comply with its payment obligations under the Tomlin order. The claimant has now filed an application[2] ("the Application") for judgment on admission of facts to be entered against the defendant pursuant to an express term of the Tomlin order. The defendant resists the Application on the grounds that the sum that the defendant is obliged to pay the claimant under the Tomlin order ought to be set

[1] HC/OC 273/2023.

[2] HC/SUM 722/2025.

off against a judgment debt arising from recent judgments in the defendant's favour entered in a separate suit.

Background

The parties and their pleaded cases

2 The claimant ("JPL") is a company incorporated in Singapore engaged in business activities that include processing copper slag used for surface preparation in the shipbuilding and repair industry. JPL and Sembcorp Marine Integrated Yard Pte Ltd ("SMIY") are related companies, being subsidiaries of Sembcorp Marine Ltd ("SCM") (now known as Seatrium Limited). SMIY (now renamed as Seatrium (SG) Pte. Ltd.) is an 85.8% shareholder of JPL. In other words, JPL is a subsidiary of SMIY and SMIY is a subsidiary of SCM.

3 The defendant ("Lanka") is a company incorporated in Singapore that is engaged in the business of, *inter alia*, providing manpower and services for building and repairing ships, tankers and other vessels.

4 In the Suit, JPL's pleaded case[3] is summarised as follows:

(a) SMIY entered into a contract with Lanka for Lanka to perform surface blasting/ cleaning of ships at SCM's shipyards. One of the materials that Lanka needed to carry out these works was processed copper slag.

(b) JPL supplied processed copper slag to Lanka for this purpose from May 2017 to September 2019.

[3] As set out in the Statement of Claim (Amendment No. 1) dated 17 July 2023.

(c) Lanka owes JPL $521,260.95 for the processed copper slag supplied by JPL.

(d) JPL therefore claims the sum of $521,260.95, interest thereon and costs ("the Claimed Sum") as against Lanka.

5 In its pleaded defence ("the Defence")[4], Lanka denies that JPL is entitled to any of the relief sought. Lanka however admits that it placed orders with JPL from before May 2017 to September 2019 for copper slag and that JPL fulfilled some of these orders. Lanka avers that, to carry out its surface blasting/ cleaning work, Lanka used processed copper slag purchased from JPL and from other sources, and maintained a reserve quantity of copper slag in storage. Lanka further avers that SMIY also contracted other companies to perform surface blasting/ cleaning of ships at SCM's shipyards.

6 A key plank of Lanka's Defence hinges on a purported understanding (the "Understanding") between the parties that Lanka would be obliged to pay JPL for the copper slag only after SMIY had paid Lanka for the works and services that Lanka had provided to SMIY in which Lanka had used the copper slag. The Understanding is the basis of an estoppel pleaded in paragraph 13 of the Defence. As there will be multiple references to this paragraph further below, it is important to reproduce the entire paragraph as follows:

> (a) With respect to payment, the parties' agreement and/or mutual understanding at all material times was that [Lanka] would only be obliged to pay [JPL] after [Lanka] had received payment from SMIY for the corresponding works and services performed by [Lanka] for SMIY which the copper slag which was the subject matter of the invoice was used for ("Understanding"). It was in reliance of this Understanding and

[4] Defence (Amendment No. 1) dated 29 November 2023.

> the fact that [JPL] and SMIY are related companies that [Lanka] began purchasing copper slag from [JPL].
>
> (b) Pursuant to the Understanding, [Lanka] would periodically deposit monies in a designated account as and when it received payment from SMIY for work done. [JPL] would then withdraw monies from the account as payment for outstanding invoices for the copper slag supplied to [Lanka].
>
> (c) Sometime in or around late 2018, SMIY failed to make payments to [Lanka] for work done by [Lanka]. As a result, as the non-payment related to work done with the copper slag which was the subject matter of the invoices from [JPL], [Lanka] stopped paying into the designated account for [JPL].
>
> (d) Sometime on or around 22 March 2019, a meeting was held at SMIY's Tanjong Kling office between SMIY, [JPL] and the representatives of vendors of SMIY, including [Lanka], who were all also creditors of SMIY. At the meeting, SMIY and [JPL] proposed that the attendees set off any amounts owed by SMIY to them against any amounts the companies owed to [JPL]. None of the companies, including [Lanka], agreed to the proposal.
>
> (e) [Lanka] avers that it would be unjust or unconscionable for [JPL] to be permitted to go back on the Understanding, and that [JPL] is estopped from seeking any payment from [Lanka] pending payment by SMIY to [Lanka] for the works and services performed by [Lanka] for SMIY.

Procedural history leading up to the Tomlin Order and the Application

7 It is apt at this juncture to highlight in some detail the procedural history leading up to the filing of the Application. Of particular significance are two events: (a) first, Lanka commenced separate proceedings against SMIY before JPL commenced this Suit against Lanka; and (b) second, the Court granted a consent order that all further proceedings in the Suit be stayed until 31 December 2024 except for the purpose of carrying into effect the Schedule to the order (the "Tomlin Order"). I shall elaborate on these events below.

8 Lanka commenced HC/S 1052/2020 ("Suit 1052") against SMIY on 30 October 2020 to recover such amounts due and payable by SMIY for the works

and services that Lanka had performed for SMIY from 2016 to 2019 (including surface blasting/ cleaning works utilising the copper slag that is the subject matter of the Suit).

9 In April 2022, Suit 1052 was consolidated with other suits commenced by Lanka and its related entity, Shipworks Engineering Pte Ltd ("Shipworks"), against SMIY and its related entity, Jurong Shipyard Pte Ltd ("JSPL"), for amounts due and payable for Lanka's services rendered between 2013 and 2019. The lead suit is HC/S 1040/2020 and the other consolidated suits are HC/S 1042/2020, HC/S 1051/2020 and Suit 1052 (hereinafter, "Suit 1040" will be used to collectively refer to the consolidated suits).

