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

**[2025] SGHC 202**

Originating Application No 1330 of 2024 (Summons No 2319 of 2025)

In the matter of Section 216A of the Companies Act 1967

Between

Vivaz Group Holdings Pte Ltd

… *Claimant*

And

TripleOne (Cambodia)
Investment Pte Ltd

… *Defendant*

And

Lee Kok Heng Jeremiah

… *Non-Party*

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# GROUNDS OF DECISION

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[Civil Procedure — Inherent powers]
[Companies — Statutory derivative action]
[Limitation of Actions — Breach of fiduciary duty]

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# Vivaz Group Holdings Pte Ltd
# v
# TripleOne (Cambodia) Investment Pte Ltd
# (Lee Kok Heng Jeremiah, non-party)

**[2025] SGHC 202**

General Division of the High Court — Originating Application No 1330 of 2024 (Summons No 2319 of 2025)
Mohamed Faizal JC
15 September 2025

14 October 2025

**Mohamed Faizal JC:**

## Introduction

1 This application raised the issue of what recourse there would be to a claimant, whose application to commence a derivative action in the name of a company was dismissed at first instance but which is pending an appeal, and where the limitation period for the company's cause of action will likely expire before such appeal is heard. On the facts of this case, I granted the claimant permission to file a protective writ by way of an originating claim on behalf of the defendant, subject to the condition that such originating claim not be served on the potential defendants of the derivative action pending the determination of the appeal. As this is a relatively novel issue which does not appear to have received in-depth consideration by our courts, I now set out the grounds of my decision in full.

## Facts

2 In HC/OA 1330/2024 ("OA 1330"), the claimant, Vivaz Group Holdings Pte Ltd ("Vivaz"), applied for the court's permission to bring an action in the name and on behalf of the defendant, TripleOne (Cambodia) Investment Pte Ltd ("Company"), pursuant to s 216A of the Companies Act 1967 (2020 Rev Ed) ("Companies Act"). I had dismissed OA 1330 on 10 June 2025. Vivaz subsequently filed an appeal against my decision to the Appellate Division of the High Court ("Appellate Division") in AD/CA 54/2025 ("CA 54") on 7 July 2025. On 5 September 2025, I published my grounds of decision for OA 1330 in *Vivaz Group Holdings Pte Ltd v TripleOne (Cambodia) Investment Pte Ltd* [2025] SGHC 176 ("*Vivaz (Merits)*"). In gist, I had concluded that Vivaz knew of the impugned transaction at the material time, and thus dismissed OA 1330 on the basis that Vivaz had not brought the application in good faith (*Vivaz (Merits)* at [4]).

3 The background facts to this case are set out in detail in *Vivaz (Merits)* at [5]–[19] and I do not intend to repeat the same here. Instead, I will only sketch out the essential facts to contextualise the application that was before me. In gist, Vivaz's intended derivative action primarily concerns a board of directors' resolution dated 24 September 2019 ("Disposal of Shares Resolution") which sanctioned the sale of all the Company's shares in One Eleven Investment Pte Ltd ("OEI") to TPC Properties Pte Ltd ("TPC"). Vivaz had contended that the Disposal of Shares Resolution was orchestrated by Lee Kok Heng Jeremiah ("Mr Lee") and Poh Boon Hua ("Mr Amos Poh"), both of whom were directors of the Company at the material time, in breach of their duties to the Company.[1]

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[1] Quek Lay Wah's affidavit dated 14 August 2025 ("Quek's Affidavit") at paras 11–13.



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The potential defendants to the intended derivative action are thus Mr Lee, Mr Amos Poh, TPC and other recipients of the Company's shares in OEI ("Potential Defendants").[2]

4 On 15 August 2025, Vivaz filed HC/SUM 2319/2025 ("SUM 2319") seeking the court's permission to file a protective writ by way of an originating claim on behalf of the Company, subject to the condition that such originating claim would not be served on the Potential Defendants pending the determination of CA 54. Mr Lee, who had objected to OA 1330 in his capacity as a non-party to those proceedings, did not object to this application.[3]

**Vivaz's case**

5 If Vivaz succeeds in CA 54, it may then be able to commence the intended derivative action. However, at the time SUM 2319 was before me, CA 54 was not yet fixed for hearing before the Appellate Division, and the parties had not yet been notified of the record of proceedings for OA 1330.[4] Vivaz took the position that the Company's claim against Mr Lee and Mr Amos Poh for breach of their fiduciary duties by orchestrating the Disposal of Shares Resolution ("Fiduciary Duty Claim") would be time-barred by 24 September 2025.[5] Thus, Vivaz filed SUM 2319 to preserve the Company's rights pending the determination of CA 54.[6] Should SUM 2319 be granted, Vivaz undertook

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2 Quek's Affidavit at para 5.

3 Claimant's written submissions dated 1 September 2025 ("CWS") at para 3; NEs (15 September 2025) at 2:12–15.

4 CWS at para 30(a)(ii); NEs (15 September 2025) at 5:6–10.

5 Quek's Affidavit at para 24; CWS at para 8.

6 Quek's Affidavit at para 26.



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not to serve the protective writ on the Potential Defendants unless otherwise directed.[7]

6 Vivaz submitted that this court had the power to grant SUM 2319 pursuant to s 216A(5) of the Companies Act and/or O 3 r 2(2) of the Rules of Court 2021 ("ROC 2021").[8] In a similar vein, Vivaz submitted that this court had the inherent jurisdiction to hear SUM 2319 pursuant to O 15 r 12(4) of the ROC 2021,[9] and that the doctrine of *functus officio* did not constitute a bar as the application did not affect the substantive merits of the decision in OA 1330.[10]

7 Vivaz also submitted that, in light of the absence of local jurisprudence on applications of this nature, the decisions of the Hong Kong courts offered a valuable and persuasive guide. In this regard, Vivaz referred me to three decisions of the Hong Kong Court of First Instance in *Chen Pei Xiong v Convoy Global Holdings Limited* [2024] HKCU 1157 ("*Chen Pei Xiong (Interim)*"), *Chen Pei Xiong v Convoy Global Holdings Limited* [2024] HKCU 3316 ("*Chen Pei Xiong (Merits)*"), and *Sea Heritage Holdings Limited v Nice Wave International Limited* [2024] HKCU 4364 ("*Sea Heritage*"). In these cases, the plaintiffs applied for leave to commence statutory derivative actions on behalf of their respective companies. Because the limitation period for the underlying claims had been set to expire before the hearings for the derivative action applications, the plaintiffs also applied for interim orders granting them leave to issue protective writs, on the condition that the protective writs would not be

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7 Quek's Affidavit at para 27.

