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

[2025] SGHC 245

Originating Application No 363 of 2022 (Assessment of Damages No 8 of 2025)

Between

CVK

… *Claimant*

And

1. CVO
2. CVL
3. CVM
4. CVN

… *Defendants*

GROUNDS OF DECISION

[Damages — Assessment]
[Damages — Compensation and damages]
[Damages — Quantum]
[Civil Procedure — Mareva injunctions]

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v
CVO and others

[2025] SGHC 245

General Division of the High Court — Originating Application No 363 of 2022 (Assessment of Damages No 8 of 2025)
Andre Maniam J
30 September 2025

5 December 2025

Andre Maniam J:

Introduction

1 I declined to order the claimant to pay compensation to the 4th defendant pursuant to an undertaking to damages ("Undertaking") the claimant had provided to obtain a freezing order (which was later set aside / discharged).

2 I found that:

(a) the freezing order had not caused loss to the 4th defendant; and

(b) even if the freezing order had caused loss to the 4th defendant, the claimant should not compensate the 4th defendant for the loss.

3 These are the grounds of my decision, which the 4th defendant has appealed against.

Background

4 On 21 July 2022, I granted a freezing order against the four defendants, on the application of the claimant.[1] On 29 August 2022, I set aside / discharged that freezing order.[2] To obtain the freezing order, the claimant had provided the Undertaking in the following terms, which was incorporated in the freezing order at para 1 of Schedule 1 to Annex A of the order:[3]

> If the Court later finds that this order has caused loss to the defendant, and decides that the defendant should be compensated for that loss, the claimant will comply with any order the Court may make.

5 On 4 October 2022, the 1st, 3rd, and 4th defendants applied by HC/SUM 3721/2022 for an order for specific sums to be paid as compensation for losses allegedly caused to them by the freezing order, alternatively for an inquiry as to damages; the 2nd defendant made a similar application that day, by HC/SUM 3722/2022.

6 On 29 November 2022, I dismissed those applications.[4] The 4th defendant, however, requested further arguments, focusing on its *alternative* prayer for an inquiry as to damages (rather than its *primary* prayer for specific sums to be ordered there and then). I acceded to that request for further arguments.

7 At the hearing of further arguments on 30 January 2023, the 4th defendant submitted that where a freezing order is set aside, an inquiry as to

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1 Notes of Evidence dated 21 July 2022 at p 4.

2 Notes of Evidence dated 29 August 2022 at p 12.

3 Originating Application (without notice) for HC/OA 363/2022 filed on 20 July 2022.

4 Notes of Evidence dated 29 November 2022 at p 10.

damages would ordinarily be ordered if the defendant in question shows that it has suffered loss that was *prima facie* or arguably caused by the order, unless special circumstances justify not ordering an inquiry. The 4th defendant also suggested that if an inquiry were ordered, it could put forward further evidence to support an order for compensation. I accepted the 4th defendant's further arguments, and ordered an inquiry as to damages.[5]

8 On 29 January 2024, the 4th defendant requested a case conference to take directions for the inquiry as to damages.[6] Those directions were given, and the inquiry proceeded to a hearing on 30 September 2025. The 4th defendant's founder and director ("Mr D") filed an affidavit of evidence-in-chief ("AEIC") and testified at the hearing, as did the claimant. The parties' counsel filed opening statements before the hearing, and made oral submissions after the witnesses had testified. After hearing submissions, I decided not to order the claimant to pay the 4th defendant compensation, for reasons set out below.

Analysis and disposition

General principles for ordering compensation on an undertaking as to damages

9 On the terms of the Undertaking, two questions arise before compensation will be ordered:

(a) had the order caused loss to the 4th defendant; and

(b) if so, should the claimant be ordered to compensate the 4th defendant for that loss?

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5 Notes of Evidence dated 30 January 2023 at p 5.

6 Letter from Havelock Law Corporation to the Court dated 29 January 2024.

10 The principles applicable to an inquiry as to damages were not in dispute, and may be summarised as follows:

(a) ordinary contractual principles including causation, mitigation, and remoteness are relevant;[7]

(b) the freezing order must have been the effective cause of the loss;[8]

(c) the loss must have been reasonably foreseeable at the time the freezing order was granted;[9] and

(d) the loss must not have been avoidable by reasonable mitigation.[10]

Did the freezing order cause the 4th defendant loss for which the claimant should pay compensation?

11 I found that the freezing order did not cause the 4th defendant the loss complained of – the freezing order was not the effective cause of the loss. On the facts, it was the unreasonable conduct of the 4th defendant and/or its founder and director Mr D that had caused the loss. That could be expressed as a matter of causation; it could also be expressed as a failure to mitigate. This was fatal to the 4th defendant's claim for compensation.

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7 4th Defendant's Opening Statement at [22]; Claimant's Opening Statement at [37]–[44]; *CHS COP GmbH v Vikas Goel* [2005] 3 SLR(R) 202 ("*CHS*") at [57]–[58].

8 4th Defendant's Opening Statement at [23]; Claimant's Opening Statement at [37]–[39].

9 Claimant's Opening Statement at [40]–[43]; *CHS* at [82], [101]–[102].

10 Claimant's Opening Statement at [44]; *CHS* at [53].

The loss

12 The 4th defendant claimed to have suffered loss of remuneration because of the injunction, as follows:

(a) When the freezing order was made on 21 July 2022, the 4th defendant had been engaged by a client (the "Client") to provide certain services (the "Engagement"), on the terms of a letter of engagement ("LOE") which the 4th defendant had sent to the Client on 12 July 2022.[11]

(b) On the terms of the LOE, the 4th defendant would have been paid US$250,000 for a first phase of work, for which the 4th defendant had to prepare a certain report. For a second phase of work, the 4th defendant would have been paid US$330,000 if the Client *sold* its shares in a certain joint venture company ("JVCo") to its fellow shareholder, or US$430,000 if instead the Client *bought* over its fellow shareholder's shares in the JVCo. However, whether the Company received payment for the second phase of work (and if so, what payment) was dependent on what happened with the JVCo: if neither shareholder in the JVCo bought out the other shareholder, the Company would not be paid for the second phase of work.[12]

(c) The LOE was unsigned, but it would have been signed by the Client if only Mr D had managed to fly to Sri Lanka to carry out the Engagement.[13]

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11 4th Defendant's Opening Statement at [2] and [11].

12 4th Defendant's Opening Statement at [11]; 4th Defendant's AEIC at pp 95–96.

13 4th Defendant's Opening Statement at [38].

(d) Mr D had planned to travel to Sri Lanka on 26 July 2022, and he had on 15 July 2022 booked his flight from Singapore to Sri Lanka (at an estimated cost of some S$3,000 for business class travel),[14] and on 19 July 2022 he had booked his accommodation in Sri Lanka (for US$1,566.45 or approximately S$2,217);[15] however, those plans were disrupted by the freezing order and ultimately Mr D did not manage to travel to Sri Lanka for the Engagement.

(e) By the time the freezing order was set aside on 29 August 2022, the Client had already appointed another party in place of the 4th defendant (and the Client informed the 4th defendant of this on 10 August 2022), and the Company thus lost the Engagement and remuneration from it.[16]

The terms of the freezing order

13 The terms of the freezing order *did not prohibit* the Company from making payments in the ordinary and proper course of business. The order contained various stated exceptions, including (at para 4): "[t]his order does not prohibit the Defendants from dealing with or disposing of any of their assets in the ordinary and proper course of business." Relatedly, the order stated (at para 12), "[n]o bank need enquire as to the application or proposed application of any money withdrawn by the Defendant if the withdrawal appears to be permitted by this order."

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14 Transcript for 30 September 2025 ("Transcript"), at pp 30–31.

15 Mr D's AEIC ("4th Defendant's AEIC") at [36] and p 128.

16 4th Defendant's Opening Statement at [17] and [56(a)].

14 It was, moreover, common ground between the parties that the Engagement's trip expenses (the "Trip Expenses"), including the Sri Lanka Trip Expenses, *were* expenses in the ordinary and proper course of business.[17]

15 The terms of the freezing order thus did not prohibit the Company from paying the Trip Expenses.

The parties' position on causation and mitigation

16 The 4th defendant nevertheless contended that the freezing order had *in fact* prevented the Company from paying the Trip Expenses, for after the freezing order was served on various banks including DBS Bank ("DBS"), DBS froze the 4th defendant's bank account with the bank, and Mr D also lost the use of his personal and corporate credit cards. Consequently, the Trip Expenses could not be paid, and so the Sri Lanka trip did not happen.[18]

17 The conduct of the parties, and that of third parties (like DBS and the Client), was relevant to whether the freezing order was an effective cause of the loss notwithstanding that the terms of the freezing order did not prohibit payment of the Trip Expenses. I thus considered the 4th defendant's interactions with the claimant, DBS, and the Client. A detailed chronology is set out in the appendix to these grounds of decision.

18 The claimant contended that the loss was self-induced: the effective cause of the loss was the unreasonable conduct of the 4th defendant and/or its

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17 Claimant's Opening Statement at [4b]; 4th Defendant's Opening Statement at [49]–[50].