10 The Suit was commenced on 5 May 2023. For the avoidance of doubt, the Suit is not part of Suit 1040.

11 On 5 August 2024, on the application of the parties, the court granted the Tomlin Order by consent, staying all further proceedings until 31 December 2024 upon the terms set out in the Schedule except for the purpose of carrying the Schedule into effect. These terms had been agreed to by JPL and Lanka. Pursuant to the Schedule to the Tomlin Order:

(a) Paragraph 1 states that Lanka shall pay to JPL by 31 December 2024, without admitting liability: (i) the sum of $521,260.95; and (ii) the sum of $41,674.81, being interest on the sum of $521,260.95 at the rate of 5.33% per year for 1.5 years.

(b) Paragraph 3 states that JPL will discontinue the action with no order as to costs within seven days after 31 December 2024, upon receipt of these sums from Lanka.

(c) Paragraph 4 states that, in the event that Lanka does not pay these sums by 31 December 2024, JPL will thereafter be entitled to apply for judgment under O 9 of the Rules of Court 2021 ("ROC") on the basis that Lanka admits owing JPL: (i) the sum of $521,260.95; (ii) interest at 5.33% per year from 1 July 2023 onwards; and (iii) costs from 1 January 2025 onwards.

(d) Paragraph 5 states that these terms shall be in full and final settlement of all claims that either party shall have or may have against the other arising out of the matters in this action.

12 On 20 December 2024, the General Division of the High Court issued *Shipworks Engineering Pte Ltd and another v Sembcorp Marine Integrated Yard Pte Ltd and another and other suits* [2024] SGHC 325, being its first judgment in Suit 1040 ("Suit 1040 first judgment"). The court's findings were overall in favour of Lanka and Shipworks against SMIY and JSPL. The court further directed the parties to calculate the quantum of damages payable based on the court's findings.

13 In breach of paragraph 1 of the Schedule to the Tomlin Order, Lanka failed to pay the sums of $521,260.95 and $41,674.81 by 31 December 2024.

14 On 13 March 2025, the General Division of the High Court issued *Shipworks Engineering Pte Ltd and another v Sembcorp Marine Integrated Yard Pte Ltd and another and other suits* [2025] SGHC 40, its second judgment in Suit 1040 ("Suit 1040 second judgment"). This judgment awarded Lanka and Shipworks the sum of $19,804,242.45, comprising *inter alia* the judgment debt of $5,086,515.44 (the "Judgment Debt") payable by SMIY to Lanka in Suit

1052. I will refer to both these judgments collectively as the "Suit 1040 judgments".

15 On 18 March 2025, JPL filed the Application to enter judgment on admission of facts against Lanka pursuant to O 9 r 18(2) of the ROC read with paragraph 4 of the Schedule to the Tomlin Order. JPL sought to enter judgment for: (a) the sum of $521,260.95; (b) interest at 5.33% per year from 1 July 2023 onwards; (c) costs from 1 January 2025 onwards; and (d) costs of the Application and of the judgment to be entered.

16 On 19 May 2025, the defendants in Suit 1040 (SMIY and JSPL) applied for a stay of execution of the Suit 1040 judgments. This stay application has been held in abeyance as parties in Suit 1040 agreed that there will be an interim stay of execution until the stay application is disposed of or withdrawn.

17 On 29 May 2025 and 4 June 2025, the parties filed cross appeals to the Appellate Division of the High Court under O 19 of the ROC against the Suit 1040 judgments. The appeals were originally fixed to be heard on a date in November 2025 but that date has since been vacated. The appeals will be refixed to a date to be confirmed.

Parties' submissions

18 Lanka does not dispute that it has breached paragraph 1 of the Schedule to the Tomlin Order. However, Lanka relies on an equitable set-off arising from the Suit 1040 judgments to resist the Application.

19 Lanka argues that the closely intertwined business and transactional relationship between Lanka, JPL and SMIY renders it wholly fair and just for

Lanka to set off the Claimed Sum against the Judgment Debt; the Claimed Sum arises out of Lanka's procurement of processed copper slag from JPL from May 2017 to September 2019 in order to carry out surface blasting/ cleaning works for SMIY. Lanka carried out that work based on the Understanding, i.e. that Lanka would pay JPL for a particular invoice only *after* SMIY had paid Lanka for the works in which Lanka had used the invoiced copper slag. Lanka therefore contends that this pay-when-paid arrangement means that the Claimed Sum cannot be considered in isolation.

20 Lanka relies on two types of set-off recognised in equity:

(a) Where an equitable set-off exists by way of an implied agreement: First, the Understanding and the pay-when-paid arrangement effectively constitutes a set-off arrangement whereby the settlement of JPL's invoices for the supply of copper slag would be made with the incoming payments from SMIY to Lanka. Second, the existence of an implied agreement for set-off between JPL and Lanka can also reasonably be inferred from the fact that JPL had not pursued the payment of the invoices (with the earliest invoice being dated 8 May 2017) for a significant period of time. JPL issued a formal letter of demand only on 14 December 2020, after which it allowed another period of 2.5 years to elapse before it commenced the Suit. Lanka therefore submits that the delay is evidence of the Understanding and the pay-when-paid arrangement. Lanka further refers to SMIY's and JPL's own position and their proposal for a set-off of outstanding debts between the parties during the meeting on 22 March 2019 ("2019 Meeting") (see sub-paragraph 13(d) of the Defence which is reproduced at [6] above).

(b) Where a party can show some equitable ground for being protected against his adversary's demand: Lanka asserts that the Understanding and the pay-when-paid arrangement establishes an inextricable link between JPL's claims for payment against Lanka for the supply of copper slag and claims for payment by Lanka against SMIY for payment of works performed using that copper slag. Given that JPL's entire claim in the Suit (out of which the Claimed Sum arises) is premised on outstanding invoices of copper slag supplied to Lanka, and Lanka's claim against SMIY in Suit 1052 (which culminated in the Judgment Debt) is in turn for the recovery of outstanding payments for Lanka's performance of surface blasting/ cleaning works for SMIY using the copper slag supplied by JPL, the Judgment Debt and the Claimed Sum effectively arise out of the same transaction and/or possess the requisite degree of proximity to warrant setting-off the two claims. Second, entering judgment on the Application would result in Lanka being put further out-of-pocket of both the Claimed Sum and the Judgment Debt, all while being compelled to incur continuing legal costs to meet the legal challenges posed by JPL and SMIY. On the other hand, no injustice would be occasioned to JPL especially since JPL and SMIY had themselves previously proposed to set off the amounts owed by SMIY against the amounts owed to JPL.