8 CWS at paras 11–12.

9 Claimant's further written submissions dated 5 September 2025 ("CFWS") at para 10.

10 CFWS at para 23.



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served on the putative defendants pending the determination of the derivative action applications. The Hong Kong courts relied on the power under s 737(2)(a) of the Companies Ordinance (Cap 622) (HK) ("HK Companies Ordinance") to grant the interim orders. Vivaz submitted that s 216A(5) of the Companies Act represents the analogue to such a provision under Singapore law.[11]

8 Vivaz further submitted that it was in the interests of justice for SUM 2319 to be granted. First, Vivaz would suffer significant prejudice if SUM 2319 were denied. Should Vivaz succeed in CA 54, it would be a mere paper judgment as the claims arising out of the Disposal of Shares Resolution would likely be time-barred by 24 September 2025, and Vivaz would be left with no effective recourse or remedy. Second, the granting of SUM 2319 would not cause any prejudice to the Potential Defendants. As Vivaz would not be serving the protective writ on the Potential Defendants, they would not need to take any steps in response. If CA 54 is subsequently dismissed, the Appellate Division can set aside the permission granted in SUM 2319 or issue further directions prohibiting the service of the protective writ which would simply expire at the end of its validity period without any possible extension.[12]

**Issues to be determined**

9 Having regard to the background facts and Vivaz's submissions, I was of the view that two issues had to be determined: (a) first, whether this court even had the power to grant SUM 2319; and (b) if so, second, whether SUM 2319 should be granted. Before I set out my analysis on the two issues, it

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11 CWS at paras 15–29.

12 CWS at para 30.



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is appropriate to first examine the case authorities on the use of protective writs in derivative action applications so as to better situate their relevance, and significance, to the present case.

**Case law on protective writs in derivative action applications**

10 As noted earlier, there appears to be no local case authority where an application similar to SUM 2319 had been expressly considered. However, I found the *obiter* comments in *Sinwa SS (HK) Co Ltd v Nordic International Ltd* [2016] 4 SLR 320 ("*Sinwa*") to be of some relevance. In that case, the plaintiff sought leave to commence a common law derivative action on behalf of the company. The derivative action had to be brought by way of arbitration in Singapore due to an arbitration clause which the company was bound by. The limitation expiry date for most of the alleged claims fell between the date of filing of the derivative action application and the date of the substantive hearing.

11 Steven Chong J (as he then was) held that the filing of the derivative action application did not stop the limitation period from running, and thus most of the alleged claims were time-barred by the time of the substantive hearing. In coming to this view, Chong J was cognisant of the argument that, after a plaintiff files the derivative action application, it often would have no control as to when the application would be heard, and so the filing of the application ought to be sufficient to bring the alleged claims within the limitation period to avoid any potential injustice. However, Chong J rejected this argument and suggested that the plaintiff could theoretically have, *inter alia*, applied to the court for permission to file the notice of arbitration in the company's name pending the determination of the derivative action application (*Sinwa* at [38]). It appeared to me that the mechanism suggested by Chong J was essentially that of a "protective notice of arbitration". However, it should be noted that Chong J



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contemplated its use as an interim measure pending the first instance judge's determination of the derivative action application.

12 Turning to the foreign case authorities, as observed at [7] above, Vivaz relied on three Hong Kong cases. In *Chen Pei Xiong (Interim)*, the plaintiff sought leave to commence a statutory derivative action on behalf of the company, but the limitation period of the underlying claim was about to expire before the application could be substantively heard. Thus, the plaintiff also sought an interim order that he be granted leave to issue a protective writ on behalf of the company pending the determination of the derivative action application, on the condition that he would not serve the protective writ on the putative defendant. In granting the interim order, Coleman J reasoned as follows (*Chen Pei Xiong (Interim)* at [15]):

> (5) It seems to me to be appropriately equivalent for the protective writ to be issued, if no further step is taken on that writ if it is ultimately determined that leave to bring the statutory derivative action should not be granted – and would have been refused had it been possible to have the full argument and a decision prior to 27 March 2024.
>
> (6) If it is determined that leave should not be granted, the protective writ will never be served on Mr Ng and will simply expire at the end of its validity period. In essence, without there ever being a defendant to that action, the action would never really have started and can be ignored.
>
> (7) Indeed, it may even be possible – if it is determined that leave should not be granted – that the issue of the writ can be set aside in some appropriate way.

13 Subsequently, in *Chen Pei Xiong (Merits)*, Coleman J dismissed the derivative action application. He then made a fresh order overturning the interim order previously granted such that the protective writ could be treated as never having been issued. If that was not possible, he directed that the protective writ



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must not be served, such that it would simply expire at the end of its validity period without any extension of its validity (*Chen Pei Xiong (Merits)* at [98]).