18 4th Defendant's Opening Statement at [50]–[55].

founder/director Mr D; put another way, the loss could have avoided by reasonable mitigation on the part of the 4th defendant.[19]

When was the Engagement lost?

19 In considering the related issues of causation and mitigation, it was necessary to determine the point at which the Engagement was lost.

20 I considered that the Engagement was lost by 10 August 2022, by which time the Client had engaged another party in place of the 4th defendant, and the Client's chief executive officer ("Mr K") had emailed Mr D to inform him of this, and to say that it would not help for Mr D to speak to the Client's other directors (in response to Mr D's query about this on 9 August 2022).[20]

21 As of 8 August 2022, however, the Engagement had not been lost – the 4th defendant could still have saved the Engagement had Mr D been able to travel to Sri Lanka in the night of 8 August 2022, such that he could start work on 9 August 2022.

22 This would have been slightly beyond the one-week extension granted by the Client (for which Mr D would have to fly to Sri Lanka by Friday 5 August to start work on Saturday 6 August 2022).

23 Nevertheless, in Mr K's 8 August 2022 email, he told Mr D that the Client was "close to appointing other parties – timing and fees are an issue" (*ie*, the Client had yet to appoint a party to replace the 4th defendant); and "unless you can tell me the bank accounts are unfrozen, there is nothing I can do" (*ie*, if

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19 Claimant's Opening Statement at [4b] and [4c].

20 4th Defendant's AEIC at p 229.

Mr D could say that the bank accounts were unfrozen – or that Mr D could travel to Sri Lanka that day – Mr K might be able to do something to save the Engagement).[21] Given that Mr K would have liked to use the 4th defendant (as Mr K said in the same email),[22] and that the replacement party was engaged at a higher fee (as Mr K mentioned in his email of 23 August 2022),[23] it is likely that if Mr D had told Mr K on 8 August 2022 that he could travel that night and start work on 9 August 2022, the Client would have agreed to stick with the 4th defendant for the Engagement rather than to engage a new party at a higher cost.

24 The Engagement could thus still have been saved if Mr D had managed to travel to Sri Lanka on 8 August 2022, to start work on 9 August 2022. I rejected the 4th defendant's contentions that the Engagement had already been lost at an earlier point.

25 The 4th defendant contended that on 1 August 2022 it had "cancelled" the Engagement when it became clear to Mr D that there was no way he would be able to travel to Sri Lanka in the foreseeable future.[24]

26 The contemporaneous emails between Mr D and Mr K do not support this characterisation of Mr D's email of Monday 1 August 2022 to Mr K. In that email, Mr D said that he "[did not] foresee that [he] will be able to make the trip this week", *ie*, by Saturday 6 August 2022, and that he "[did not] want to keep extending as that is not fair to you [*ie*, the Client / Mr K]".

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21 4th Defendant's AEIC at p 230.

22 4th Defendant's AEIC at p 230.

23 4th Defendant's AEIC at p 227.

24 4th Defendant's AEIC at [47].

27 While Mr D had shared with Mr K his pessimism about being able to travel to Sri Lanka that week and said that he did not want to extend beyond that, that was not a "cancellation" of the Engagement on 1 August 2022. Just two days later, on 3 August 2022, Mr D emailed Mr K to ask if there was anything that he could still work on (for the Engagement) while he was not physically in Sri Lanka – Mr D himself clearly did not regard himself to have "cancelled" the Engagement on 1 August 2022.[25]

28 It is also inconsistent with any cancellation of the Engagement on 1 August 2022 by the 4th defendant, for the lawyers for the 1st and 4th defendants ("1&4Ds") to have written to the claimant's lawyers the same day to seek consent to DBS releasing (among other things) S$20,000 for the trip(s) for the Engagement.[26]

29 That request for the claimant's consent produced a largely positive response from the claimant on 5 August 2022, and that very day Mr D updated Mr K that he had heard from his lawyers that the claimant was prepared to consent to allow the bank to release money from the 4th defendant's bank account. Mr D raised with Mr K the possibility of travel to Sri Lanka by Friday (12 August) or the week beginning 15 August.[27]

30 On Mr K's part, it too does not appear that he regarded the 4th defendant to have cancelled the Engagement on 1 August 2022 (or at all). Rather, it was

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25 4th Defendant's AEIC at pp 231–232.

26 Claimant's AEIC at p 195.

27 4th Defendant's AEIC at pp 230–231.

the Client that eventually cancelled the Engagement by engaging another party in place of the 4th defendant – as Mr K informed Mr D on 10 August 2022.[28]

31 If, however, the 4th defendant *had* cancelled the Engagement on 1 August 2022 and the Engagement was lost as a result, that would have been unreasonable conduct on the part of the 4th defendant, and that unreasonable conduct – and not the freezing order – would have been the effective cause of the loss.

32 It would have been unreasonable conduct on the part of the 4th defendant to cancel the Engagement on 1 August 2022 given that:

(a) on 30 July 2022 the Client had just agreed to a one-week extension for Mr D to travel to Sri Lanka and start work, *ie*, giving the 4th defendant until Saturday 6 August 2022 to do so;[29]

(b) on 27 July 2022 1&4Ds' lawyers had written to UOB and DBS requesting the release of funds in the bank accounts of Mr D (with UOB and DBS) and the 4th defendant (with DBS);[30] UOB had responded the same day (27 July 2022);[31] DBS had yet to respond as at 1 August 2022,[32] but no attempt had been made to check with DBS, before any purported "cancellation" of the Engagement by the 4th defendant on 1 August 2022; and

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28 4th Defendant's AEIC at p 229.

29 4th Defendant's AEIC at p 233.

30 Claimant's AEIC at pp 164–165 and 176–178.

31 4th Defendant's AEIC at p 212.

32 4th Defendant's AEIC at p 211.

(c) on 1 August 2022 1&4Ds' lawyers had written to the claimant's lawyers to seek consent to the release by DBS of S$20,000 for the trip(s) for the Engagement.[33]

Could the Trip Expenses (and especially the Sri Lanka Trip Expenses) have been met notwithstanding the freezing order?

33 It was common ground that the terms of the freezing order did not prohibit payment of the Trip Expenses as a payment in the ordinary and proper course of the 4th defendant's business (which, it is common ground, that payment was). The dispute was over whether *in fact* the freezing order nevertheless prevented that payment from being made.

34 The 4th defendant's position was that the freezing order prevented payment of the Trip Expenses (until that order was discharged on 29 August 2022):[34]

(a) the 4th defendant's bank account with DBS was frozen as a result of the freezing order;

(b) DBS never agreed to allow S$20,000 to be withdrawn from the 4th defendant's account to pay for the Trip Expenses;

(c) the claimant never consented to S$20,000 being withdrawn from the 4th defendant's DBS account to pay for the Trip Expenses; and

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33 Claimant's AEIC at pp 195–196.

34 4th Defendant's Opening Statement at [49]–[55].

(d) in any event, without Mr D having a valid credit card of his own, the Sri Lanka Trip Expenses could not have been paid, and Mr D could not have made the Sri Lanka trip.[35]

35 The claimant's position was that:

(a) the terms of the freezing order never prohibited payment of the Trip Expenses, and so his consent was not needed;[36] and

(b) there were various ways in which the Trip Expenses could have been paid, which the 4th defendant and/or Mr D ought reasonably to have availed themselves of.[37]

36 I considered:

(a) whether Mr D needed a valid credit card of his own to pay the Trip Expenses;

(b) whether court assistance could reasonably have been obtained for payment of the Trip Expenses;

(c) whether the 4th defendant could reasonably have obtained money from its DBS account for the Trip Expenses, by directly persuading DBS to allow withdrawal, or by obtaining the claimant's consent; and

(d) whether the 4th defendant and/or Mr D could reasonably have obtained money from other sources for the Trip Expenses, such as from

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35 Transcript at p 30 lines 14–16; p 33 line 18–p 34 line 2.

36 Claimant's Opening Statement at [14] and [55].

37 Claimant's Opening Statement at [59]–[62].

the Client, from a friend of Mr D's, or from money otherwise paid to 1&4Ds' lawyers.

(1) Did Mr D need a valid credit card of his own to pay the Trip Expenses?

37 In response to the freezing order, the banks froze not only Mr D's and the 4th defendant's bank accounts, but also Mr D's personal and corporate credit cards.[38]

38 When 1&4Ds' lawyers wrote to the banks about withdrawals, and to the claimant's lawyers to seek consent to such withdrawals, however, they did not ask for the use of those credit cards to be restored: 1&4Ds' lawyers' letters only mentioned the release of *money* from bank accounts to make payments, including payments for the Sri Lanka trip expenses.[39]

39 In Mr D's AEIC and his testimony at the hearing, however, his credit cards took centre stage. The 4th defendant contended that even if it had *money* (released by DBS, with or without consent from the claimant) sufficient for the Sri Lanka Trip Expenses, without Mr D having a valid credit card his airfare and accommodation could not be paid for, and so the Sri Lanka trip could not have taken place in any event.[40]

40 Put another way, all of 1&4Ds' lawyers' correspondence (with DBS, and with the claimant's lawyers) regarding the release of *money* from the 4th defendant's DBS bank account, was an exercise in futility without Mr D

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38 4th Defendant's Opening Statement at [50].