21 In brief, JPL submits that Lanka is not entitled to rely on equitable set-off because:

(a) The claims in the Suit and those in Suit 1040 (and the consolidated suits) are different;

(b) Lanka did not specifically plead set-off in its Defence;

(c) JPL has a separate legal personality from its related company, SMIY, and from its parent company, Seatrium Limited/ SCM. JPL and SMIY are neither identical nor similar parties;

(d) On its own pleaded case, it is unclear whether Lanka even used the copper slag supplied by JPL to perform the surface blasting/ cleaning works for SMIY;

(e) Lanka has not made out the elements for the two types of equitable set-off;

(f) Even if there was a right of set-off (which is denied), Lanka has waived its right by consenting to the Tomlin Order. It is inequitable for Lanka to now disregard the Tomlin Order; and

(g) Since the effect of the Tomlin Order is that proceedings are stayed, if Lanka intends to rely on an equitable set-off (which heavily relies on the Understanding and the pay-when-paid arrangement), Lanka should have made an application for the stay to be lifted so that these matters could be heard at trial. Given that Lanka had opted to settle the dispute in the Suit, it was not for Lanka to now reopen these matters before this court in relation to an application for final judgment on the Tomlin Order.

Issues to be determined

22 Three main issues arise, which I will deal in the following sequence:

(a) First, whether by consenting to the Tomlin Order, Lanka is precluded from relying on an equitable set-off.

(b) Second, whether the failure to plead equitable set-off precludes Lanka from relying on it.

(c) Third, and in any event, whether the grounds for an equitable set-off have been made out.

Issue 1: Whether by consenting to the Tomlin Order, Lanka is precluded from relying on equitable set-off

Preliminary issue: Did Lanka waive its right of set-off

23 I do not accept JPL's contention that Lanka waived its right to rely on set-off by consenting to the Tomlin Order. I accept instead Lanka's submission that JPL's entitlement to the Claimed Sum crystallised only upon Lanka's failure to make payment in accordance with paragraph 1 of the Schedule to the Tomlin Order, i.e. on 31 December 2024. Lanka therefore did not waive its right to rely on a set-off against the Claimed Sum by consenting to the Tomlin Order on 5 August 2024 given that JPL's entitlement to the Claimed Sum had not yet arisen then. Arguably, Lanka's right to rely on a set off arose only on 31 December 2024 when *both* the Claimed Sum and the Judgment Debt became due and payable.

24 In *Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317 at [54], the Court of Appeal held that the doctrine of waiver by election "concerns a situation where a party has a choice between two inconsistent rights. If he elects not to exercise one of those rights, he will be held to have abandoned that right if he has communicated his election in clear and unequivocal terms to the other party". I agree with Lanka that there was no inconsistency between Lanka's consent to the Tomlin Order and its right to rely on a set-off against JPL's entitlement to the Claimed Sum under the Tomlin

Order because that right arose only subsequently, much less was there any clear and unequivocal representation that Lanka was electing between two inconsistent rights.

25 For completeness, JPL raises another objection in that the full and final settlement clause in paragraph 5 of the Schedule to the Tomlin Order (see [11(d)] above) precludes Lanka from relying on an equitable set-off. I agree with Lanka that this objection is without merit because the wording of paragraph 5 clearly relates to the settlement of all underlying claims "in this action", i.e. *in the Suit*, and it does not fetter Lanka's right to rely on a set-off between the Claimed Sum (in the Suit) and the Judgment Debt (in Suit 1052).

The applicable law relating to Tomlin Orders

26 The legal principles relating to Tomlin Orders are set out in Lee Seiu Kin J's decision of *HQH Capital Ltd v Chen Liping* [2023] 4 SLR 885 ("*HQH Capital*").

27 In *HQH Capital*, the defendant was a director of Pavilion Holdings Ltd ("PHL"). The defendant entered into two agreements ("the Principal and Supplementary Agreements") and received a cheque for $2m. The plaintiff's position was that under these agreements, the defendant would grant the plaintiff a call option to purchase shares in PHL and receive a prepaid sum of $2m from the plaintiff as full consideration for the purchase price of the shares. The defendant's position was that she had agreed to a lump sum loan of $2m and that the Principal and Supplementary Agreements were designed to disguise this unlicensed and illegal moneylending transaction. The plaintiff subsequently exercised the call option, but the defendant did not deliver the shares to the plaintiff. The plaintiff then sued the defendant. On the application of the parties,

the court entered a Tomlin Order by consent. After the defendant defaulted, again on the application of both parties, the court revised the Tomlin Order, again by consent. The plaintiff eventually applied for final judgment to be entered against the defendant on the revised Tomlin Order for the sum of $3.25m less sums paid by the defendant to date and for the defendant to pay costs of $50,000. The defendant opposed the application, contending *inter alia* that the Principal and Supplementary Agreements were unenforceable agreements which concealed an illegal moneylending transaction.

28 The key principles and findings that may be distilled from *HQH Capital* are as follows:

(a) A Tomlin order is a consent order staying an action on agreed terms included in a schedule to the order. The operative order in a Tomlin order is the stay of the action, with the court reserving the power, despite the stay, to make such orders as are necessary to enforce the terms of the schedule. A Tomlin order does not mandate the performance of any term to the schedule. The schedule operates merely to record the terms of the parties' contractual agreement. It is only when parties are deadlocked in relation to the performance of the terms in the schedule that the court may, upon application by any party and in exercise of the powers reserved to the court, make orders to ensure compliance with those terms: at [24] – [32].

(b) The stay in a Tomlin order means that further proceedings in the action are not allowed unless and until the stay is lifted. It follows that the court has the power to lift the stay: at [34].