14 In *Sea Heritage*, Deputy High Court Judge MC Law was confronted with a similar application. In granting the plaintiff leave to file the protective writ on an interim basis, Judge Law referred to *Chen Pei Xiong (Interim)* and *Chen Pei Xiong (Merits)* and reasoned as follows (*Sea Heritage* at [15]):

> Having considered the parties' submissions, I agreed with Mr Ng that such interim order was protective in nature and would cause no prejudice to the Company, Navigator and Lee. I was satisfied that the claims of the Company as set out in the draft Statement of Claim may be time-barred in October 2024. On the other hand, if the interim order under paragraph 2 of the OS was refused, it would cause prejudice. Further, should it subsequently appear to me that leave should not be granted to Sea Heritage to commence the statutory derivative action, I could either make a fresh order overturning the leave granted for issue of the protective writ, or make a further direction that the writ must not be served …

15 Once again, it should be highlighted that in these three Hong Kong cases, the applications to file protective writs were made on an interim basis pending the first instance judge's determination of the derivative action application. This is made even clearer by the fact that Coleman J and Judge Law appeared to grant the interim orders by virtue of reliance on the power available under s 737(2)(a) of the HK Companies Ordinance (*Chen Pei Xiong (Interim)* at [9]; *Sea Heritage* at [13]), which states as follows:

> **737. Court's general powers to order and direct**
>
> (1) The Court may make any order, and give any direction, that it thinks fit in respect of—
>
> (a) any proceedings brought or intervened in under section 732(1), (2) or (3);
>
> (b) an application for leave for the purposes of section 732(1), (2) or (3);



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> …
>
> (2) Without limiting subsection (1), the Court may do any or all of the following under paragraph (a) or (b) of that subsection—
>
> (a) make an *interim order* pending the determination of the proceedings or application;
>
> …
>
> [emphasis added]

16 As it turns out, although Vivaz only placed reliance on Hong Kong jurisprudence, Hong Kong is not the only common law jurisdiction to have considered the use of protective writs in derivative action applications. A similar line of case law has also developed in Australia. In *Re RUS Holdings (Australia) Pty Ltd* [2012] NSWSC 1075 ("*Re RUS Holdings*"), the plaintiffs sought leave to commence statutory derivative actions on behalf of two companies to set aside various statutory demands. The matter had to be dealt with expediently because, under Australian law, an application to set aside a statutory demand had to be made within 21 days after the statutory demand was served.

17 Black J reasoned that the court had the power to make an interim order in a derivative action application, and that such power, in an appropriate case, extended to an interim order authorising the taking of a step which was necessary to preserve the status quo pending the determination of the substantive application, and that on the facts, the commencement of proceedings to set aside the statutory demands was such a step (*Re RUS Holdings* at [4]). He was satisfied that there was a serious question to be tried as to whether the plaintiffs could satisfy the statutory requirements for a derivative action and thus whether the derivative action application ought to be granted. He was also satisfied that the balance of convenience supported the grant of the interim order because the commencement of the setting aside proceedings would not



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prejudice the interests of any party as the timelines indicated that the derivative action application would be determined before the setting aside application. On the other hand, if the interim order was not made, the applications to set aside the statutory demands would not be made in time, and there would be significant adverse impacts on the companies and those holding interests in them (*Re RUS Holdings* at [7]). Thus, Black J authorised the plaintiffs to institute the proceedings in the name of the companies on an interim basis (*Re RUS Holdings* at [8]).

18 In *Re Legal Practice Management Group Pty Ltd* [2017] NSWSC 1500 ("*Re Legal Practice*"), the applicants sought leave to commence statutory derivative actions on behalf of three companies. The applicants also sought leave to commence those proceedings on an interim basis to avoid the limitation period for the companies' underlying claims expiring before the final determination of the derivative action application. Black J held that the court had the power to make an interim order permitting the commencement of the proceedings and referred to his earlier decision in *Re RUS Holdings* (*Re Legal Practice* at [6]). He considered that the statutory factors which the court must be satisfied of before it grants a derivative action application also applied to the grant of leave on an interim basis and that those factors were satisfied on the facts. He thus concluded on an interim basis that there was a serious question to be tried (*Re Legal Practice* at [7]–[8]). On the applicants' undertaking that they would not serve the statement of claim on the putative defendants or otherwise continue the proceedings without further leave of court, Black J granted the applicants leave on an interim basis to file the statement of claim but to take no further step in the proceedings without leave of court (*Re Legal Practice* at [9]).



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19 I highlight once again that in these two Australian cases, leave to file the protective writ had been granted on an interim basis pending the first instance judge's determination of the derivative action application. In both cases, Black J granted the interim orders by relying on the power found under s 241(1)(a) of the Corporations Act 2001 (Cth) ("Australian Corporations Act"), which stated:

> **241 General powers of the Court**
>
> (1) The Court may make any orders, and give any directions, that it considers appropriate in relation to proceedings brought or intervened in with leave, or an application for leave, including:
>
> (a) *interim orders*; and
>
> …
>
> [emphasis added]

20 The case of *Pesec v Consolidated Builders Ltd (No 3)* [2021] ACTSC 105 ("*Pesec*") involved a different fact pattern. In that case, the plaintiff had sought leave to bring a statutory derivative action on behalf of the company. As the limitation period for the company's underlying claim had been set to expire on 14 April 2021, McWilliam AsJ (as she then was) determined the application urgently on 13 April 2021. While she dismissed the application, she made a further interim order, pursuant to s 241(1)(a) of the Australian Corporations Act, granting leave to the plaintiff to file the proposed claim, on the condition that the plaintiff first file an application for leave to appeal. McWilliam AsJ reasoned that the interim order was necessary to preserve the status quo until the parties had the opportunity to appeal her decision. The interim filing of the proceedings ensured that any appeal by the plaintiff, if successful, was not then rendered futile by the passing of the limitation period in the meantime. However, McWilliam AsJ also noted that the plaintiff should have taken more timely action. She advised that litigants should take a proactive approach and deal with



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the issue of an approaching limitation expiry date well in advance, such as by applying for an interim order to commence proceedings pending the determination of the derivative action application, citing *Re Legal Practice* as an example (*Pesec* at [141]–[145]).

21 In *Pesec*, unlike all the previous cases discussed, permission to file the protective writ had been granted after the first instance judge dismissed the derivative action application, but was intended to preserve the plaintiff's rights even as the appellate court was considering whether to grant permission to appeal. However, it should be noted that McWilliam AsJ still relied on the power under s 241(1)(a) of the Australian Corporations Act to make the interim order.

**Whether this court had the power to grant SUM 2319**

22 Having examined the case law on the use of protective writs in derivative action applications, I turn to the issue of whether this court had the power to grant SUM 2319, or put differently, what the legal basis was for SUM 2319.