39 4th Defendant's AEIC at pp 144–145; Claimant's AEIC at pp 164–165 and 176–178.

40 Transcript at p 37 lines 18–27.

regaining the use of his credit cards – a matter which 1&4Ds' lawyers never mentioned in that correspondence.

41 I rejected the 4th defendant's contention that Mr D had to have a valid credit card of his own, for him to make the Sri Lanka trip.

42 Mr D had put the point this way in his AEIC:

(a) the freezing order had caused all of his personal and corporate credit and debit cards to be disabled (at [5]);

(b) he was unable to access any of the 4th defendant's or his bank accounts and credit/debit cards to pay for air tickets and accommodation (at [38]); and

(c) (at [53]):

> In any event, my inability to travel to Sri Lanka would not have been solved simply by obtaining a further loan. As is well known, a credit card is invariably required for booking a flight and hotel. From 21 July 2022 onwards, my credit cards were all frozen. While I could theoretically have asked another person to use their credit card to make these bookings, this would have been extremely risky for me. It is common practice for both airlines and hotels, at the point of embarkation/arrival, to request to see the credit card that was used to make a booking, for verification purposes. This is something that I have experienced personally, as a regular business traveller. In fact, the requirement for a credit card to be presented is expressly stated on the Singapore Airlines website, a copy of which is exhibited hereto and marked "**DA-11**". Had I not been able to present the credit card used for booking, I likely would not have been permitted to board the airline or check into the hotel.

43 Besides a bare assertion in Mr D's AEIC at [53] that it was allegedly "well known" that "a credit card is invariably required for booking a flight and hotel", the 4th defendant provided no evidence that *cash* could not be used to pay for air travel from Singapore to Sri Lanka, or for accommodation in Sri

Lanka. I doubted the assertion that a person with cash but no credit cards, could not (by using cash) fly to Sri Lanka and obtain accommodation there. I did not, however, need to rest my decision on whether cash could have been used to pay for the Sri Lanka Trip Expenses. It was sufficient for me to find – as I did – that *Mr D* did not need a valid credit card *of his own* for that purpose: another person's credit / debit card could have been used to pay the Sri Lanka Trip Expenses.

44 Indeed, Mr D referred to this possibility in his AEIC at [53] (quoted above at [42(c)]). He described it as a "theoretical" possibility, but it was a very real one. He said that if he had asked another person to use his/her credit card to book his air ticket and accommodation, that would have been "extremely risky" for him. I rejected this.

45 Mr D said that the requirement for a credit card to be presented is expressly stated on the Singapore Airlines website, a copy of which he exhibited to his AEIC. Indeed, the extract which Mr D exhibited from the Singapore Airlines website does say that the credit / debit card used to make the booking must generally be presented for verification (otherwise, Singapore Airlines should be contacted about the matter); but it also recognises that the credit / debit cardholder need not be the passenger travelling on the booking. The Singapore Airlines "Help and FAQs" write-up on the point reads:[41]

> I've booked a flight for someone else and paid with my credit / debit card. Can the passenger [present] the credit / debit card for verification on my behalf?
>
> No, for security, the cardholder must present their credit / debit card in person for verification. If [you're] unable to do this, get in touch with your local Singapore Airlines office.

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41 4th Defendant's AEIC, at p 246.

46 Thus, Mr D could have asked another person to use his/her credit card to book his air ticket, with that person presenting that credit card for verification, *eg*, when Mr D checked in at Changi Airport.

47 In the event, Mr D never explored the possibility of getting another person to use his/her credit / debit card to pay for Mr D's air ticket, although this was clearly permitted by Singapore Airlines – doing so was not "extremely risky", or risky at all.

48 It was likewise plainly incorrect for Mr D to say that if he were unable to present the credit card used for booking, at the point of checking in to the hotel in Sri Lanka, he likely would not have been permitted to check into the hotel. This position is contradicted by the Booking.com confirmation of his booking (exhibited to Mr D's AEIC), which states:[42]

> Please present the same credit card used to guarantee your booking when checking in / making payment at the resort.
>
> If you are making payment using another card holder's credit card, kindly provide the following to the resort prior to your arrival:
>
> 1) Authorization letter with card holder's signature
>
> 2) Copy of the card holder's card (front and back of card with cardholder's signature)
>
> 3) Copy of the card holder's passport or driver's license
>
> Please note that the resort may contact the cardholder for verification purposes.

49 A Booking.com guest's accommodation can be paid for by another person's credit card – in that event, the guest need not produce *the credit card* when he checks in, but instead (as stated by Booking.com) he should produce

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[42] 4th Defendant's AEIC at p 142.

an authorisation letter signed by the card holder, a copy of the card used for the booking, and a copy of the card holder's passport or driver's licence.

50 Mr D never explored the possibility of getting another person to use his/her credit card to pay for Mr D's accommodation in Sri Lanka, although this was expressly allowed by Booking.com's terms. As with payment for a Singapore Airlines air ticket, using another person's credit card to pay for accommodation booked through Booking.com was not "extremely risky", or risky at all: it was expressly permitted.

51 Thus, the fact that Mr D did not have the use of *his own* personal or corporate credit cards did not stand in the way of his airfare and accommodation being paid for: that could have been done using another person's credit / debit card. Notably, Mr D did not say he was unable to obtain the use of another person's credit / debit card to pay the Sri Lanka trip expenses. The only excuse he gave was that it was "extremely risky" to do so, as that would likely result in him not be able to travel or stay. For the above reasons, I rejected that.

52 Moreover, I did not accept that Mr D genuinely believed that he needed a valid credit card of his own to pay for his airfare and accommodation. 1&4Ds' lawyers never raised this in their correspondence with the banks or the claimant's lawyers, nor was it raised in the application to set aside or, alternatively, vary the injunction.

53 Indeed, Mr D's emails with Mr K were premised on him being able to make the Sri Lanka trip if he managed to get *money* from the 4th defendant's DBS account, whether by directly persuading DBS to allow withdrawal, or by persuading the claimant to consent to that withdrawal: the need for a credit / debit card of Mr D's to pay the expense never entered the picture.

54 Mr D's belated insistence that he needed a valid credit card of his own, was just an excuse to deflect attention from the 4th defendant and/or Mr D not reasonably availing themselves of alternative ways to pay for the Trip Expenses.

55 Despite Mr D not being able to use his personal and corporate credit cards while the freezing order was in effect, I found that the Trip Expenses could reasonably have been paid using another person's credit / debit card. This was particularly so, for (as I discuss below) the 4th defendant could reasonably have obtained a release of the S$20,000 sought for the Trip Expenses – in that event, the 4th defendant could immediately have reimbursed the person whose credit / debit card was used to pay the Trip Expenses.

(2) Could court assistance reasonably have been obtained for payment of the Trip Expenses?

56 In relation to the S$20,000 sought for the Trip Expenses, the 4th defendant focused on the restrictions placed by the freezing order (on the 4th defendant's DBS account, and on Mr D's personal and corporate credit cards). In the event, DBS was not persuaded to allow a withdrawal of money to meet the Trip Expenses, nor did the claimant consent to that.

57 There was, however, yet another way to obtain money from the 4th defendant's DBS account: by applying to court for this. Indeed, the 4th defendant eventually did so, when it applied on 8 August 2022 for the freezing order *as a whole* to be set aside, alternatively varied.[43] In those circumstances, the duty registrar allowed the claimant till 22 August 2022 to file a reply affidavit;[44] the

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43 HC/SUM 2957/2022: Summons for setting aside judgment/order dated 8 August 2022.

44 Notes of Evidence dated 10 August 2022 at p 6.

hearing was then fixed for 29 August 2022 when the freezing order was set aside.[45]

58 Instead of making an application in relation to the freezing order as a whole, however, the 4th defendant could have made a targeted application for the withdrawal of S$20,000 for the Trip Expenses, and (if necessary) for Mr D's personal or corporate credit cards to be used to pay for that. The claimant had not disputed that those expenses were in the ordinary and proper course of business. He had first taken the position that his consent was not required – the 4th defendant could and should simply liaise directly with the bank.[46] Later on, the claimant was under the misapprehension (created by the 4th defendant) that the trip(s) for the Engagement had been cancelled (as 1&4Ds' lawyers had said on 27 July 2022), and so the claimant's lawyers' letter of 5 August 2022 said he did not consent to that item (when it was raised again in 1&4Ds' lawyers' letter of 1 August 2022).[47]

59 On the facts as they are now known, as of 27 July 2022 the trip(s) for the Engagement had not been cancelled, and into August 2022 Mr D was still hoping to travel to Sri Lanka for the Engagement.

60 If an application had been made to court to specifically permit payment of S$20,000 for the Trip Expenses (with the 4th defendant clarifying that Mr D still wished to travel for the Engagement), there would have been nothing for the claimant to file a reply affidavit to (as he had earlier not disputed that payment of the Trip Expenses was a payment in the ordinary and proper course

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45 Notes of Evidence dated 29 August 2022 at p 12.

46 4th Defendant's AEIC at pp 187–188.

47 4th Defendant's AEIC at pp 213–216.

of business), I would have been willing to hear the application at short notice, and I would have granted an order to permit the withdrawal of S$20,000 from the 4th defendant's DBS account for the Trip Expenses, and (if necessary) for Mr D's personal or corporate credit cards to be used to pay for that.