(c) Since the schedule to a Tomlin order is not an order of the court and amounts only to a record of a contract between the parties reached out of court, the schedule may be set aside on the basis upon which any ordinary contract may be set aside: at [51].

(d) Lee J found that the arguments canvassed with respect to the Principal and Supplementary Agreements were not relevant as they concerned issues pertaining to the main dispute in the suit. Under the rule in *Henderson v Henderson* (1843) 3 Hare 100 ("the *Henderson* rule") and its application in *Venkatraman Kalyanaraman v Nithya Kalyani and others* [2016] 4 SLR 1365 ("*Venkatraman*"), the defendant could no longer bring forth contentions pertaining to the circumstances under which the Principal and Supplementary Agreements were entered into: at [21].

(e) The *Henderson* rule, also known as the extended doctrine of *res judicata*, operates to preclude litigants in later proceedings from raising points not previously decided because they were not raised in the earlier proceedings, even though they could and should have been raised in those proceedings. In *Venkatraman*, the court explained that the *Henderson* rule may be engaged when the earlier proceedings concluded amicably, be it by way of a consent judgment or order issued by the court or where the settlement agreement was entered into privately, without being embodied in a court judgment or order: at [22].

(f) If the defendant truly intended to pursue her complaints vis-à-vis the enforceability and validity of the Principal and Supplementary Agreements, she should have applied for the stay resulting from the Tomlin Orders to be lifted so that these matters could be heard at trial.

Given that she had opted to settle the dispute, it was not for her to now reopen these matters before this court in relation to an application for final judgment on the revised Tomlin Order: at [23].

29 Although the editorial note in the decision of *HQH Capital* states that the defendant's appeal was dismissed by the Appellate Division with no written grounds of decision rendered, the note goes on to specifically report that:

> The Appellate Division also rejected the appellant's argument that the court below failed to consider her allegation that there was economic duress from the respondent in obtaining the [Principal and Supplementary Agreements], as well as the purpose of these underlying agreements being illegal moneylending transactions. These agreements were superseded by the Tomlin Orders, and if the appellant had wanted to press these issues, she should not have consented to the Tomlin Orders. Having consented to the Tomlin Orders, extended *res judicata* applied.

My decision

30 Lanka submits that *HQH Capital* has no bearing on its arguments in respect of the Application for two main reasons:

(a) Lanka urges this court to ignore JPL's submission that equitable set-off has not been pleaded as the Application concerns what is essentially a new debt arising from the parties' contractual agreement under the Schedule to the Tomlin Order. The alleged debt that was the subject matter of the Suit has been compromised, and JPL's submission therefore falls away; and

(b) Lanka distinguishes *HQH Capital* on the basis that Lee J's concerns in that case related to disputed issues that ought to have been determined at the trial of the underlying suit. The same concerns about

> issues that ought to be determined at trial in the Suit do not arise in the Application. This is because Lanka's case of equitable set-off is premised on circumstances and facts which are undisputed, and which actually arise from JPL's own pleadings, affidavits and written submissions. For example, SMIY and JPL are related parties and they belong to the Seatrium Group of companies. All the facts raised in JPL's own pleadings, affidavits and written submissions relating to the supply of processed copper slag are undisputed and need not go to trial for determination. Lanka submits that while the Suit has been compromised, it does not mean that the background transactional facts between the parties are extinguished as well.

31 In respect of Lanka's first point, I am unable to agree that *HQH Capital* goes so far as to stand for the proposition that the requirement to specifically plead set-off is dispensed with when parties subsequently enter into a Tomlin Order by consent. First, nothing in *HQH Capital* states or implies such a proposition. Second, Lanka is *still* effectively seeking an equitable set-off of the "new debt arising from the parties' contractual agreement under the Schedule to the Tomlin Order" against the Judgment Debt.

32 As for Lanka's second point, I agree with JPL's submission that while there are some facts that are undisputed, there are triable issues relating to the so-called Understanding. JPL heavily disputes the existence of any such Understanding. Another serious bone of contention is whether Lanka in fact used the copper slag that is the subject-matter of the Suit to perform surface blasting/ cleaning works for SMIY.

33 Accordingly, by applying the above legal principles at [28] above to the present facts, I find that Lanka's submissions relating to the Understanding and the pay-when-paid arrangement irrelevant as they are matters pertaining to the underlying dispute in the Suit. Since the parties have consented to the Tomlin Order, the proceedings are stayed. If Lanka intends to pursue the defence of equitable set-off (which is heavily dependent on the Understanding and the pay-when-paid arrangement), Lanka should have made an application for the stay to be lifted so that these matters can proceed for trial. Lanka did not do so. Having consented to the Tomlin Order, extended *res judicata* applied and it is not for Lanka to now reopen these matters before this court in relation to an application for final judgment on the Tomlin Order.

Issue 2: Whether the failure to plead equitable set-off precludes Lanka from relying on it

The applicable law relating to pleadings

34 In *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 ("*Rabobank*") at [44], the Court of Appeal observed that a defence of equitable set-off was a matter which had to be specifically pleaded. This requirement was but an application of the rule in O 18 r 8(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), which sets out matters which must be specifically pleaded to prevent unfair surprise to an opponent in litigation. The wording of O 18 r 8(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) is *in pari materia* with paragraph 8 in Form 13 of Appendix A of the Supreme Court Practice Directions 2021. Hence, the requirement that a defence of equitable set-off must be specifically pleaded is arguably still applicable.

35 Lanka relies on the Court of Appeal's seminal decision in *How Weng Fan & Ors v Sengkang Town Council* [2023] 2 SLR 235, which stands for the following propositions:

(a) The general rule is that the parties are bound by their pleadings, and the court is precluded from deciding matters that have not been put into issue by the parties: at [18].

(b) There are two important principles that qualify the foregoing rule. First, only material facts supporting each element of a legal claim need to be pleaded. On that basis, the particular legal result flowing from the material facts that the claimant wishes to pursue need not be pleaded. Equally, the relevant propositions or inferences of law need not be pleaded. Second, a narrow exception exists where the court may permit an unpleaded point to be raised (and to be determined) if there is no irreparable prejudice caused to the other party at trial that cannot be compensated by costs or where it would be clearly unjust for the court not to do so: at [18] to [20].