23 As a preliminary point, I observed that SUM 2319 had been filed after I had fully determined the merits of OA 1330. Thus, the three Hong Kong cases cited by Vivaz were, in my view, of little to no assistance in so far as the question of legal basis was concerned, since they were all cases in which permission to file the protective writ was granted pending the determination of the derivative action application. Indeed, Vivaz conceded as much after I highlighted this variance in the fact pattern between the Hong Kong cases and



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the present case.[13] In my view, this is further reinforced by the fact that, in those cases, the Hong Kong courts had placed reliance on an express statutory power under s 737(2)(a) of the HK Companies Ordinance to make such interim orders (see [15] above). It was clear to me that no such equivalent provision exists under s 216A of the Companies Act.

24 For the same reasons, the Australian cases of *Re RUS Holdings* and *Re Legal Practice* were of little to no assistance on the question of legal basis. While *Pesec* was a case in which permission to file the protective writ was granted after the derivative action application was dismissed but pending the appellate court's determination of an application for permission to appeal, it remained the case that McWilliam AsJ's decision placed reliance on an express statutory power under s 241(1)(a) of the Australian Corporations Act to make the interim order (see [20]–[21] above), which once more found no local analogue in s 216A of the Companies Act.

25 Likewise, Chong J's *obiter* comment in *Sinwa* was not directly apposite on the issue of legal basis. Chong J contemplated the use of a "protective notice of arbitration" as an interim measure pending the determination of the derivative action application. Further, Chong J did not discuss what legal basis the court could rely on to grant a plaintiff permission to file such a "protective notice of arbitration"; this is entirely understandable as it was simply unnecessary for him to explore, or deliberate on, the matter further as the issue was not one that was squarely before him. Thus, *Sinwa* did not provide much insight as to whether this court would have the power to grant SUM 2319.

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13 CFWS at paras 29–30.



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26 As the case authorities were not instructive, and this appeared to be a case of first impression, it was necessary to analyse the issue of legal basis by reference to first principles. In this regard, Vivaz submitted that the legal basis for me to grant SUM 2319 could be found in s 216A(5) of the Companies Act, which stated: "[i]n granting permission under this section, the Court may make such orders or interim orders as it thinks fit in the interests of justice". In my view, SUM 2319 clearly did not fall within the four corners of this provision. As I explained to counsel for Vivaz at the hearing before me, since I had not granted any permission for Vivaz to bring the intended derivative action, the aforesaid power to "make such orders or interim orders as [the court] thinks fit in the interests of justice" was simply not engaged. To be fair, after I highlighted this, counsel for Vivaz accepted the same and did not press the point further.[14] I was similarly unpersuaded by Vivaz's attempts to analogise s 216A(5) of the Companies Act with s 737 of the HK Companies Ordinance. In the Hong Kong cases, the courts relied on the express statutory power under s 737(2)(a) of the HK Companies Ordinance. Not only is that provision far from being *in pari materia* with s 216A(5) of the Companies Act, but significantly, the provision concerns the power to "make an interim order pending the determination of the proceedings or application" which, as I have already explained, would not be relevant in the present fact pattern as I had already determined OA 1330 on the merits and the matter was on appeal in CA 54.

27 Next, Vivaz submitted that this court had the "inherent jurisdiction" under O 15 r 12(4) of the ROC 2021 to hear SUM 2319. I pause here to make a point pertaining to terminology. In *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 ("*Re Nalpon*"), the Court of Appeal explained the difference between

[14] NEs (15 September 2025) at 3:1–10.



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the "inherent jurisdiction" and the "inherent powers" of the court. The "jurisdiction" of a court is its authority to hear and determine a matter brought before it, and such jurisdiction must be statutorily conferred upon by the statute constituting the court. In contrast, the "powers" of a court constitute its capacity to give effect to its determination by making or granting the orders or reliefs sought by the successful party to the dispute (*Re Nalpon* at [13]–[14] and [31]). Where earlier cases referred to the "inherent jurisdiction" of the court, they generally meant to refer to the "inherent powers" of the court, and the latter term ought to generally be used for conceptual clarity moving forward (*Re Nalpon* at [34]–[41]). In the present case, this court's *jurisdiction* to hear SUM 2319 stemmed from ss 16(1)(*a*)(i) and/or 17(1)(*c*) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA") (*Re Nalpon* at [32]). Given that this court had the jurisdiction to hear and determine OA 1330, it was uncontroversial that it also had the jurisdiction to hear and determine an application filed within the same originating process, *viz*, SUM 2319. The real question, in my mind, was whether this court had the *power* to grant SUM 2319. Indeed, O 15 r 12(4) of the ROC 2021 pertains to the court's *power* to "give such further orders or directions incidental or consequential to any judgment or order that the Court considers appropriate". Thus, the correct question was whether this court had the "inherent powers" under O 15 r 12(4) of the ROC 2021 to grant the order that was being sought in SUM 2319.

28 This would, of course, turn on the question of the proper contours of O 15 r 12(4) of the ROC 2021. There are no published decisions discussing this provision. However, it is derived from O 92 r 5 of the Rules of Court (2014 Rev Ed) ("ROC 2014") which states that "the Court may make or give such further orders or directions incidental or consequential to any judgment or order as may be necessary in any case" (*Singapore Civil Procedure 2025* vol 1 (Cavinder



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Bull gen ed) (Sweet & Maxwell, 2025) ("*Singapore Civil Procedure*") at para 15/12/3). Order 92 r 5 of the ROC 2014 has been said to be a manifestation of the court's "residual inherent [powers] even after an order is pronounced, to clarify the terms of the order and/or to give consequential directions" (*Godfrey Gerald QC v UBS AG* [2004] 4 SLR(R) 411 ("*Godfrey*") at [18]–[19]). It should thus follow that O 15 r 12(4) represents the same residual inherent power under the ROC 2021.

29 It was clear to me that both O 92 r 5 of the ROC 2014 and O 15 r 12(4) of the ROC 2021 are phrased in a broad manner and are intended to confer upon the court a wide discretion to make incidental or consequential orders (*Singapore Civil Procedure* at para 15/12/3; *Godfrey* at [19]). While the case law had yet to recognise either provision as the legal basis for the court to grant a party permission to file a protective writ whilst a derivative action application is on appeal, I was of the view that O 15 r 12(4) of the ROC 2021 was broad enough to encompass the order sought in SUM 2319. In particular, I was of the view that granting Vivaz permission to file a protective writ would be "incidental" to my decision in OA 1330, in that it facilitated the preservation of the Company's rights pending the determination of CA 54.