61 In *Fiona Trust & Holding Corporation and others v Privalov and others (No 2)* [2016] EWHC 2163 (Comm), the freezing order expressly prohibited the conclusion of newbuilding contracts (see [83]–[84]). The court found it "unrealistic to think that an application to the court for the removal of this prohibition would have been straightforward." The removal of that prohibition had unsuccessfully been sought at an earlier hearing, and any variation application to permit the defendants to conclude such contracts would undoubtedly have been resisted vigorously by the claimants. The court thus concluded:

> … The duty to mitigate is only a duty to act reasonably. Any failure by the defendants to make a further application which would have taken time, would have been strongly resisted, and which had only moderate prospects of success, was not unreasonable. There was here no failure to mitigate. (At [84].)

62 The present case is quite different: the freezing order did not prohibit payment of the Trip Expenses; it allowed payments in the ordinary and proper course of business, and it was not disputed that payment of the Trip Expenses was a payment in the ordinary and proper course of business. An application to court would not have been a contested application to allow a *prohibited* expense, it would have been for an order to facilitate a *permitted* expense, which the claimant would likely not have resisted (and, if the claimant had, resistance would have been futile). The 4th defendant ought reasonably to have made such an application, in which case it would have obtained the necessary order, the Sri Lanka Trip Expenses would have been paid, and the Engagement saved.

63 In terms of timing, the 4th defendant had sufficient time to make such an application. On 8 August 2022 (when it was still not too late for Mr D to travel to Sri Lanka and save the Engagement), the 4th defendant made an application for the freezing order *as a whole* to be set aside or varied. The 4th defendant could reasonably have made a targeted application for payment of the Trip Expenses (or, at least, the Sri Lanka Trip Expenses) on an earlier date, for instance:

(a) after receiving the claimant's lawyers' letter of 26 July 2022 (which indicated that the claimant considered payment of the Trip Expenses to be a permissible payment in the ordinary and proper course of business);[48] or

(b) on 1 August 2022 (instead of writing again to the claimant's lawyers to seek consent), when DBS had yet to respond; or

(c) on 5 August 2022 (when the claimant's lawyers' response indicated that he misapprehended that the trip(s) for the Engagement had been cancelled – as the 4th defendant had incorrectly conveyed through 1&4Ds' lawyers' letter of 27 July 2022).[49]

(3) Could the 4th defendant reasonably have obtained money from its DBS account for the Trip Expenses?

64 Even without court assistance, the 4th defendant could reasonably have obtained money from its DBS account for the Sri Lanka Trip Expenses by directly persuading DBS to allow withdrawal, or by obtaining the claimant's consent.

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48 4th Defendant's AEIC at pp 187–188.

49 4th Defendant's AEIC at pp 213–216.

65 1&4Ds' lawyers wrote to both UOB and DBS on 27 July 2022,[50] UOB replied the same day,[51] DBS replied only by a letter dated 2 August 2022 – which 1&4Ds' lawyers said they only received on 8 August 2022.[52]

66 Out of all the items mentioned in 1&4Ds' lawyers' letters to the banks, the only one which became the subject of a claim for compensation was the request for S$20,000 for the Trip Expenses. Money for that was sought from the 4th defendant's DBS account. Yet, it appears that the 4th defendant was content to just wait until 1&4Ds' lawyers received DBS' reply (on 8 August 2022, 12 days after the 27 July 2022 letter requesting withdrawal), without taking any steps to check with DBS in the interim, especially since UOB had replied on 27 July 2022 itself.

67 Given that DBS' letter was dated 2 August 2022, if 1&4Ds' lawyers had checked with DBS on 2 August 2022, or at the latest 3 August 2022, they would have found out what DBS' position was, and that would have given the 4th defendant another five or six days to respond (a period within which Mr D could still have made the Sri Lanka trip).

68 Notably, DBS did not require that the claimant consent to the withdrawals requested by the 4th defendant.

69 Instead, DBS sought confirmation of three matters from the 4th defendant's lawyers (in their capacity as such), namely that:[53]

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50 Claimant's AEIC at pp 164–165 and 176–178.

51 4th Defendant's AEIC at p 212.

52 4th Defendant's AEIC at pp 217–220.

53 4th Defendant's AEIC at pp 219–220.

(i) the estimated sum of S$6,000 for the 4th defendant's legal fees was a reasonable sum for legal advice;

(ii) the items in paras 7(a)(ii) to (iv) were required for the 4th defendant's ordinary and proper course of business (para 7(a)(iii) being the S$20,000 sought in relation to the trip(s) for the Engagement); and

(iii) no consent from the claimant's lawyer for these withdrawals was required.

70 The 4th defendant ought reasonably to have provided these confirmations through its lawyers, but it never did.

71 Instead, 1&4Ds' lawyers stated in their 8 August 2022 letter to the claimant's lawyers that their preliminary instructions were that it was inappropriate for them to furnish the confirmations sought by DBS, as they were not DBS' lawyers. They also said they would respond to DBS in due course.[54]

72 In relation to the withdrawals requested from the 4th defendant's DBS account, those "preliminary instructions" would have been the 4th defendant's instructions. There was nothing in further correspondence from 1&4Ds' lawyers by way of update about those "preliminary instructions", nor did 1&4Ds' lawyers ever respond to DBS (although they had said they would do so "in due course").

73 DBS had asked for confirmations to be provided by the 4th defendant's lawyers, in their capacity as the 4th defendant's lawyers. It was unreasonable for

[54] 4th Defendant's AEIC at pp 217–218.

the 4th defendant to instruct its lawyers that it was inappropriate for them to provide such confirmations because they were not *DBS' lawyers*.

74 In relation to the third confirmation (that no consent was required from the claimant's lawyer for the requested withdrawals), DBS was merely asking for the 4th defendant's lawyers to confirm the effect of the terms of the freezing order. The 4th defendant ought reasonably to have provided that confirmation, and in that regard, it could also have provided DBS with the claimant's lawyers' 26 July 2022 letter which effectively confirmed the same – that the claimant's consent was not needed for payments in the ordinary and proper course of business (including payment of the Trip Expenses).

75 In relation to the second confirmation (that the items listed – including the Trip Expenses – were required for the 4th defendant's ordinary and proper course of business), the 4th defendant ought reasonably to have provided that confirmation too. Of all the parties, the 4th defendant would know best if those expenses were required for its ordinary and proper course of business, and it should have confirmed that through its lawyers. Again, it could have provided DBS with a copy of the claimant's lawyers' letter of 26 July 2022 to show that the claimant did not dispute this.

76 Had those two confirmations been provided, DBS would have permitted the withdrawal of the S$20,000 sought for the Trip Expenses, those expenses would have been paid, Mr D would have made the Sri Lanka trip, and the Engagement would have been saved.

77 Turning to the correspondence between the lawyers, the claimant had made it clear from his lawyer's letter of 26 July 2022 that he did not dispute that

payment of the Trip Expenses (for which the 4th defendant sought to spend S$20,000) was a payment in the ordinary and proper course of business.[55]

78 On 27 July 2022, however, the 4th defendant incorrectly stated through its lawyers' letter that the trip(s) for the Engagement had been "cancelled", giving the impression that the trip(s) would not happen anymore.[56] This impression was reinforced by the same letter stating that the 4th defendant reserved its right to seek all loss and damage from*, inter alia*, the said loss of business opportunit(ies) from the claimant in due course. At that point in time, there was in fact no loss of business opportunities in relation to the Engagement, which was still live, and for which Mr D was still intending to travel to Sri Lanka.

79 In truth, as of 27 July 2022 the trip(s) had not been cancelled: Mr D had merely postponed his departure to Sri Lanka by two days, from 26 to 28 July 2022. There is nothing to show that Mr D's Singapore Airlines booking for a flight leaving Singapore on 28 July 2022 had been cancelled as of 27 July 2022.

80 At 5.13pm on 27 July 2022, Mr D had emailed Mr K to say that he "cannot make Friday morning", indicated that he could not make the trip in the night of Thursday 28 July 2022 so as to meet and start work on Friday 29 July 2022.[57] However, this does not mean that the trip(s) for the Engagement had been "cancelled", especially since Mr D went on to say, "I am using all my efforts here to facilitate this trip but it is proving very difficult."[58] The trip to Sri

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55 4th Defendant's AEIC at pp 187–188.

56 4th Defendant's AEIC at p 205.

57 4th Defendant's AEIC at p 236.

58 4th Defendant's AEIC at p 236.

Lanka had not been "cancelled" (in the sense that it would not happen anymore): Mr D was still trying to make it happen.