My decision

36 In summary, Lanka contends that although "equitable set-off" was not specifically pleaded in the Defence, there is no prejudice to JPL as the material facts and circumstances underlying the defence of equitable set-off have been pleaded. According to Lanka, the material facts underlying its defence of equitable set-off, i.e. the relationship and/or communications between the parties, have been pleaded in the Defence. The express use of the term "set-off" is unnecessary in the pleadings as the application of equitable set-off is merely the "legal result" or "legal consequence" flowing from the pleaded material

facts. Lanka submits that the pleaded facts in the Defence support both claims in estoppel and equitable set-off and consequently Lanka's pleading on estoppel does not preclude it from also invoking equitable set-off.

37 I do not agree with Lanka's submissions for two main reasons. First, the Understanding and the pay-when-paid arrangement pleaded at sub-paragraphs 13(a) and (b) of the Defence (reproduced at [6] above) concern the parties' concurrence "*with respect to payment*" [emphasis added]. In my view, these paragraphs in the Defence describes a deferred payment arrangement. To say that the said paragraphs support Lanka's defence of equitable set-off is like fitting a square peg into a round hole. Those paragraphs simply do not describe what a set-off fundamentally is. In Rory Derham, *The Law of Set-off* (Oxford University Press, 4th ed, 2010) ("*Rory Derham*") at [1.01], the learned author opines that set-off can be defined as *the setting of money cross-claims against each other to produce a balance* (see also *Hayate Investment Co Ltd v ManagementPlus (Singapore) Pte Ltd* [2012] SGHCR 3 ("*Hayate*") at [11]). No such material facts supporting the setting of monetary cross-claims against each other has been pleaded in the Defence. Second, it is expressly pleaded in sub-paragraph 13(d) of the Defence (reproduced at [6] above) that Lanka rejected SMIY's and JPL's proposal to set off the amounts owed by SMIY to Lanka against the amounts owed by Lanka to JPL during the 2019 meeting. Hence, not only does this rejection of set-off by Lanka reinforce that the Understanding and the pay-when-paid arrangement pleaded in the earlier paragraphs of the Defence are matters which concern payment (and not liability), it also renders Lanka's current position (to rely on set-off) *inherently inconsistent* with its pleadings.

38 As stated earlier, the parties have consented to the Tomlin Order and the proceedings are stayed. If Lanka intends to pursue this line of defence, i.e.

equitable set-off, Lanka should have made an application for the stay to be lifted so that matters (such as the Understanding) can proceed for determination at trial. Lanka may then wish to consider whether it is necessary to take out other application(s), including an application to amend its pleadings. Having said that, an application to amend the Defence may not necessarily be a straightforward exercise, especially in respect of sub-paragraph 13(d) of the Defence and if JPL raises objections to the proposed amendments.

39 Be that as it may, I find that, based on the Defence as currently drafted, Lanka is precluded from invoking equitable set-off.

Issue 3: In any event, whether the grounds for an equitable set-off have been made out

The applicable law relating to equitable set-off

40 In *Rabobank*, the Court of Appeal authoritatively held that there are four types of set-offs recognised in equity:

(a) where a right of set-off existed at law, it would be recognised in equity;

(b) an equitable set-off would exist by analogy with a legal set-off;

(c) an equitable set-off could exist by agreement between parties who have had mutual dealings; and

(d) where a party could show some equitable ground for being protected against his adversary's demand.

41 For present purposes, we are only concerned with the third and fourth types of set-off and they are hereinafter referred to as "set-off by implied agreement" and "substantive set-off" respectively.

42 In a set-off by implied agreement, equity will take hold of very slight evidence of an agreement to set off in order to establish a right to set off between the two parties to an action. This is to do justice between the two parties who have had mutual dealings, and where it would be unjust to permit one party to make a claim against another without allowing a set-off (see *Rabobank* at [40]). In *Rabobank*, the Court of Appeal further explained at [41] – [42]:

> 41 We refer also to *Rory Derham* at para 3.03, where the author recognises that a set-off by implied agreement in the case of insufficient evidence to prove a contractual set-off is equitable in nature:
>
> > An equitable set-off can take a number of forms. There are some early cases in which debts were set-off in equity based upon an implied agreement that a set-off should occur, and indeed Sir Joseph Jekyll once said that 'the least evidence of an agreement for a [set-off] will do', and that 'equity will take hold of a very slight thing to do both parties right'.
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> 42 The author relied on the New Zealand decision of *Commercial Factors Ltd v Maxwell Printing Ltd* [1994] 1 NZLR 724. In that case, which was one of the cases which the Judge here had placed much reliance, two parties entered into a cheque swapping arrangement for a monthly settlement of their mutual dealings. Pursuant to the arrangement, either party could refuse to provide a cheque in respect of its indebtedness if it was not at the same time provided with a cheque in respect of what was owed to it. Hammond J held (at 740) that an implied contract to set off mutual debts was made out on a balance of probabilities. However, Hammond J stated that even if such an arrangement could not amount to a contract at law, or a contract *strictu sensu*, it nevertheless was an arrangement that equity would recognise. Hammond J did not conflate the legal requirements for proof of a contractual set-off with an equitable set-off which arose by an implied agreement.

It is noteworthy that the quoted statement made by the Master of the Rolls, Sir Joseph Jekyll, referenced by the learned author of *Rory Derham*, was taken from the decision of the Chancery Court, *Jeffs v Wood* (1723) 2 P Wms 128 ("*Jeffs v Wood*"). I will return to this statement at a later juncture.

43 As for substantive set-off, the Court of Appeal in *Rabobank* at [40] held that it arises when a claim and counterclaim arise out of the same set of facts and are so closely connected that it would be inequitable not to allow a set-off.

44 There is also no requirement for the claims to be liquidated before the substantive set-off is permissible. Further, the substantive set-off is exercisable as a self-help remedy and may be retroactive. It is also uncertain whether the principles of mutuality must be strictly applied: see *Rory Derham* at [4.67] – [4.83] and *Hayate* at [22].