30 In coming to this view, I was cognisant that the court's power under O 15 r 12(4) of the ROC 2021 does not extend to correcting substantive errors or effecting substantive amendments or variations to orders that had been perfected. This is consistent with the doctrine of *functus officio*, which is a facet of the broader principle of finality in dispute resolution. However, the doctrine, properly understood, only concerns the substantive determinations made by the court (*Godfrey* at [18]–[19]; *Wee Soon Kim Anthony v UBS AG* [2005] SGCA 3 at [69]; *Ong Chai Hong v Chiang Shirley* [2016] 3 SLR 1006 at [11]–[13];



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*Thu Aung Zaw v Ku Swee Boon* [2018] 4 SLR 1260 at [19]; *Retrospect Investment (S) Pte Ltd v Lateral Solutions Pte Ltd* [2020] 1 SLR 763 at [15]). In the present case, after I dismissed OA 1330 on 10 June 2025, I was admittedly *functus officio* in so far as the substantive merits of OA 1330 were concerned. However, in my view, SUM 2319 did not invite me to substantively reconsider the merits of OA 1330 (subject to the observations I make at [53]–[57] below). Instead, in SUM 2319, Vivaz simply sought to preserve the Company's Fiduciary Duty Claim from being time-barred, pending the determination of CA 54. As explained at [48] below, regardless of who succeeds in CA 54, granting Vivaz permission to file the protective writ would not confer on Vivaz any undue advantage or cause the Potential Defendants any undue prejudice, and thus could not meaningfully be described as a substantive amendment to my decision in OA 1330. Therefore, I agreed with Vivaz that the doctrine of *functus officio* did not represent an obstacle to granting the order sought in SUM 2319.

31 Given that O 15 r 12(4) of the ROC 2021 was the *lex specialis* for the legal basis on which SUM 2319 could be granted, it was unnecessary for me to assess the merits of Vivaz's alternative reliance on O 3 r 2(2) of the ROC 2021, as that provision only applies "[w]here there is no express provision in [the ROC 2021] or any other written law" on the matter. Nonetheless, for completeness, I note that in the event I was wrong on my interpretation of O 15 r 12(4), I would have been of the view that this court would have the inherent powers to grant SUM 2319 pursuant to O 3 r 2(2).

32 Subject to the proviso stated above, O 3 r 2(2) of the ROC 2021 provides that "the Court may do whatever the Court considers necessary on the facts of the case before it to ensure that justice is done or to prevent an abuse of the



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process of the Court, so long as it is not prohibited by law and is consistent with the Ideals". Order 3 r 2(2) is also a reflection of the court's inherent powers (*Huttons Asia Pte Ltd v Chen Qiming* [2024] 2 SLR 401 at [22]). It gives the court broad powers to give directions and make necessary orders according to the justice of the case (*Blomberg, Johan Daniel v Khan Zhi Yan* [2024] 3 SLR 1079 at [45]), and is arguably phrased in an even broader manner than O 15 r 12(4). Thus, I would have been of the view that O 3 r 2(2) was also capable of encompassing the order sought in SUM 2319. For the reasons set out at [40]–[57] below, I would also have been of the view that granting Vivaz permission to file the protective writ would be entirely consistent with the Ideals in O 3 r 1(2), in particular the ideals of fair access to justice and fair and practical results suited to the needs of the parties.

33 Lastly, I was cognisant of the fact that the Appellate Division adjudicating CA 54 likely had the express statutory power, under s 40(1)(*b*) of the SCJA, to grant Vivaz permission to file the protective writ. That provision provides that the Appellate Division may make "any interim order to prevent prejudice to the claims of the parties pending the determination of the pending matter". Before me, Vivaz accepted that the application in SUM 2319 could also have been made to the Appellate Division. Indeed, in earlier correspondence with the court prior to the filing of SUM 2319, Vivaz had expressly considered whether it should be making the application to the Appellate Division instead of this court.[15] However, I noted, as Vivaz did in its submissions, that where an application may be made either to the General Division of the High Court ("General Division") or to the Appellate Division, it must first be made to the

15 CFWS at para 5.



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General Division.[16] This is made clear by s 39 of the SCJA and O 19 r 35(2) of the ROC 2021. It was thus in that specific context that Vivaz elected to have the application heard before me.

**Whether SUM 2319 should be granted**

34 Having held that this court had the inherent powers to grant SUM 2319, I then had to address the second issue regarding the merits of the application. As a preliminary matter, it was first necessary to ascertain the applicable test. Under O 15 r 12(4) of the ROC 2021, the test is whether the order or direction is "appropriate". But I also noted that the test under O 92 r 5 of the ROC 2014 was whether the order or direction was "necessary". Further, to the extent these provisions constitute a manifestation of the court's inherent powers, the case authorities recognise that an essential touchstone is that of "need", and there must be "reasonably strong or compelling reasons" showing why such inherent powers should be invoked (*Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 ("*Anthony Wee v LSS*") at [27] and [30]). It has also been said that such inherent powers should only be exercised in special or exceptional circumstances (*Roberto Building Material Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2003] 2 SLR(R) 353 at [16]–[17]; *Re Nalpon* at [42]). Ultimately, however, the inquiry is a fact-sensitive one. The court retains a degree of flexibility and discretion in the use of its inherent powers and such exercise should not be circumscribed by rigid tests or criteria. The general guideline is that such inherent powers should be exercised judiciously and invoked when it is just and equitable to do so (*Anthony Wee v LSS* at [27]).

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16 CFWS at para 6; NEs (15 September 2025) at 2:23–25.



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35 Without proscribing a definitive test, in my judgment, a few non-exhaustive factors appeared to me to be of especial salience in determining whether a party should be granted permission to file a protective writ while a derivative action application is on appeal: (a) whether there is a real need for the protective writ; (b) whether granting permission to file the protective writ strikes the right balance between the interests of the parties and avoids any undue prejudice to them; (c) whether there was any inordinate delay caused by the party seeking the protective writ; and (d) whether the appeal is bound to fail.