81 The incorrect statement that the trip(s) for the Engagement had been "cancelled", however, led the claimant to believe that the trip(s) would not happen anymore; and so when 1&4Ds' lawyers wrote again on 1 August 2022 to seek the claimant's consent for the Trip Expenses, his lawyers responded on 5 August 2022 to say that as the trip(s) had been cancelled (as 1&4Ds' lawyers had said), he did not consent to the Trip Expenses.[59]

82 In that 5 August 2022 response, the claimant's lawyers invited "further explanation or clarification" from the 4th defendant,[60] but none was provided in 1&4Ds' lawyers' letter of 8 August 2022 or further correspondence.[61]

83 Having created the incorrect impression on 27 July 2022 that the Sri Lanka trip had been cancelled (when that was not the case), the 4th defendant ought reasonably to have clarified that the trip had in fact not been cancelled, and that it still intended for Mr D to travel to Sri Lanka for the Engagement, and that is why on 1 August 2022 it was still seeking the claimant's consent to the Trip Expenses being paid from the 4th defendant's DBS account. If only that clarification had been provided, the claimant would have consented to that item of expenses unconditionally, just as he had consented to various other items of the 4th defendant's business expenses, in his lawyers' letter of 5 August 2022.[62]

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59 4th Defendant's AEIC at pp 213–216.

60 4th Defendant's AEIC at p 215.

61 4th Defendant's AEIC at pp 217–218.

62 4th Defendant's AEIC at pp 213–216.

84 In sum, it was the 4th defendant's unreasonable conduct that was the effective cause of its inability to withdraw S$20,000 from its DBS account for the Trip Expenses:

(a) it incorrectly told the claimant on 27 July 2022 that the Sri Lanka trip had been cancelled (when that was not so), and it failed to correct that misleading impression – even after being invited to do so by the claimant's lawyers' letter of 5 August 2022;

(b) it failed reasonably to check what DBS' position was, prior to its lawyers receiving DBS' letter of 2 August 2022 on 8 August 2022 – the 4th defendant could have found out what DBS' position was on 2 or 3 August 2022, if only it had checked; and

(c) it failed to provide DBS with confirmations that payment of the Trip Expenses did not require the claimant's lawyers' consent, and that this was required for the 4th defendant's ordinary and proper course of business.

(4) Could the 4th defendant and/or Mr D reasonably have obtained funds from other sources for the Sri Lanka Trip Expenses, such as from the Client, from a friend of Mr D's, or from money otherwise paid to 1&4Ds' lawyers?

85 Besides obtaining money from the 4th defendant's DBS account (whether through court assistance, or by providing confirmations to DBS, or by obtaining the claimant's consent), there were other ways in which the 4th defendant and/or Mr D could reasonably have obtained funds for the Sri Lanka trip from another source: from the Client, or from a friend of Mr D's, or from money otherwise paid to 1&4Ds' lawyers.

86 Clause 3.6 of the LOE provided that the 4th defendant's fees "are exclusive of Singapore Goods and Services Tax, and incidental expenses such as printing, *travel and accommodation*, and telecommunications, which would be reimbursed at cost." (emphasis added).[63]

87 On the terms of the LOE, once the 4th defendant had paid travel and accommodation expenses, it could seek reimbursement of those at cost from the Client. It is but a short step from that, for the Client simply to have paid for those expenses directly.

88 However, although Mr D told the Client's Mr K of the restrictions placed by the freezing order, he never asked if the Client would pay for those expenses directly, which would have allowed Mr D to travelled to Sri Lanka for the Engagement.

89 When Mr D was cross-examined about this, he agreed that the Sri Lanka Trip Expenses would have amounted to some S$5,000–6,000.[64] He said he did not request advance payment of those expenses from the Client because it was "pointless" since he needed the use of his own credit card for the flight and the hotel stay.[65] He said he would have been embarrassed to ask the Client to make payment first, but the "main reason" he did not ask, was that he did not have a valid credit card of his own to present at check-in for the flight and the hotel stay.[66]

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63 4th Defendant's AEIC at p 96.

64 Transcript, p 31 lines 8–13.

65 Transcript, p 32 line 28 to p 33 line 3.

66 Transcript, p 33 lines 7–17.

90 As stated above at [41]–[55], I rejected the 4th defendant's contention that Mr D could only have made the Sri Lanka trip if he had a valid credit card of his own, and I have also found that Mr D did not genuinely believe this.

91 If Mr D had requested that the Client make advance payment of the travel and accommodation expenses for the Sri Lanka trip, I found it likely that the Client would have agreed to this, as compared to the Client having to engage a third party in place of the 4th defendant (which was not Mr K's preference) at a higher fee, and moreover with work only starting later than it could otherwise have (if Mr D had been able to travel to Sri Lanka).

92 Mr D had also obtained a loan from a personal friend for approximately S$30,000 to pay a deposit to 1&4Ds' lawyers.[67] Mr D said that it would have been an imposition to ask that friend for a further loan of S$5,000–6,000 so that he could make the Sri Lanka trip.[68] He also harked back to the "credit card issue" (which I did not accept).[69] Notably, Mr D did not suggest that he would not have been able to borrow that sum from his friend, if only he had asked.

93 Given that an expense of S$5,000–6,000 could have saved an Engagement worth at least US$250,000, it was reasonable for the 4th defendant and/or Mr D to strenuously pursue available alternatives for obtaining money – including borrowing from a friend of Mr D's. Had that been done, the 4th defendant would likely have obtained sufficient money for the Sri Lanka Trip Expenses.

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67 4th Defendant's AEIC at [40].

68 Transcript at p 36 line 24 to p 37 line 8.

69 Transcript at p 37 lines 26–27.

94 In a similar vein, the 4th defendant and/or Mr D could have explored with 1&4Ds' lawyers the possibility of paying a smaller deposit: instead of S$30,000, perhaps S$24,000, so that the 4th defendant would have money for the Sri Lanka Trip Expenses. The 4th defendant and/or Mr D ought reasonably to have focused on saving the Engagement as a priority, rather than wrapping that up in a compendious attack on the freezing order as a whole.

95 On this point, by the time of the assessment I did not have the benefit of hearing directly from the firm who were 1&4Ds' lawyers at the time, for the 4th defendant had appointed new lawyers. Nevertheless, I found it likely that those who were 1&4Ds' lawyers at the time would have acceded to this if it had been suggested to them. Instead, it appears that the 4th defendant misled its own lawyers to thinking that as of 27 July 2022 the Sri Lanka trip had been "cancelled" and so that was in turn relayed to the claimant's lawyers.

96 It should also be borne in mind that *first*, the Client was obliged to reimburse travel and accommodation expenses at cost – and so once the expenses were paid, the 4th defendant could seek their reimbursement; and *second*, the 4th defendant stood to receive a fee of US$150,000 on completion of the first draft of the report under the Engagement, a draft which was to be provided by 12 August 2022.[70] Once the 4th defendant received reimbursement or fees from the Client, it would be able to pay further deposits or fees to 1&4Ds' lawyers.

Conclusion on causation / mitigation

97 In summary, the 4th defendant and/or Mr D:

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70 4th Defendant's AEIC at pp 93 and 95.

(a) failed reasonably to seek to pay the trip expenses using the credit / debit card of someone other than Mr D;

(b) failed reasonably to seek the court's assistance to make payments that the freezing order *did not prohibit*;

(c) failed reasonably to provide DBS with confirmations on which DBS would have allowed the 4th defendant to withdraw from its DBS account the S$20,000 sought for the Trip Expenses;

(d) misled the claimant into thinking that the trip(s) for the Engagement had been cancelled, and failed to correct that misimpression – consequently, the claimant thought that the Trip Expenses were no longer needed, and so it did not consent to the withdrawal of S$20,000 sought for that; and

(e) failed reasonably to obtain funds from other sources, such as from the Client, from a friend of Mr D's, or from money otherwise paid to 1&4Ds' lawyers.

98 It was not the freezing order but the conduct of the 4th defendant and/or Mr D that was the effective cause of Mr D not making the Sri Lanka trip, and the consequent loss of the Engagement. Put another way, the 4th defendant had failed reasonably to mitigate the loss, and consequently the loss is not one that the claimant should pay compensation for.

Quantum of compensation

99 In view of my findings above, the question of the quantum of compensation was moot. Nevertheless, I would add that if I had concluded that the freezing order had caused the 4th defendant loss for which the claimant

should pay compensation, I would only have awarded damages in respect of the first phase of the Engagement, for which the 4th defendant's fee was US$250,000.[71]

100 There was also a "success fee" for a second phase of the Engagement, either US$330,000 if the Client *sold* its shares in the JVCo to its fellow shareholder, or US$430,000 if instead the Client *bought* over its fellow shareholder's shares in the JVCo, but *no fee* if neither event happened.[72]

101 In Mr D's AEIC at [65], he stated that in respect of the second phase of the Engagement the 4th defendant sought "[d]amages in the sum of either: (i) US$330,000; or (ii) US$430,000". In the 4th defendant's opening statement, the 4th defendant's lawyers stated in that regard that the 4th defendant sought "either US$330,000 or US$430,000 (or such other figure as the Court considers to be representative of the damage suffered by Straits Advisors for the loss of the chance to earn these sums)."[73]

102 On the evidence before the court, however, I was not able to meaningfully assess how likely it was for (a) the Client to sell its JVCo shares to its fellow shareholder, or (b) the Client to buy over its fellow shareholder's JVCo shares, or (c) neither to happen. In particular, the 4th defendant provided no evidence as to *what had actually happened* with the JVCo.

103 The 4th defendant's only witness was Mr D; it did not call the Client's Mr K as a witness.

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71 4th Defendant's AEIC at p 95.

72 4th Defendant's AEIC at p 222.