45 The existence of substantive set-off was affirmed by the Court of Appeal in *Pacific Rim Investments Pte Ltd v Lam Seng Tiong & Anor* [1995] 2 SLR(R) 643 ("*Pacific Rim*"). There, the Court of Appeal held that substantive set-off was a defence exercisable as a form of self-help. However, the exercise of substantive set-off was only permitted if equitable considerations supported such an exercise. The right of substantive set-off arose where there were good equitable grounds for directly impeaching the title to the legal demand which the creditor was seeking to enforce, and such a right may be excluded by contract. Moreover, there were exceptions (such as claims for freight in voyage charters, actions on dishonoured bills of exchange and certain actions on bank guarantees) where equity had followed the common law by recognising the exceptions to common law abatement.

46 In *Abdul Salam Asanaru Pillai (trading as South Kerala Cashew Exporters) v Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR(R) 856 ("*Abdul Salam*"), Sundaresh Menon JC (as he then was) summarised the following propositions relating to substantive set-off:

(a) There is a general right to equitable set-off in cases where there is a close relationship or connection between the dealings and the transactions which give rise to the respective claims;

(b) It is not necessarily the case that the claim and cross-claim must arise out of the same contract;

(c) There is no universal rule that claims arising out of the same contract may be set against one another in all circumstances; and

(d) In determining how close the connection needs to be, the court should not get bogged down in the nuances of differently expressed formulations, save that there must be a close and inseparable relationship between the claims. Beyond this, the outcome can be left to be governed by notions of fairness and whether the circumstances are such that it would be manifestly unjust to allow one claim to be enforced without regard to the other.

47 In the round, Menon JC observed that (at [28]):

> The question of whether a sufficient degree of closeness is established in the connection between the respective claims is not determined by some sort of formulaic process. In each case, the question turns on whether the respective claims are so closely connected that it would offend one's sense of fairness or justice to allow one claim to be enforced without regard to the other.

48 In *Rory Derham* at paragraph 4.58, the learned author states that in order for a court of equity to provide relief by way of set-off, the person claiming relief must demonstrate some equitable ground for being protected from the other party's demand. He adds that as a corollary, an equitable set-off may be denied, notwithstanding that cross-claims are otherwise sufficiently closely connected, if there are factors or circumstances which militate against the justice or fairness of a set-off. Thus, the conduct of the parties may be relevant to the question of the availability of equitable relief by way of set-off.

My decision in respect of set-off by implied agreement

49 Lanka asserts that the Court does not require proof of an agreement to set off, whether implied or otherwise, and it suffices that the "least evidence of an agreement for a [set-off] will do", and that "equity will take hold of a very slight thing to do both parties right", such as where a set-off arrangement would have been a reasonable act in the circumstances and the parties did not otherwise assert their mutual rights at the material time such that the parties "must be understood, like reasonable persons, to have adopted an arrangement perfectly obvious and in conformity with what ought to have been done".

50 In respect of Lanka's reliance on the Understanding and that it constitutes a set-off arrangement, according to Lanka's own case, there needs to be at least *slight evidence* of an agreement. Other than a bare assertion in the affidavit of Lanka's sole director Mr Navin Kumar s/o S Jaganathan dated 2 April 2025 ("Lanka's affidavit) that JPL and SMIY are related companies, no facts have been pleaded that would support a set-off by implied agreement. Given that Lanka asserts the existence of the Understanding, the burden is on Lanka to adduce sufficient evidence to prove its assertion. However, Lanka's

affidavit contains no evidence on the Understanding. Further, Lanka at sub-paragraph 13(b) of its Defence avers that "[p]ursuant to the Understanding, [Lanka] would periodically deposit monies in a designated account as and when it received payment from SMIY for work done. [JPL] would then withdraw monies from the account as payment for outstanding invoices for the copper slag supplied to [Lanka]." One would have at least expected Lanka to produce the bank statements to show the deposits and the payments out from the bank account in question. Yet, no such evidence has been adduced.

51 Lanka further submits that an implied agreement can be reasonably inferred due to the fact that JPL delayed pursuing the payment of the invoices, and that SMIY and JPL proposed a set-off to Lanka, together with other creditors of SMIY, at the 2019 Meeting. I accept JPL's submission that the events that purportedly occurred at the 2019 Meeting do not support Lanka's argument that there is *slight evidence* of an agreement to set off. On the contrary, it is expressly pleaded in sub-paragraph 13(d) of the Defence (reproduced at [6] above) that Lanka rejected SMIY's and JPL's proposal for a set-off of the amounts owed by SMIY to Lanka against the amounts owed by Lanka to JPL during the 2019 meeting. Lanka's own pleaded case makes it unequivocally clear that there was no such agreement of set-off between the parties at all.

52 As for Lanka's argument that JPL's delay in pursuing the payment of the invoices is evidence of the Understanding and the pay-when-paid arrangement, I find this to be a neutral point. Unless more evidence can be shown, I have to give equal weight to JPL's submission that JPL had an unfettered prerogative to decide when it would pursue its claims.

53 Pertinently, JPL argues that Lanka's heavy reliance on the statement in *Jeffs v Wood* that the "least evidence of an agreement for a [set-off] will do" should be viewed with caution. I agree. In *Rabobank* at [43] – [44], the Court of Appeal held that a distinction had to be drawn between the rules applicable under the common law of contractual set-off and those applicable to equitable set-off. A court of equity would impose an equitable set-off *between two parties* who have had mutual dealings resulting in mutual debts owing *to each other*, in the presence of slight evidence to ameliorate the harshness of the strict legal requirement of proof of a contract or agreement to set off, implied or otherwise on a balance of probabilities. The imposition of an equitable set-off in these circumstances was to avoid the injustice caused by granting the plaintiff judgment for the sum owed to it by the defendant without having regard to the defendant's cross-claim against the plaintiff. The Court of Appeal found that one of the reasons why the case in *Rabobank* did not warrant the intervention of equity was because the case concerned an alleged *tripartite* rather than *bilateral* set-off agreement. Therefore, the common law rule applied such that contracts are not to be lightly implied unless the court was confident that the parties intended to create contractual relations. Cases such as *Jeffs v Wood* were decided on equitable principles *in the factual context of two parties who had mutual debts*. The Court of Appeal provided a useful illustration of a tripartite situation where Company A owes a debt to Company B who in turns owes a debt to Company C (a situation similar to the present case); it is not at all clear why it would be unjust not to invoke equitable principles for the implication of a set-off agreement among all three parties. Company B could well have intended for Company A to be its debtor at law. The Court of Appeal then proceeded to conclude that a court should be slow to, and indeed should not

apply *Jeffs v Wood* to a case where different circumstances and different considerations prevail.