36 In this regard, an analogy could perhaps be drawn with the grant of a stay of execution or an Erinford injunction pending an appeal. I was cognisant that the analogy is not altogether perfect. Unlike the present case, there are express statutory provisions which indicate that the General Division has the power to grant a stay of execution or an Erinford injunction pending an appeal (see s 45(1) and para 14 of the First Schedule to the SCJA). A stay of execution is generally sought by an unsuccessful defendant to preserve the status quo prior to the first instance court's decision pending the appeal. Conversely, an Erinford injunction is generally sought by an unsuccessful claimant to obtain the very relief that was not granted by the first instance court, albeit on an interim basis, pending the appeal. As between the two, the protective writ sought in SUM 2319 was more akin to an Erinford injunction than a stay of execution. However, SUM 2319 arguably went even further than a prohibitive Erinford injunction in that, instead of restraining the defendant from taking certain actions, it sought to permit Vivaz to take positive steps in support of its interests, albeit on an interim basis, when permission to take those steps was denied by the first instance court on the merits. In that sense, there are some differences across each of these types of orders.



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37 Be that as it may, there nonetheless is obvious commonality in that all these mechanisms operate as exceptions to the general principle that a successful litigant should not be deprived of the fruits of his litigation pending an appeal. The court's power to grant a stay of execution is also, in some senses, a manifestation of the court's inherent powers to make non-substantive amendments to its own orders, *viz*, an amendment as to the time at which the order is to take effect (*Santoso Winoto v Suseno Winoto* [2024] 4 SLR 560 at [16]). To the extent Erinford injunctions and stays of execution represent nothing more than "two sides of the same coin" (*DJY v DJZ* [2025] 3 SLR 1561 ("*DJY v DJZ*") at [22]), it can also be said that the court's power to grant Erinford injunctions is a manifestation of the court's inherent powers.

38 Seen in the above light, it is noteworthy that the test for a stay of execution pending an appeal is whether there are "special circumstances" justifying it, and this would include situations where a successful appeal would be rendered nugatory if the stay is not granted (*Axis Megalink Sdn Bhd v Far East Mining Pte Ltd* [2024] SGHC 47 ("*Axis*") at [8]–[9]). The fact that there is little merit to the appeal is also a relevant circumstance the court can take into account (*Strandore Invest A/S v Soh Kim Wat* [2010] SGHC 174 at [10]). Ultimately, the court's task when considering such a stay application is to hold the balance between the interests of the parties and avoid any prejudice to them (*PricewaterhouseCoopers LLP v Celestial Nutrifoods Ltd* [2015] 3 SLR 665 at [19]). Likewise, in determining whether an Erinford injunction pending an appeal ought to be granted, the court applies a two-part test which requires, first, a consideration of the likelihood of a successful appeal, and second, a balancing exercise of the effects of granting or not granting the injunction on the parties. Under the first part of the test, all that is required is that the applicant should be ready to state with sufficiently detailed particulars the reasons why its



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arguments on appeal will succeed based on a fair and objective standard. Under the second part of the test, an important consideration is whether the appeal would be rendered nugatory if the injunction is not granted, and if so, the injunction ought to be granted (*DJY v DJZ* at [42], [44] and [50]).

39 It is thus readily apparent that the factors I had identified at [35] above mirror those regularly considered in an application for a stay of execution or an Erinford injunction pending an appeal. On the facts of this case, I was of the view that the factors pointed in favour of granting SUM 2319. I explain each of the factors in turn.

***Whether there was a real need for the protective writ***

40 As mentioned at [34] above, an essential touchstone for the court's invocation of its inherent powers is that of "need". The premise of Vivaz's submissions was that the limitation expiry date of the Company's Fiduciary Duty Claim was 24 September 2025. There was no compelling reason to doubt this. In the draft originating claim annexed to SUM 2319, one of the claims identified was for damages arising out of Mr Lee's and Mr Amos Poh's alleged breach of their fiduciary duties to the Company, presumably in relation to their carrying out of the Disposal of Shares Resolution. Such an action would be founded on equity, and the six-year limitation period would apply pursuant to s 6(7) of the Limitation Act 1959 (2020 Rev Ed) ("Limitation Act") (*Dynasty Line Ltd v Sukamto Sia* [2014] 3 SLR 277 at [53]). Further, the filing of OA 1330 would not have the effect of stopping the limitation period from running as an application for permission to commence a derivative action does not constitute an "action" brought by or on behalf of the company to enforce its accrued cause of action (*Sinwa* at [21]).



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41 I was alive to the fact that Vivaz's position in OA 1330 was that it only became aware of the Disposal of Shares Resolution sometime in August 2024 and that information and documents had been wilfully concealed from it.[17] If this was to be believed, then it seemed to me that the limitation period for the Company's claim could, in theory at least, be postponed until the date Vivaz discovered (or could, with reasonable diligence, have discovered) the fraud which concealed the right of action, pursuant to s 29(1)(*b*) of the Limitation Act. Be that as it may, I was of the view that it was not objectionable for Vivaz to take a more risk-averse approach in these proceedings, given the reality that there would have been no absolute certainty that it would be able to make good the allegation of fraud in any eventual derivative action.

42 As things stood, therefore, there was a fair chance that the Company's Fiduciary Duty Claim could become time-barred before the hearing for CA 54 or the release of any decision in respect of it. Vivaz was thus placed in an invidious position where the intended derivative action was at risk of being rendered ineffectual whilst proceedings seeking permission to bring that very derivative action were still ongoing. Even if Vivaz succeeds in CA 54, there was a real risk that it would be a pyrrhic victory if the Fiduciary Duty Claim became time-barred. In my view, these were special and exceptional circumstances indicating a real need for Vivaz to file the protective writ to preserve the Company's rights and to avoid CA 54 being rendered nugatory. As alluded to at [38] above, these are similarly considerations which would have supported the grant of a stay of execution or an Erinford injunction pending an appeal.

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17 Quek Lay Wah's affidavit dated 20 December 2024 at paras 61–64 and 77.