73 4th Defendant's Opening Statement at [58].

104 The evidence does include Mr K's 13 September 2022 correspondence to Mr D saying that it was "[f]or sure" that one shareholder would buy out the other, and that his "current guess" was that the other shareholder would buy out the Client (which would mean a further fee of US$330,000, rather than US$430,000).[74] However, those views of Mr K's were untested by cross-examination, and more fundamentally, the court simply does not know what eventually happened to the JVCo: perhaps the Client and the other shareholder agreed to continue as shareholders in the JVCo (despite Mr K's pessimistic view of this possibility); perhaps they agreed to sell the JVCo to a third party, rather than for one shareholder to buy out the other; or perhaps either shareholder sold its shares to a third party. If neither shareholder bought out the other, no further fee was payable for the second phase of the Engagement.

105 The 4th defendant's opening statement raised the possibility of damages being awarded on the basis of a loss of chance.[75] In a typical "loss of chance" analysis, the court is asked to assess the chance of something happening which has not happened. The loss of chance doctrine allows a claimant to claim for the loss of a chance of a favourable outcome (rather than the favourable outcome itself). The claimant must prove a causal link between the contractual breach and the alleged loss. The court has to compare the position the claimant would have been in had the contract not been breached, and the position the claimant is currently in given that the contract has been breached: *Crescendas Bionics Pte Ltd v Jurong Primewide Pte Ltd and other appeals* [2023] 1 SLR 536 at [37]–[43]. In the present case, the court is asked to evaluate the likelihood of three possible outcomes, one of which must have happened since (albeit following work done not by the 4th defendant, but by another party engaged by

74 4th Defendant's AEIC at p 222.

75 4th Defendant's Opening Statement at [58].

the Client). However, the court does not know what in fact has happened, and the 4th defendant (the party seeking compensation) provided no information on this, although Mr D said he had enjoyed a friendly relationship with Mr K, and Mr D had also been in contact with the other shareholder's representative. The 4th defendant either had, or could reasonably have obtained, evidence as to what had happened to the JVCo – but that was not put forward, and the 4th defendant did not explain why. I was left with the impression that evidence on this would not have been favourable to the 4th defendant. In particular, if in fact neither shareholder had bought out the other shareholder, that would have been a strong indicator that the 4th defendant had not lost any remuneration from the second phase of the Engagement (which was on a "success fee" basis).

106 Ultimately, it was for the 4th defendant to prove what it had lost in terms of remuneration from the second phase of the Engagement, but it had failed to do so. In the circumstances, I would not have awarded anything for this aspect of the matter.

Conclusion

107 For the above reasons, I dismissed the 4th defendant's claim for compensation pursuant to the Undertaking, with costs.

Andre Maniam
Judge of the High Court

Charris Wong, Benaiah Lim and Lee Ee Yang (Covenant Chambers LLC) for the claimant;
Chua Sui Tong and Russell Ng (Rev Law LLC) for the 4th defendant.

Appendix – detailed chronology

Original trip arrangements

108 On 15 July 2022, Mr D made a Singapore Airlines booking for round trip flights for him to travel from Singapore to Sri Lanka and back – to leave Singapore for Sri Lanka in the night of 26 July 2022, and to return from Sri Lanka for Singapore in the morning of 5 August 2022.[76]

109 On 19 July 2022, Mr D booked accommodation in Sri Lanka, through Booking.com, to check in on 26 July 2022 and to check out on 5 August 2022. The stated price was US$1,566.45, approximately S$2,217.[77]

The freezing order and the banks

110 The freezing order was made on 21 July 2022.[78]

111 On 22 July 2022, the claimant's lawyers informed various banks, including DBS, of the freezing order. DBS duly froze the 4th defendant's bank account(s) with the bank, and the 4th defendant came to know of this.[79]

Revised trip arrangements

112 Mr D rescheduled his intended trip to Sri Lanka, postponing his departure from 26 to 28 July 2022; Mr D informed the Client of this plan on 22 July 2022: in his email to the Client's Mr K that day, he referred to a call with Mr K, and said he would not be able to arrive on Tuesday 26 July due to

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76 4th Defendant's AEIC at p 119.

77 4th Defendant's AEIC at pp 121–123.

78 HC/ORC 3678/2022 dated 21 July 2022.

79 4th Defendant's AEIC at pp 189–202.

circumstances completely out of his control, and that – as agreed – he would try to reschedule for Thursday 28 July, and would hopefully be able to make it then.[80]

113 On 24 July 2022, Mr D revised his accommodation booking to check in on 28 July 2022 instead of 26 July 2022 as originally booked. The price for the intended stay (now shorter) was revised to US$1,253.85, approximately S$1,775.[81]

114 On 25 July 2022, Mr D revised his Singapore Airlines booking such that he would leave Singapore for Sri Lanka in the night of 28 July 2022 (instead of 26 July 2022 as per his original booking).

115 In the event, Mr D never made payment, and the air ticket was thus never issued.

25–27 July 2022 correspondence between lawyers

116 On 21 July 2022, Mr D obtained from a personal friend a loan of approximately S$30,000 in order to pay a deposit for 1&4Ds' lawyers' fees.[82]

117 In a first letter of 25 July 2022, 1&4Ds' lawyers wrote to the claimant's lawyers to say that Mr D and the 4th defendant had discovered that their bank accounts had been frozen, and that despite the exceptions set out in the freezing order, Mr D and the 4th defendant were unable to access or use any of the funds

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80 4th Defendant's AEIC at p 238.

81 4th Defendant's AEIC at [39(b)] and p 141.

82 4th Defendant's AEIC at [40].

in their bank account(s) for the purposes set out in the exceptions, and that had greatly hampered the 4th defendant's ability to conduct its business.[83]

118 1&4Ds' lawyers asked for urgent confirmation (in any event, by 10am on 26 July 2022) that the claimant consented to the 4th defendant's request for (among other things) DBS to release the sum of S$51,000 to the 4th defendant for reasonable legal expenses and business expenses incurred and to be incurred in the ordinary and proper course of business. That sum of $51,000 included "[s]cheduled business travel expenses (estimated at S$20,000)" – that was a reference to the trip(s) for the Engagement.[84]

119 In a third letter dated 25 July 2022, 1&4Ds' lawyers put the claimant on notice of three LOEs that the 4th defendant had, one dated in 2019, and two dated in 2021, *ie*, not the LOE that is now in issue (which only came into being in 2022). 1&4Ds' lawyers said that there were ongoing transactions pursuant to those three LOEs, for which the 4th defendant expected to receive various stated amounts as fees. An estimate was provided as to the losses which the freezing order might cause the 4th defendant, in relation to those transactions.[85]

120 The LOE which is the subject of the present damages claim was not one of those specifically mentioned in that letter, but would be covered by the general statement in the letter that, "[f]or the avoidance of doubt, those losses do not include losses from other engagements and/or business currently under negotiations which may similarly be adversely affected."[86]

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83 4th Defendant's AEIC at pp 144–145.

84 4th Defendant's AEIC at pp 144–145.

85 4th Defendant's AEIC at pp 146–147.

86 4th Defendant's AEIC at p 147.

121 On 26 July 2022, the claimant's lawyers replied to 1&4Ds' lawyers' first letter of 25 July 2022. They highlighted the exceptions in paras 3 and 4 of Annex A to the freezing order (including the "ordinary and proper course of business" exception in para 4 – quoted at [13] above) and para 12 on withdrawals by the defendants (also quoted at [13] above). They thus stated that Mr D and the 4th defendant should look to the banks for the sums which they wanted the banks to release for expenses.[87]

122 The claimant's lawyers also commented that the sum sought for payment to account for legal fees "can hardly be considered reasonable in the circumstances", but they did not say the same about the 4th defendant's proposed business expenses (including the $20,000 sought by the 4th defendant in respect of the trip(s) for the Engagement).[88]

123 1&4Ds' lawyers responded on 27 July 2022. In their first letter that day they said that the request for the claimant's consent to release funds was a reasonable one, and they had written to the claimant's lawyers "in order to expedite the process for the banks to quickly allow our clients access to their funds."[89]

124 Regarding the S$36,000 sought for legal fees, they said that S$6,000 was earmarked for the 4th defendant's legal fees – for payment of past legal services rendered to it; the other S$30,000 was earmarked for Mr D, and it was

87 4th Defendant's AEIC at pp 187–188.

88 4th Defendant's AEIC at p 188.

89 4th Defendant's AEIC at pp 203–204.

usual practice for law firms to request the payment of deposits to account for anticipated professional fees and disbursements.[90]

125 1&4Ds' lawyers added that "practically, the banks may not be as willing or as quick to release the funds without [the claimant's] express consent." They said that "[i]n the interest of time, we will proceed to write to the banks regarding [the release of funds]."[91]

126 1&4Ds' lawyers sent another letter dated 27 July 2022 to the claimant's lawyers. They put the claimant on further notice that the 4th defendant's "scheduled business trip referred to in paragraph 5(a)(iii) of our 1st letter has since been cancelled as a result of, *inter alia*, the Order of Court." This was a reference to the trip(s) for the Engagement. 1&4Ds' lawyers continued by stating that the 4th defendant's rights remained fully reserved, including its right to seek all loss and damage from*, inter alia*, the said loss of business opportunit(ies) from the claimant in due course.[92]

127 On 27 July 2022, the claimant's lawyers replied to 1&4Ds' lawyers' third letter of 25 July 2022. They reiterated what they had said in their letter of 26 July 2022, that the freezing order did not prohibit the 4th defendant from incurring expenses in the ordinary and proper course of business.[93]

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90 4th Defendant's AEIC at p 203.