54 As the proponent of the defence of equitable set-off, the burden of proof lies on Lanka to prove that such a tripartite set-off agreement was formed. I find that Lanka has failed to discharge the burden as not a shred of evidence has been adduced to support the existence of a tripartite set-off agreement between JPL, Lanka and SMIY. Lanka's reliance on the statement in *Jeffs v Wood* that the "least evidence of an agreement for a [set-off] will do" is, in my view, misconceived as the present case concerns an alleged three-party arrangement, and not a bilateral set-off agreement. Lanka is therefore precluded from relying on set-off by implied agreement.

My decision in respect of substantive set-off

55 As stated earlier at [45] above, the right of substantive set-off arises where there are good equitable grounds for directly impeaching the title to the legal demand which the creditor is seeking to enforce (see *Pacific Rim*). As the learned author in *Rory Derham* observed, the person claiming relief must demonstrate some equitable ground for being protected from the other party's demand. As a corollary, an equitable set-off may be denied notwithstanding that cross-claims are otherwise sufficiently closely connected, if there are factors or circumstances which militate against the justice or fairness of a set-off. In my judgment, there are circumstances in the present case which militate against such an equitable set-off being raised.

56 Crucially, Lanka pleaded in sub-paragraph 13(d) of the Defence that it *had rejected* SMIY's and JPL's proposal for a set-off of the amounts owed by

SMIY to Lanka against the amounts owed by Lanka to JPL during the 2019 meeting.

57 Taking a step back, this means that from Lanka's perspective, there was an offer in 2019 by SMIY and JPL for a set-off which Lanka had rejected. Looking at the timeline, Lanka thereafter commenced Suit 1052 against SMIY on 30 October 2020 and by end April 2022, Suit 1052 was eventually consolidated with Suit 1040 and the other suits. Separately, the Suit commenced on 5 May 2023 and on 5 August 2024, on the application of the parties (i.e., JPL and Lanka), the court entered the Tomlin Order by consent. Based on the Suit 1040 first judgment, the trial in Suit 1040 commenced only on 29 August 2024. However, the Suit was never part of Suit 1040. Having had the opportunity to do so for over a year, the parties in Suit 1040, being large and sophisticated commercial parties represented by counsel (which includes Lanka and its related entity, Shipworks and SMIY and its related entity, JSPL) clearly did not perceive the Suit (and the dispute between JPL and Lanka) to be sufficiently connected to Suit 1040 to apply for the Suit to be consolidated with Suit 1040. Notably, Lanka is the common party in both sets of proceedings.

58 In other words, the parties in Suit 1040 and the parties in the Suit had all along operated on the basis that Suit 1040 and the Suit would be kept *separate*. They operated their financial affairs and businesses on that basis. JPL did so and probably held the genuine belief that the Suit would be finally resolved when it entered into the Tomlin Order. In light of the above, coupled with Lanka's own pleaded position that Lanka had rejected SMIY's and JPL's proposal for a set-off in 2019, I do not think that the present case justifies equity's intervention, and I find that substantive set-off ought not apply in Lanka's favour.

59 Even though I have found that substantive set-off ought not apply, I will, for completeness, briefly deal with the issue on whether there is a close relationship or connection between the supply of copper slag from JPL to Lanka and Lanka's performance of surface blasting/ cleaning works for SMIY using the copper slag supplied. The question turns on whether the respective claims are so closely connected that it would offend one's sense of fairness or justice to allow JPL's claim for the Claimed Sum to be enforced without regard to the Judgment Debt due and owing by SMIY to Lanka.

60 In Lanka's affidavit at paragraph 4, Lanka provided three reasons in support of the set-off and the close connection between the claims:

(a) The parties are identical if not similar. Lanka is the Defendant in the Suit and the judgment creditor in Suit 1040. JPL is within the same group of companies as the defendants in Suit 1040 (i.e. the Seatrium Group). SMIY (renamed to Seatrium (SG) Pte. Ltd.) is an 85.8% shareholder of JPL and is one of the judgment debtors in Suit 1040.

(b) According to Lanka, the subject matter of the claims overlaps entirely. The Suit concerns the supply of copper slag from 2015 to 2019 to Lanka. The claim in Suit 1040 concerns work done by Lanka (using the copper slag delivered) to perform services for the Seatrium Group (i.e. the cleaning of ships).

(c) Lanka has remained out of pocket for years because the Seatrium Group of companies has refused to make payments in respect of the services it had performed. The Seatrium Group continues to refuse to pay Lanka (despite the Suit 1040 judgments being issued) and yet, JPL presses ahead insisting on payment.

61 As regards Lanka's first reason, the parties in the Suit and Suit 1040 are not identical. I agree with JPL that Lanka is merely relying on the shareholding relationship between JPL and SMIY. JPL is not a party to Suit 1040, and Lanka has not adduced evidence to show that JPL's separate legal personality should be disregarded. This scenario was squarely addressed by the learned author in *Rory Derham* (at paragraph 4.68):

> In its simplest form, mutuality means that A can sue B and B can sue A. If the situation instead is that A can sue B and B can sue C, it would not usually be just that the demands be set off because this would mean that A's asset (the claim against B) would be used to pay C's liability. This would include a case where A and C are related entities.

Similar to the present case, JPL (A) can sue Lanka (B), and Lanka (B) can sue SMIY (C), but this does not mean that there is mutuality between JPL and Lanka.