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43 It also appeared to me that the filing of the protective writ was the least problematic way to sidestep the impending limitation expiry date. I had considered whether it was open to Vivaz, if it succeeds in CA 54, to seek a further order from the Appellate Division, pursuant to s 216A(5) of the Companies Act, that the period between the commencement of OA 1330 and the resolution of CA 54 would not count towards the limitation period of the Fiduciary Duty Claim. For avoidance of doubt, I make no comment on whether such an order could or should be made as the matter was not before me. Suffice to say, given the urgency with which Vivaz filed SUM 2319, any such alternative means to overcome the imminent expiry of the limitation period would, in all likelihood, entail greater legal risks, as compared to obtaining permission to file a protective writ at this stage of the proceedings.

44 In coming to my view, I found some, albeit indirect, support from Chong J's *obiter* comment in *Sinwa*. Despite the limitations highlighted at [25] above, *Sinwa* was nevertheless an instance in which our local courts spoke approvingly of the use of a "protective notice of arbitration" to sidestep an impending limitation expiry date. Likewise, even though the legal basis for the interim order granted in *Pesec* was not available in the present case (see [24] above), the thrust of McWilliam AsJ's reasoning was nevertheless relevant. As in *Pesec*, the filing of the protective writ by Vivaz would ensure that the appeal in CA 54, if successful, would not be rendered futile by the passing of the limitation period in the meantime.



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***Whether granting permission to file the protective writ struck the right balance between the interests of the parties and avoided undue prejudice to them***

45 As the inherent powers of the court should only be exercised when it is just and equitable to do so, SUM 2319 should only be granted if it strikes the right balance between the interests of the parties and avoids undue prejudice to them. As alluded to at [38] above, such considerations are also relevant when determining whether to grant a stay of execution or an Erinford injunction pending an appeal.

46 Given that Vivaz had a real need to file the protective writ (see [40]–[44] above), it followed that Vivaz would suffer significant prejudice if it were denied permission to do so. I thus had to consider whether granting such permission would cause undue prejudice to the Potential Defendants, and if so, how the interests of the parties ought to be balanced.

47 On the facts of this case, I agreed with counsel for Vivaz that the filing of the protective writ would not cause undue prejudice to the Potential Defendants. I made two key observations. First, I noted that Mr Lee, who is one of the Potential Defendants in the intended derivative action and had substantively opposed OA 1330, did not, in fact, object to SUM 2319 (see [4] above).

48 Second, I noted that Vivaz had undertaken not to serve the protective writ on any of the Potential Defendants unless otherwise directed. The Potential Defendants would therefore not be under any obligation to take positive steps such as the filing of the notice of intention to contest or not to contest (O 6 r 6(1) of the ROC 2021). In fact, the General Division would not even have



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jurisdiction to hear and try the action until the Potential Defendants are served with the protective writ (s 16(1)(*a*) of the SCJA). Should Vivaz succeed in CA 54, the Appellate Division can order Vivaz to serve the protective writ on the Potential Defendants, and the originating process will then be set afoot. If, however, Vivaz fails in CA 54, the Appellate Division can either order that the protective writ be null and void, or order that Vivaz must not serve the protective writ on the Potential Defendants, in which case the protective writ would die a natural death after its validity for service expires (O 6 r 3(1)(*b*) of the ROC 2021). This was also the reasoning adopted by the Hong Kong courts in *Chen Pei Xiong (Interim)*, *Chen Pei Xiong (Merits)* and *Sea Heritage* (see [12]–[14] above) which I respectfully agreed with.

49 Seen in the round, I was of the view that granting Vivaz permission to file the protective writ, on the condition that the protective writ must not be served on the Potential Defendants pending the determination of CA 54, struck the right balance between the interests of the parties. It allowed the Company's rights to be preserved without causing any undue prejudice to the Potential Defendants. In this sense, much like Black J in *Re RUS Holdings* (see [17] above), I was of the view that the balance of convenience pointed in favour of granting SUM 2319.

***Whether there was any inordinate delay caused by Vivaz***

50 In an ideal world, a derivative action application would be brought well ahead of time so that there is sufficient buffer for any subsequent appeal or administrative steps before commencing the derivative action proper (assuming of course, that permission is granted by the court to do so). If the fact that the current proceedings were so close in time to the likely limitation expiry date of the Fiduciary Duty Claim was due to inordinate delay caused by Vivaz, then



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Vivaz arguably ought to suffer the consequences of its own delay, and it would not be just and equitable for the court to exercise its inherent powers to allow Vivaz to sidestep the limitation period by filing the protective writ.

51 In this regard, I noted that OA 1330 was commenced by Vivaz in December 2024, around nine months before the likely limitation expiry date of the Fiduciary Duty Claim. In *Vivaz (Merits)*, I found that there was inordinate delay by Vivaz in commencing OA 1330 because of my finding of fact that Vivaz knew of the impugned transaction as early as 2019 (*Vivaz (Merits)* at [77]). However, I also accepted that, if Vivaz was to be believed that it did not know of the impugned transaction until August 2024, then there would be no question of an inordinate delay (*Vivaz (Merits)* at [17] and [76]). This question of fact is now before the Appellate Division in CA 54 and I therefore made no further comment on it.

52 Looking at Vivaz's conduct of the proceedings *since the commencement of OA 1330*, there was no evidence of any inordinate delay caused by Vivaz for which it should suffer the consequences of. Even if there had been some minor delays attributable to Vivaz, they were not significant in the grander scheme of things. Thus, this factor did not point against granting SUM 2319.

***Whether CA 54 was bound to fail***

53 Last, contrary to the submissions of counsel for Vivaz at the hearing before me,[18] I was of the view that the merits of the appeal constitute a relevant factor. To be clear, the only assessment the court ought to make in this regard is whether the appeal is so obviously deficient that it is bound to fail. If so, it

[18] NEs (15 September 2025) at 4:8–29.



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would, in my judgment, not be just and equitable to grant a party permission to file the protective writ and deny the other party the fruits of its success in the derivative action application at first instance. In most cases, this would be a low threshold in that all that needs to be shown is that there are some prospects of the appeal succeeding.