91 4th Defendant's AEIC at p 203.

92 4th Defendant's AEIC at p 205.

93 4th Defendant's AEIC at pp 206–207.

Requests to banks to release funds

128 1&4Ds' lawyers proceeded to write to UOB[94] (in respect of Mr D) and to DBS[95] (in respect of the 4th defendant and Mr D) on 27 July 2022.

129 In the letter to UOB, 1&4Ds' lawyers asked at para 7(a) for the release of S$21,182.99 to Mr D from his bank account "for reasonable legal expenses and ordinary living expenses for the next 10 days". A breakdown was provided which included S$500 for ordinary living expenses (corresponding to the sum of $500 a week allowed for ordinary living expenses in para 3 of the freezing order). The breakdown listed items for sums totalling S$42,365.97 (including an estimated S$30,000 for legal fees).[96] Half of that amount of S$42,265.97, *ie*, S$21,182.99 was requested from UOB, the other half was requested from DBS. This was, however, not explained in the letters to UOB and DBS, and the inconsistency between a request for S$21,182.99 and a breakdown for double that amount was raised in DBS' reply (see [154] below).

130 1&4Ds' lawyers also asked at para 7(b) for UOB to take immediate steps to honour all existing GIRO payments to be made from Mr D's bank account with UOB.[97]

131 UOB replied the same day[98] to say that the requested amount to be released per para 7(a) of 1&4Ds' lawyers' letter was far in excess of the S$500 a week that the freezing order allowed Mr D to spend towards his ordinary living

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94 Claimant's AEIC at p 164.

95 Claimant's AEIC at p 176.

96 Claimant's AEIC at p 165.

97 Claimant's AEIC at p 165.

98 Claimant's AEIC at p 193.

expenses, and UOB was not in a position to determine whether the amount of $21,182.99 was reasonable in the context of a "reasonable sum on legal advice and representation" within the freezing order.[99] UOB thus asked that the 4th defendant provide written confirmation from the claimant's lawyers that they were agreeable to the request at para 7(a), before UOB could process it internally.[100]

132 In relation to the request to resume GIRO payments, UOB said that as Mr D's account(s) had been frozen, UOB was unable to allow GIRO payments "operationally". UOB thus suggested that Mr D find alternative payment modes, and thereafter provide the claimant's consent for payment to be made from Mr D's UOB account(s) with the relevant details, for UOB to facilitate the payment request.[101]

133 In 1&4Ds' lawyers' letter to DBS, DBS was asked to release the sum of S$21,182.99 to MR D for reasonable legal expenses and ordinary living expenses for the next 10 days, and DBS was provided with the same breakdown for double that amount, *ie*, S$42,365.98 (as had been provided to UOB).[102]

134 DBS was also asked to immediately release S$51,000 to the 4th defendant from its bank account "for reasonable legal expenses and business expenses incurred and to be incurred in the ordinary and proper course of business for the next 10 days", for which a breakdown was provided that included an estimated S$6,000 for legal fees, and "[s]cheduled business travel

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99 Claimant's AEIC at p 193.

100 Claimant's AEIC at p 193.

101 Claimant's AEIC at p 193.

102 Claimant's AEIC at p 177.

expenses (estimated at S$20,000)" – that was in relation to the trip(s) for the Engagement.[103]

135 DBS replied by a letter dated 2 August 2022,[104] which 1&4Ds' lawyers only received on 8 August 2022 (see [152] below).

27–28 July 2022 communications between the 4th defendant and the Client

136 On or about 27 July 2022, Mr D spoke further to the Client's Mr K. Mr D's 27 July 2022 email[105] referred to that call and said that as per their call, he was very embarrassed to advise that he could not make Friday morning (*ie*, 29 July 2022 – on the basis of him flying to Sri Lanka on 28 July 2022); he was using all his efforts to facilitate the trip but it was proving very difficult.

137 On 28 July 2022, the Client's Mr K replied[106] to say that the Client's board had agreed to the 4th defendant's terms and approved the LOE, the Client considered that a binding agreement was in place, and that board members had pointed out that failure to undertake the Engagement, would be a breach of agreement. The Client asked the 4th defendant to be more explicit as to why the travel was causing a problem.

138 The same day, Mr D replied by email to inform the Client's Mr K of the freezing order, which had frozen funds and bank accounts, preventing the 4th defendant from being able to buy airplane tickets and pay for accommodation.[107]

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103 Claimant's AEIC at p 177.

104 Claimant's AEIC at pp 199–200.

105 4th Defendant's AEIC at p 236.

106 4th Defendant's AEIC at p 236.

107 4th Defendant's AEIC at p 235.

29 July 2022 correspondence between lawyers

139 On 29 July 2022, the claimant's lawyers wrote to 1&4Ds' lawyers,[108] reiterating that the claimant's consent to the release of funds from the 4th defendant's bank accounts was not necessary for the same, whether as a matter of practice or compliance with the freezing order.

30 July 2022 correspondence between the 4th defendant and the Client

140 On 30 July 2022, the Client's Mr K emailed Mr D to say, "[p]lease try to get here [*ie*, Sri Lanka]." He said, "[w]e can agree to one week delay, but this needs to be completed next week."[109] 30 July 2022 was a Saturday, the parties had planned to meet earlier on the previous day, Friday, 29 July 2022 (on the premise of Mr D flying to Sri Lanka on 28 July 2022), and the reference to "one week delay" and "next week" would thus have deferred the travel/work timeline from the week of Monday 25 July (to Saturday 30 July) 2022, to the week of Monday 1 August (to Saturday 6 August) 2022.

141 Viewing this against the backdrop of the LOE, the 4th defendant had been required to complete a first draft of a report by 12 August 2022, unless agreed otherwise in writing between the parties (for a fee of US$150,000, and a final draft of the report by 26 August 2022 for a further fee of US$100,000, unless agreed otherwise in writing between the parties.[110] A number of trips was contemplated: first to Sri Lanka during the week beginning 25 July 2022 (for one to two weeks), then Malaysia or Australia, depending on the work in Sri

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108 4th Defendant's AEIC at p 208.

109 4th Defendant's AEIC at p 234.

110 4th Defendant's AEIC at p 115.

Lanka, and finally to Sri Lanka in the week beginning 15 or 22 August 2022, depending on progress.[111]

1 August 2022 correspondence between lawyers

142 On 1 August 2022, 1&4Ds' lawyers replied to the claimant's lawyers' letter of 29 July 2022.[112] They disagreed with the statement that the claimant's consent to the release of funds was not necessary as a matter of practice or compliance with the freezing order. They enclosed a copy of UOB's reply and said UOB had replied to ask that written confirmation be obtained from the claimant before it would process the release of funds. They said that "[f]rom the reply from UOB and the lack thereof from DBS, it is clear that the banks would require [the claimant's] express consent before funds will be quickly released to [Mr D or the 4th defendant]". They said that they would be writing separately to ask again for the claimant's consent to the release of funds.

143 On 1 August 2022, 1&4Ds' lawyers sent a further letter to the claimant's lawyers seeking consent to the release of funds to the 4th defendant and Mr D (as per 1&4Ds' lawyers' letters to the banks):[113]

(a) from DBS, the sums of S$51,000 for the 4th defendant and S$21,182.99 for Mr D; and

(b) from UOB, the sum of S$21,182.99 for Mr D.

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111 4th Defendant's AEIC at p 113.

112 4th Defendant's AEIC at pp 210–211.

113 Claimant's AEIC at pp 195–196.

1–4 August 2022 communications between the 4th defendant and the Client

144 On 1 August 2022 (the same day that 1&4Ds' lawyers wrote again to the claimant's lawyers seeking consent to the release of funds by the banks), Mr D emailed the Client's Mr K. He said, "[t]hank you for agreeing to a one week extension", but went on to say:[114]

> I regret to advise that the [claimant] has refused to allow [the 4th defendant's] bank accounts to be unfrozen, and I don't foresee that I will be able to make the trip this week.
>
> I don't want to keep extending as that is not fair to you.

145 Mr K replied on 2 August 2022 to say "[w]e won't be able to push these dates out further" and that the 4th defendant was clearly in breach of contract.[115]

146 On 3 August 2022, Mr D emailed Mr K to ask if there was any way to salvage the situation, anything that could be worked on while he was not physically in Sri Lanka.[116]

147 On 4 August 2022, Mr K replied to say that it was not possible for the work to be done remotely, and that the Client's "immediate priority is trying to fill the gap left by your inability to travel due to [the 4th defendant's] frozen bank accounts."[117]

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114 4th Defendant's AEIC at p 233.

115 4th Defendant's AEIC at p 232.

116 4th Defendant's AEIC at p 232.

117 4th Defendant's AEIC at p 231.