62 The second reason provided by Lanka paints a picture that the subject matter of the Suit overlaps entirely with that in Suit 1040. In response, JPL submits that Lanka has failed to prove that all of the copper slag it used for surface blasting/ cleaning works for SMIY was, in fact, supplied by JPL. Lanka responds by arguing that JPL has not proffered any authority for a requirement that the claims sought to be set off must arise from transactions that map onto each other exclusively or overlap totally. Lanka reiterates that the authorities require only that there be a close relationship or connection between the transactions. Lanka then attempts to show the closeness of the connection by explaining that:

(a) Annex A of JPL's SOC in the Suit lists 86 invoices for which JPL supplied processed copper slag to Lanka in connection with 37 job

numbers issued by SMIY (also called "Work Orders" in Suit 1052) and which are the subject of JPL's claims against Lanka.

(b) Comparing job numbers in the column titled "Particulars" in Annex A of JPL's Statement of Claim (Amendment No. 1) dated 17 July 2023 ("SOC") (which is the job number for the relevant invoice) against Lanka's Work Order numbers in Annex A and Annex D of the Statement of Claim (Amendment No. 1) in Suit 1052 dated 23 June 2021 ("Suit 1052 SOC") reveals that out of the 37 job numbers cited by JPL in its SOC, there are 27 overlapping Work Orders which are the subject of Lanka's claim for unpaid invoiced amounts against SMIY in Suit 1052. According to Lanka, that translates to an approximate 73% overlap.

63 However, a closer inspection of Annexes A and D of the Suit 1052 SOC shows that there are in total 246 Work Orders in Annex A and 15 Work Orders in Annex D that are the subject of Lanka's claim against SMIY. This means that out of a total of 261 Work Orders, only 27 of those Work Orders correspond to JPL's claims against Lanka in the Suit for the supply of copper slag. This effectively means that **only 10.3% of the total surface blasting/ cleaning works carried out by Lanka for SMIY are connected with JPL's supply of copper slag**. Indeed, this ties in with paragraph 3(3) of Lanka's Defence which pleads that "To carry out its surface blasting/cleaning work, [Lanka] used processed copper slag purchased from JPL *and from other sources, and maintained a reserve quantity of copper slag in storage*." Further, paragraph 10(d) of Lanka's Defence pleads that "[Lanka] would draw *on its reserve of copper slag and the copper slag obtained from other sources* to continue carrying out its surface blasting/cleaning work" [emphasis added]. It is therefore

not surprising that all parties involved in Suit 1040 (which included Lanka) did not see any need for the Suit to be consolidated with the other suits.

64 Accordingly, I am not persuaded that there is a close connection between the supply of copper slag from JPL to Lanka and Lanka's performance of surface blasting/ cleaning works for SMIY that will justify equitable set-off.

65 Lastly, Lanka's argument (that it has remained out of pocket for years because the Seatrium Group has refused to make payments in respect of the services it had performed) does not hold water. The appeals have been filed against the Suit 1040 judgments to the Appellate Division of the High Court and will be heard on a date to be confirmed. The parties in Suit 1040 have agreed that there will be an interim stay of execution by consent. In the meantime, JPL is entitled to proceed with the Application in the Suit. This is all part of the litigation process.

66 For the reasons set out above, I am satisfied that the respective claims are *not* so closely connected that it would offend the court's sense of fairness or justice to allow JPL's claim for the Claimed Sum to be enforced without regard to the Judgment Debt due and owing by SMIY to Lanka.

67 Given the findings above, it is not necessary for this court to consider the issue pertaining to mutuality. For context, after the hearing on 28 April 2025, I noted that there is some uncertainty on whether the principles of mutuality must be strictly applied before substantive set-off can apply: *Hayate* at [22]. I therefore asked the parties for further submissions on whether there are any precedents or authorities whereby equitable set-off was applied in a factual scenario where there is no mutuality. Both parties are in agreement that there

are *no local* authorities or precedents that have specifically applied the fourth type of equitable set-off in factual scenarios involving unidentical parties.

68 Lanka however emphasises that the authorities or precedents relating to substantive equitable set-off do not espouse or lay down any requirement of mutuality. Lanka cited cases from Australia and Canada. Lanka also relied on the following passage in *Rory Derham* at paragraph 4.68:

> "Nevertheless, the test for equitable set-off traditionally has not been formulated in terms of a requirement of mutuality. Consistent with the inherent flexibility of equitable remedies, if in an exceptional case a set-off would be appropriate in all the circumstances notwithstanding that the claims in issue are not mutual, as a matter of principle there would seem to be no compelling reason why a court of equity should not have a discretion to permit a set-off despite the absence of mutuality …".

I should, for completeness, state the sentence that comes after the above quote in *Rory Derham*: "subject to compliance with the rule of practice of the Court of Chancery that all persons materially interested in the subject of a suit generally should be made parties to the suit".

69 As there is no need to, I pass no comment on the issue of mutuality in relation to substantive set-off and Lanka's further submissions above.

Conclusion

70 For the reasons above, I find that Lanka's defence of equitable set-off does not apply and the Claimed Sum ought not be set off against the Judgment Debt.

71 Accordingly, pursuant to the Application and in exercise of the powers reserved under the Tomlin Order to make orders for the purpose of carrying out the terms of the Schedule, I order that:

(a) Judgment on admission of facts be entered against Lanka pursuant to Order 9 r 18(2) of the ROC, read with paragraph 4 of the Schedule to the Tomlin Order (HC/ORC 4118/2024 dated 5 August 2024); and

(b) Lanka pays to JPL:

(i) the sum of $521,260.95;

(ii) interest at 5.33% per year on the said sum of $521,260.95 from 1 July 2023 to the date of judgment, i.e. today; and

(iii) costs from 1 January 2025 onwards.

72 I will hear parties on costs. I thank counsel for their written and oral submissions.

Kenneth Choo
Assistant Registrar

Tan Boon Yong Thomas and Lieu Kuok Poh (Haridass Ho & Partners) for the claimant;
Yong Yi Xiang and Devathas Satianathan (Rajah & Tann Singapore LLP) for the defendant.