54 In this regard, I take guidance from the jurisprudence surrounding applications for a stay of execution or an Erinford injunction pending an appeal. As alluded to at [38] above, the courts have made it clear that the complete dearth of merit in an appeal would be a relevant factor. In fact, as highlighted at [36] above, SUM 2319 arguably went further than an application for a stay of execution or an Erinford injunction, in that it sought to permit Vivaz to take positive steps to support its own interests, albeit on an interim basis, when the first instance court had denied such permission on the merits. This was not a course to be taken lightly, and certainly not if the basis for it was an appeal that was clearly bound to fail.

55 I noted that the court in *Axis* at [32] had expressed some reservations about whether the merits of an appeal should matter at all when a court is deciding whether to grant a stay of execution pending an appeal. In that case, the court opined that it was unclear what the rationale was for the lack of merits to be a relevant circumstance. As a practical matter, the court was of the view that keeping out any consideration of merits would prevent parties from having to re-argue their cases on appeal before the lower court. These reservations are admittedly not without some force. Nonetheless, in my view, they can be satisfactorily addressed by the way in which the court formulates the inquiry. The rationale for the lack of merits being a relevant circumstance is that it would not be just and equitable for a successful party to be denied the fruits of his



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success at first instance on the basis of a hopeless appeal. In assessing whether an appeal has at least some prospect of succeeding, the court is not, and should not be, re-hearing the matter substantively but rather merely determining whether a minimum threshold of merit is met such that the appeal is not one that is necessarily bound to fail. In this regard, I would echo the recent observations made in *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [50]–[54] that there is nothing inconsistent, or unusual, about the court assessing whether an appeal is bound to fail; indeed, this is an inquiry it has to undertake in other settings as well.

56 In saying this, I understand that the idea of having a first instance court evaluate the merits of the appeal, as if it is second-guessing the decision it had just delivered, creates a sense of unease. However, given that the inquiry is simply whether the appeal has a minimum level of merit, such a concern would only very rarely, if at all, be engaged. The present case itself demonstrated this. While I did not, and still do not, think that Vivaz should succeed in its derivative action application – which, of course, ultimately informed my decision in *Vivaz (Merits)* – I also accepted that its case was not so bereft of merit that it could clearly be said to be bound to fail. I was of the view that Vivaz's case could reasonably be argued and was not undeserving of consideration by the Appellate Division. That was as far as I needed to go: to recognise that CA 54 was not entirely hopeless.

57 Thus, I concluded that CA 54 was not so hopeless that Vivaz should not be allowed to file a protective writ pending the resolution of the appeal.



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***Summary***

58 In sum, the four factors identified above pointed in favour of granting SUM 2319. Vivaz demonstrated that there was a real need for the protective writ to avoid the Fiduciary Duty Claim from potentially being time-barred. Granting Vivaz permission to file such a protective writ would not cause the Potential Defendants undue prejudice in so far as Vivaz was not permitted to serve it on them unless otherwise directed by the court. The fact that the limitation expiry date was fast approaching was not due to any inordinate delay caused by Vivaz. It could not be said that Vivaz was bound to fail in the appeal in CA 54.

59 I make a final observation regarding the interests at stake. The present case was multi-tiered in that Vivaz had to first cross the initial hurdle of obtaining the court's permission before it could commence any action in the name of the Company. To this, one might argue that permitting Vivaz to file the protective writ would essentially allow Vivaz to skip the initial hurdle. But as explained at [48] above, the filing of the protective writ does not really skip the initial hurdle as the originating process is only substantively set afoot if the Appellate Division decides in favour of Vivaz and orders it to serve the protective writ on the Potential Defendants. Conversely, one could argue that the Company's interest in preserving its Fiduciary Duty Claim should not be prejudiced simply because, in the context of a derivative action, the shareholder must first obtain the court's permission to bring the action. If this were the Company seeking to commence proceedings against the Potential Defendants, there would, in principle, be no issue with it filing a protective writ. This is not to say that applications for permission to file protective writs should be regularly granted in the context of derivative actions. Each case must necessarily be



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decided on its own facts. Nonetheless, in the present case, it had to be borne in mind that, while Vivaz was the applicant in OA 1330 and SUM 2319, the interest that was being preserved was really that of the Company.

**Conclusion**

60 For the reasons set out above, I granted SUM 2319. Whilst Vivaz had sought for costs to be in the cause, I made no order as to costs, as Mr Lee and the Company did not object to the application and made no opposing arguments.

61 In granting the application, I should not be taken as having made any finding as to the contents of the draft originating claim that had been annexed to SUM 2319. Whether the particulars were proper or deficient was a matter best dealt with by the court hearing the derivative action if Vivaz succeeds in CA 54 and, even then, if or when the Potential Defendants elect to raise the same. I should also not be taken as having made any comment on the overall merits of CA 54, which is a matter for the Appellate Division to determine, save for my observation that the appeal was not so obviously deficient that it was bound to fail (see [56] above).

62 Finally, I should highlight that at the end of the hearing before me, counsel for Vivaz made an oral application for the protective writ to be valid for service until the resolution of CA 54 on its merits or until the protective writ is withdrawn, whichever is earlier. Counsel for Mr Lee objected and submitted that Vivaz should be required to put in a further application to extend the validity period for service when the initial three-month period is about to expire. Counsel for Mr Lee also submitted that in such subsequent applications to extend the validity period, the court can assess whether Vivaz has been taking appropriate steps to bring the matter along, such as by requesting for an



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expedited appeal, instead of simply allowing the protective writ to hang over Mr Lee's head.

63 After hearing the parties' arguments on this point, I granted the oral application. Since the purpose of the protective writ was to preserve the status quo until the disposal of CA 54, it would seem to me to unnecessarily escalate costs if the parties and the court had to hear multiple successive applications to extend the validity period for service, especially when the relevant considerations were unlikely to change in between each application.

Mohamed Faizal
Judicial Commissioner

Tang Shangwei (Zheng Shangwei), Tian Warren and Neo Yi Ling (WongPartnership LLP) for the claimant;
The defendant absent and unrepresented;
Lim Tahn Lin Alfred, Lye May-Yee Jaime and Tan Su (Meritus Law LLC) for the non-party.



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