5 August 2022 correspondence between lawyers

148 On 5 August 2022, the claimant's lawyers wrote to 1&4Ds' lawyers,[118] providing the claimant's consent to the banks releasing funds to Mr D and the 4th defendant for various categories of expenditure:

(a) The claimant consented *unconditionally* to S$500 a week being released to Mr D for ordinary living expenses (which was in accordance with the freezing order).

(b) In respect of car tax, car insurance, medical insurance, IRAS taxes and utilities, the claimant's position was that those all fell within "ordinary living expenses" which Mr D should seek to make from the sum of S$500 a week allowed to him under the freezing order. The claimant's lawyers further stated that if S$500 a week was, however, not sufficient for Mr D to meet his payment obligations as they fell due, the claimant was willing to agree to the withdrawals requested for these items, *on condition that Mr D provided supporting documents* relating to those expenses, in which case the claimant would provide his formal consent within one day of receiving those supporting documents.

(c) In respect of the 4th defendant's business expenses in the ordinary and proper course of business, the claimant consented *unconditionally* to:

(i) S$2,000 for general office expenses (as requested);

(ii) S$16,500 for payment of salaries (as requested); and

(iii) S$6,500 for rental payment (as requested).

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118 4th Defendant's AEIC at pp 213–216.

(d) The claimant *did not consent* to the sum of S$20,000 for scheduled business travel expenses (*ie*, the Trip Expenses), because 1&4Ds' lawyers' letter of 27 July 2022 had stated that the trip(s) in question had been "cancelled". The claimant's lawyers thus stated, "[a]ccordingly, and pending further explanation or clarification from your client, it appears that the expense of S$20,000 no longer needs to be incurred and our client does not consent to the release of the sum of S$20,000 for the alleged "scheduled business travel expenses".

(e) In respect of the sum of S$30,000 sought for Mr D's legal fees and S$6,000 sought for the 4th defendant's legal fees, the claimant consented "*on the condition* that your client state the scope of work that the legal fees are to cover" (emphasis added).

5–8 August 2022 correspondence between the 4th defendant and the Client

149 On the same day, 5 August 2022, Mr D updated Mr K by email, saying:[119]

> I have just heard from the lawyers that the [claimant] is now, at long last, prepared to consent to allow the bank to release monies from [the 4th defendant's] account. He has made a wholly unreasonable request that he wants to see [the 4th defendant's] legal advice, which really upset my lawyers. They said totally unprofessional. He has also, rightly, pointed out that we have had to cancel this trip due to his previous refusal to consent to release our monies. However, if we can overcome the legal advice point, can we now resurrect this? If the lawyers could reach agreement on Monday morning, perhaps we could get the bank accounts released by Wednesday/Thursday and travel by Friday or the week beginning 15 August.

150 On 8 August 2022, Mr K replied to Mr D:[120]

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119 4th Defendant's AEIC at p 231.

120 4th Defendant's AEIC at p 230.

> Regrettably the answer is no. That ship has sailed. The [claimant] should have been reasonable much earlier. Indeed, it doesn't sound that he is being reasonable now. Will his lawyers really drop wanting to see your legal advice or is this just some game his is playing?...
>
> We are already close to appointing other parties – timing and fees are an issue – and I have a very unhappy Board. But we have to go down that route as we simply can't rely on [the 4th defendant]. We have been business partners for many years, and of course, I'd like to use you. I also realise that this will probably cost you over $650,000 in fees. And possibly cost us more due to the now urgent time frames. But unless you can tell me the bank accounts are unfrozen, there is nothing I can do...

8 August 2022 correspondence between lawyers

151 On 8 August 2022, 1&4Ds' lawyers replied to the claimant's lawyers' letter of 5 August 2022:[121]

(a) They took issue with the claimant's imposition of conditions for his consent to various categories of payments. In particular, they objected to the claimant's consent to the release of funds for legal fees being conditional on Mr D and the 4th defendant stating the scope of work that those fees were to cover. They said that details of that scope were privileged and might disclose confidential legal strategies.

(b) They said nothing about the request for S$20,000 for "scheduled business travel expenses".

152 In the same letter, 1&4Ds' lawyers said they had just received DBS' letter of 2 August 2022 that day, *ie*, 8 August 2022. They said that their preliminary instructions were that it was inappropriate for them to furnish the

[121] 4th Defendant's AEIC at pp 217–218.

confirmations sought by DBS, as they were not DBS' solicitors. They said they would respond to DBS in due course.[122]

DBS' letter of 2 August 2022 (received by 1&4Ds' lawyers on 8 August 2022)

153 DBS' 2 August 2022 letter[123] stated that the bank was prepared to facilitate withdrawal of monies from Mr D's and the 4th defendant's DBS accounts to the extent the withdrawal was permissible under paras 3 and 4 of the freezing order. In order to proceed, DBS asked the 4th defendant's lawyers (in their capacity as such) to confirm that:

> (i) the estimated sum of S$6,000 for the 4th defendant's legal fees was a reasonable sum for legal advice;
>
> (ii) the items in paras 7(a)(ii) to (iv) were required for the 4th defendant's ordinary and proper course of business (para 7(a)(iii) being the S$20,000 sought in relation to the trip(s) for the Engagement); and
>
> (iii) no consent from the claimant's lawyers for these withdrawals was required.

154 In relation to the request at para 7(a) of 1&4Ds' lawyers' letter (for the release of S$21,182.99 to Mr D for reasonable legal expenses and ordinary living expenses for the next ten days), DBS pointed out that the amount sought did not correspond with the breakdown provided. DBS asked for clarification of the amount which Mr D sought to withdrawn, and to be provided with the relevant breakdown. They also asked Mr D's lawyers (in their capacity as such)

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122 4th Defendant's AEIC at pp 217–218.

123 4th Defendant's AEIC at pp 219–220.

to provide the same three confirmations that DBS had sought in respect of the withdrawals requested by the 4th defendant.

155 1&4Ds' lawyers had told the claimant's lawyers on 8 August 2022 that they would reply to DBS in due course, but it appears they never replied.

8 August 2022 – setting aside application filed

156 What the lawyers did do on 8 August 2022, is file SUM 2957 to set aside / discharge the freezing order as a whole, alternatively for it to be varied and/or amended in various respects, including in respect of para 4 to provide that the 4th defendant be permitted to spend up to S$41,500 per month for the payment of salaries, office expenses, rental, general admin and legal expenses, *travel* and entertainment expenses, and to state that the banks could release funds of up to that amount for the 4th defendant upon written request by the lawyers, without consent being requested from the claimant for the banks to accede to the request. (As mentioned above at [4], [12(e)], [34] and [57], SUM 2957 was heard on 29 August 2022, and the freezing order was set aside that day.)

9 August to 13 September 2022 correspondence between the 4th defendant and the Client

157 On 9 August 2022, Mr D emailed Mr K to ask, "[w]ould it help if I speak to the other directors to see if there is a path forward?"[124]

158 Mr K replied on 10 August 2022 to say that speaking with the other directors would not help, and that the Client had engaged another party.[125]

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124 4th Defendant's AEIC at p 229.

125 4th Defendant's AEIC at p 229.

159 On 23 August 2022, Mr K wrote to Mr D to say that the work that was the subject of the Engagement had gone to another party – at a higher fee (than the 4th defendant's) for the first phase, and on similar terms for the second phase. Mr K suggested that, although it could not go towards fees for the 4th defendant, Mr D could – as a gesture of goodwill – reach out to a representative of the Client's fellow shareholder in the JVCo, to seek a resolution.[126]

160 Mr D sent Mr K an email on 25 August 2022 saying that he agreed to do so.

161 On 30 August 2022, Mr D emailed Mr K, saying that he had reached out to that shareholder's representative. Mr D also updated Mr K that the freezing order had been discharged the previous day, and the bank accounts should be unfrozen soon. He asked whether there was any way the 4th defendant could still assist the Client.[127]

162 On 13 September 2022, Mr D emailed Mr K to say that the bank accounts had been unfrozen, he could now travel, and he asked whether there was any way he could help or any way he could salvage any part of the Engagement.[128]

163 Mr K replied on 13 September 2022 to say that the fees from the Engagement were "no longer on the table" as the 4th defendant had breached the LOE by failing to go to Sri Lanka. He said that the 4th defendant was out of pocket for not just the US$250,000 but also at least US$330,000 in further fees.

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126 4th Defendant's AEIC at p 227.

127 4th Defendant's AEIC at p 225.

128 4th Defendant's AEIC at p 223.

He said it was "[f]or sure" that one shareholder would acquire the other shares; the situation would be untenable. His "current guess" was that the Client's shares would be acquired – meaning that the 4th defendant would have received further fees of US$330,000; and that it would have been US$430,000 if the other way around.[129]

164 Mr K attached a formal letter from the Client[130] to bring the matter to a close. In that letter dated 13 September 2022, the Client stated that the 4th defendant had in principle agreed to carry out the Engagement, and that the Client and the 4th defendant had reached an in principle understanding on the outline of the scope of work and terms and conditions of the Engagement. The Client further said that it had "graciously agreed to a postponement of a week to get started on the process, but you were also unable to travel then, compounding matters further."

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129 4th Defendant's AEIC at pp 222–223.

130 4th Defendant's AEIC at p 251.